

ENGLISH

Doing Business in Australia:

A Comprehensive Guide

2025



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Australia offers a dynamic and stable environment for business and foreign investment,

supported by a strong economy, political stability, and a skilled workforce. With favourable tax policies, growing domestic demand, and high adaptability to global market shifts, Australia continues to be a compelling destination for international investors seeking to allocate capital.

H&H Lawyers

SYDNEY | MELBOURNE

Our firm specialises in assisting clients with inbound investments and business operations in Australia. We offer tailored legal expertise, particularly in navigating the complexities of international business law, ensuring that foreign investors receive informed, strategic counsel.

With offices in Sydney and Melbourne, we are well-positioned to provide comprehensive legal advice on matters affecting business ventures in Australia. Whether you are looking to establish a new business, structure investments, or navigate regulatory requirements, our lawyers are ready to support you through every step of the process.

Disclaimer: This guide provides general information and should not be relied upon as legal advice. Professional legal counsel should be sought for specific circumstances and transactions.



With deep understanding of the unique legal challenges and opportunities for international clients, we are dedicated to helping you succeed in the Australian market.

We welcome the opportunity to discuss how we can assist you in exploring and expanding your investment prospects in Australia.

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Legal System

Overview of the Legal System

The Australian legal system is fundamentally important for business and investment, being predominantly based on case law rather than written statutes. Australian law follows the English common law tradition, allowing parties to freely negotiate contractual terms. Generally, the law does not impose restrictions on contract terms, though several notable exceptions exist.

Key Legal Considerations

Enforceability Issues: Provisions requiring defaulting parties to pay penalties may be unenforceable, as may agreements that contravene competition laws or impose unreasonable trade restrictions. Waivers of statutory rights and no-sue agreements may also be unenforceable.

Legal Principles: Contract enforceability can be affected by various legal principles, including limitation periods for breach of contract claims, suspension of rights during bankruptcy proceedings, and issues relating to representations and reliance.

Security Interests: Enforcement of security interests in assets may require registration under the *Personal Property Securities Act 2009 (Cth)*.

Contracts: While written contracts are advisable but not mandatory, Australia is party to the Vienna Convention on Contracts for the International Sale of Goods, which establishes uniform rules for international goods sales. Parties may opt out of the Convention in favour of local law.

Enforcement of Legal Rights

Legal rights and remedies arising from contracts or other sources may be enforced within the Australian court system. Each state and territory maintains its own justice system, with Supreme Courts and Courts of Appeal serving as the highest judicial bodies. A distinct federal court system exists, with the High Court of Australia serving as the supreme appellate court for both state and federal matters.

Available remedies include damages, injunctions, and property seizure. Many courts have authority to mandate mediation between parties before hearing cases.

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Business Structures

Various business structures exist for Australian investments, including foreign company subsidiaries and branch offices, company incorporation, franchises, partnerships, joint ventures, individual ownership, agency, and trusts.

Different structures present varying regulatory, accounting, tax, and legal considerations under the *Corporations Act 2001 (Cth)*.

Subsidiaries and Branch Offices

Foreign companies typically establish Australian businesses through subsidiary companies (separate legal entities) or branch offices (interdependent with parent companies). Subsidiaries require at least one Australian resident director; branch offices have no director requirements.

Company Incorporation

Australian companies may be formed as:

- Limited by shares (public and proprietary): Approximately 98% of registered companies
- Limited by guarantee
- Unlimited companies (public and proprietary)
- No-liability companies

Proprietary companies have less burdensome disclosure requirements but limited public share trading abilities, requiring at least one member but a maximum of 50 non-employee members. Public companies may have unlimited members and raise public funds.

Large proprietary companies must appoint auditors and submit audited financial statements to the Australian Securities and Investments Commission (ASIC) Small proprietary companies only prepare audited statements if directed by ASIC, required by members, or controlled by foreign companies under certain circumstances.

Companies must register through ASIC, including 'Limited'/'Ltd' or 'Proprietary'/'Pty' in registered names, receiving unique Australian Company Numbers (ACN) and applying for Australian Business Numbers (ABN) for tax purposes.

Franchises and Distribution

Distribution agreements typically grant "sole" or "exclusive" distribution rights within specific territories. Benefits include single entity engagement for territory operation, though distributors' profit margins may increase goods prices, potentially reducing market competitiveness.

Business Partnerships

Partnerships involve legally valid agreements between two or more parties operating businesses to generate profits. Partners share profits and losses collectively and individually, with no separate legal entity status meaning partners bear collective and individual liability for partnership debts and obligations.

Joint Ventures

Joint ventures involve two or more parties collaborating toward common goals while maintaining separate legal entity status. Formal agreements outline rights and obligations, specifying non-partnership relationships to prevent tax and liability issues. Profit distribution depends on participating interest agreements.

Joint venture companies provide alternative structures where parties hold proportional shares with shareholders' agreements governing relationships and operations.

This structure benefits participants through limited liability as limited company shareholders.

Individual Ownership

Sole proprietorships involve single individual ownership and operation without legal distinction between owner and business. Owners gain all profits but bear personal liability for all losses, debts, and obligations, creating higher risk due to unlimited liability.

Agency

Agency agreements involve relationships where agents are authorised to act on principals' behalf.

Three key relationships exist: principal-agent, principal-third party, and agent-third party. Depending on principal identification, third parties may sue principals or agents for contract breaches, though principals may always sue defaulting third parties.

Agents must act with reasonable care, disclose important information, avoid secret profits, maintain confidentiality, and ensure transactions benefit principals. Principals must pay commissions and reimburse approved expenses or liabilities.

Trust

Trusts involve legal arrangements where trustees hold property on behalf of beneficiaries or legally recognised purposes. Actual property benefits go to beneficiaries or designated purposes, not trustees. Trustees have fiduciary duties to act in beneficiaries' best interests. Businesses may operate through trusts where trustees (often private companies) hold business assets and conduct trading activities for beneficiaries.

Foreign Investment Policy

The Foreign Investment Review Board (FIRB) reviews foreign investment proposals under the Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA).

FIRB advises the Treasurer who makes final approval decisions based on national interest considerations.

Monetary Thresholds

Thresholds vary by investor country and asset type. For Free trade agreement (FTA) partner countries (including Korea, US, Japan, Chile, etc), higher thresholds apply. As of January 2025:

Investment Type	FTA Partners	Other Countries
Business acquisition	AUD \$1,455 million	AUD \$321 million
Agribusiness	AUD \$1,455 million	AUD \$72 million
Agrcultural land	AUD \$1,455 million	AUD \$72 million
Commercial land	AUD \$1,455 million	AUD \$72 million
Residential land	No threshold	No threshold

Note: Thresholds are indexed annually. Zero dollar thresholds apply regardless of investment value

Sector-Specific Restrictions

- **Critical Infrastructure:** Telecommunications, energy, water, ports, and data storage face enhanced scrutiny and potential conditions. Direct or indirect control of critical infrastructure assets requires FIRB approval regardless of value.
- **Media:** Foreign ownership restrictions apply to television, radio, and newspaper assets. Cumulative foreign ownership cannot exceed specified thresholds.
- **Sensitive Sectors:** Defence, transport, communications, and data processing receive heightened review. National security considerations significantly influence approval decision.
- **Financial Sector:** Banks, insurers, and significant financial infrastructure require FIRB clearance. APRA approval may additionally be required.

Application Process and Timing

FIRB applications must be lodged before proposed actions occur. The Treasurer has 30 days to decide (extendable to 90 days for complex matters). Decisions consider national interest factors including national security, competition, impact on economy and community, character of investor, and government policy. Applications require detailed disclosure of beneficial ownership, corporate structure, funding sources, business plans, and existing Australian holdings. Incomplete applications delay processing. Professional advice is recommended for structuring transactions to optimise approval prospects.

Fees

FIRB application fees range from \$2,400 for low-value investments to \$141,300 for acquisitions exceeding \$5 billion. Residential real estate fees are typically \$2,400 for purchases under \$1 million.

Conditions and Ongoing Compliance

FIRB approvals may impose conditions including Australian content requirements, maintaining headquarters in Australia, employment undertakings, or divestment provisions if conditions are breached. Annual compliance statements may be required. Non-compliance attracts significant civil and criminal penalties including divestment orders and fines up to the greater of \$13.95 million or three times the value gained.

Exemption Certificates

Exemption certificates permit multiple acquisitions within specified parameters over set periods without repeated applications. It is suitable for investors making regular acquisitions in specific sectors or property types. Validity typically ranges from 12 months to three years depending on certificate type.



Corporate Governance

Corporate governance encompasses rules and policies dictating company operations.

Key internal actors include directors and shareholders, while external influence comes from government, lawmakers, and regulatory authorities.

Governing Instruments

Australian companies are legally governed by:

- Corporations Act 2001 (Cth): Primary legal framework outlining compliance rules for administration, financial reporting, mergers and acquisitions, shareholder disclosure, financial services licensing, and fundraising
- Company Constitution: Establishes internal governance rules and policies implemented after registration
- Common Law: Provides additional governance principles within the Australian court system

ASX Listing Rules

Australian Securities Exchange-listed entities must adhere to Australian Stock Exchange (ASX) Listing Rules covering admission, quotations, disclosures, securities, meetings, and trading suspensions. Listed companies must include corporate governance statements in annual reports.

The 4th edition (2019) establishes eight principles:

- Lay solid foundations for management and oversight
- Structure boards to add value
- Act ethically and responsibly
- Safeguard corporate reporting integrity
- Make timely and balanced disclosures
- Respect security holder rights
- Recognise and manage risk
- Remunerate fairly and responsibly

Director Identification Numbers

All company directors must obtain a Director Identification Number (DIN), a unique identifier maintained for life. Applications must be made through the Australian Business Registry Services with identity verification (typically 100-point check). DINs are free and must be obtained before appointment as a director.

Director Requirements and Duties

Proprietary companies require at least one director; public companies require a minimum of three directors with at least two Australian residents.

Directors must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they were a director of the company in the company's circumstances.

Modern interpretation of this duty now incorporates a proactive requirement for directors to be informed of and manage non-financial risks that could materially impact the company's value or reputation. This includes:

- Environmental, Social, and Governance (ESG) Factors: Directors are increasingly expected to oversee the company's climate-related risks, cultural safety, human rights compliance in supply chains, and adherence to social standards. Failure to adequately monitor and address these risks can constitute a breach of the duty of care.
- Company Culture and Psychological Safety: Directors are responsible for ensuring a positive and safe company culture, which includes obligations regarding risk mitigation for sexual harassment, bullying, and psychological injury.

The Corporations Act 2001 (Cth) and common law establish director duties:

- Act with integrity and transparency
- Exercise due care and attention
- Make good faith decisions prioritising company interests for legitimate purposes
- Refrain from using position or information for personal gain
- Disclose significant personal interests and avoid conflicts
- Ensure companies do not trade while insolvent

Meetings

Public companies must hold general shareholders' meetings within 18 months of registration, then annually within five months following financial year end. Proprietary companies have no legal meeting requirements unless constitutional requirements exist.

Disclosures, Reports and Audits

Companies must notify ASIC of shareholder changes, share allotments, or similar information within 28 days. Public companies, large proprietary companies, and certain small proprietary companies must submit audited financial statements, auditor's reports, and directors' reports within three months (disclosing entities) or four months (other companies) after financial year end.

ASX-listed entities must continuously disclose information materially affecting security prices or values, submitting audited annual and half-yearly financial reports meeting Australian Accounting Standards Board standards. Financial records must be retained for at least seven years.

A paper boat with a red and grey patterned hull is shown on a background of a world map. The boat is positioned in the upper left quadrant, and the map shows various continents in muted colors. A dark green banner is overlaid on the right side of the image, containing the title 'Cross-Border Trade' in white text.

Cross-Border Trade

Australia's trade framework facilitates international commerce through free trade agreements, streamlined customs processes, and clear import/export regulations.

Free Trade Agreements

Australia has comprehensive free trade agreements with numerous countries including Korea (KAFTA), China (ChAFTA), Japan (JAEPA), United States (AUSFTA), and regional agreements (RCEP and CPTPP). These agreements reduce or eliminate tariffs, facilitate customs procedures, and heighten market access. For example, the Korea-Australia Free Trade Agreement (KAFTA), effective December 2014, eliminated tariffs on over 99% of Australian exports to Korea. Rules of origin requirements must be satisfied to claim preferential tariff treatment. Certificates of origin may be required.

Import Licensing and Permits

Most goods may be imported freely, but certain categories require import permits or licenses including quarantine materials, therapeutic goods, food products, chemicals, and defence items. The Department of Agriculture, Fisheries and Forestry administers biosecurity controls. Therapeutic Goods Administration approval is required for medicines and medical devices.

Customs brokers typically handle import declarations through the Integrated Cargo System. Importers must hold an Australian Business Number and may need import/export licences depending on goods.

Customs Duties and Tariff Classification

Customs duties apply to imported goods based on tariff classification under the Harmonized System. Most non-agricultural goods attract zero or low tariffs (typically 5%). GST applies to imports based on customs value, duty, transport, and insurance costs.

Accurate tariff classification is essential. The Australian Border Force provides binding tariff advice. Valuation must comply with World Trade Agreement (WTO) principles using the transaction value method primarily.

Export Controls

Export licences are required for defence and strategic goods under the *Defence Trade Controls Act 2012 (Cth)*. Goods and technology on the Defence and Strategic Goods List require permits. Sanctions and export control laws prohibit or restrict trade with certain countries, entities, and individuals.

Exporters must ensure compliance with DFAT sanctions administered under the *Autonomous Sanctions Act 2011 (Cth)* and UN sanctions. Due diligence on trading partners is essential to avoid dealing with sanctioned persons or entities.

Trade Remedies

Australia applies anti-dumping, countervailing, and safeguard measures to protect domestic industries from injurious trade practices. The Anti-Dumping Commission investigates complaints. Remedies include dumping duties, countervailing duties, and tariff increases.

Anti-Bribery and Corruption

The Commonwealth Criminal Code prohibits bribing foreign public officials. Australian companies and individuals can be prosecuted for foreign bribery committed anywhere in the world. Penalties include substantial fines and imprisonment up to 10 years for individuals.

Organisations should implement anti-bribery compliance programs including due diligence on third parties, clear policies, training, and monitoring. The Australian Federal Police and CDPP actively investigate and prosecute foreign bribery.



Banking and Finance

Establishing banking relationships and understanding Australian financial regulation is essential for foreign businesses operating in Australia.

Opening Business Bank Accounts

Foreign companies must open Australian bank accounts to conduct local business. Banks require extensive identification documentation including company registration certificates, director identification, beneficial ownership disclosure, and business activity verification.

All directors must obtain their DIN before company registration. At least one director with an Australian residential address is required for proprietary companies. Banks typically require in-person verification for at least one director, though some offer video verification.

Account establishment typically takes 1-2 weeks. Initial deposits may be required. Banks impose ongoing compliance monitoring including transaction monitoring and periodic information updates.

Anti-Money Laundering and Counter-Terrorism Financing

The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) imposes obligations on financial institutions and designated service providers.

Customer identification and verification procedures are mandatory before providing designated services.

Businesses must enrol with AUSTRAC (Australian Transaction Reports and Analysis Centre), develop AML/CTF programs, conduct ongoing customer due diligence, and report suspicious matters and threshold transactions. Record-keeping requirements extend seven years. Enhanced due diligence applies to high-risk customers and politically exposed persons.

Credit Licensing

Engaging in credit activities requires an Australian Credit Licence (ACL) from ASIC unless exemptions apply. Credit activities include providing credit, credit assistance, or acting as a credit representative. The *National Consumer Credit Protection Act 2009 (Cth)* establishes responsible lending obligations.

Licensees must maintain adequate financial resources, demonstrate competence, have dispute resolution systems, and comply with responsible lending conduct obligations.

Penalties for unlicensed credit activity are severe.

Cross-Border Payments and Foreign Exchange

Australia has no exchange controls, permitting free capital movement. Foreign currency transactions occur through banks and authorised dealers. Transfer pricing rules govern cross-border transactions between related parties to prevent profit shifting.

International money transfer businesses require registration with AUSTRAC and compliance with AML/CTF obligations. SWIFT and other international payment systems operate freely.

Transfer documentation may be required for tax purposes.

APRA Regulation

The Australian Prudential Regulation Authority (APRA) supervises banks, insurers, and superannuation funds. Foreign financial institutions establishing Australian operations require APRA authorisation and ongoing supervision. Capital adequacy, liquidity, and governance standards apply.

Foreign bank branches must have "approved deposit-taking institution" status to accept deposits.



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Labour Law

The *Fair Work Act 2009 (Cth)* primarily governs private sector employment, setting national workplace relations standards.

The Fair Work Ombudsman and Fair Work Commission enforce rights and obligations. Employment contracts must comply with legislation and modern awards.

Companies employing Australian workers, regardless of the location of incorporation, must comply with Fair Work Act requirements.

Employment Types

- **Full-time and Part-time**

Permanent staff is entitled to paid leave and public holidays. Full-time employees typically work 35-38 hours weekly; part-time employees work fewer hours on regular, ongoing schedules.

- **Casual**

No guaranteed regular hours or permanent work with flexible scheduling. Not entitled to paid leave but usually receive casual loading for higher hourly wages compared to equivalent permanent positions.

Baseline Legal Requirements

- **National Employment Standards (NES)**

Minimum entitlements including maximum weekly hours, flexible working arrangement requests, leave entitlements (parental, annual, personal/carer's, long service), and termination/redundancy entitlements. Casual workers receive limited standards.

- **Minimum Wage**

\$24.95 per hour (as at July 2025), though modern awards likely specify different rates.

- **Modern Awards**

Industry-specific minimum terms and conditions covering pay, leave, breaks, penalty and overtime rates for non-managerial and lower-paid employees.

- **Superannuation**

As of July 2025, employers must contribute 12% of employees' ordinary earnings quarterly to superannuation funds, with additional payments made beyond wages.

- **Work Health and Safety**

State and territory legislation requires employers to ensure workplace health and safety, including safe premises and equipment, suitable work environments (including bullying protection), consultation procedures, and record maintenance. Directors and senior managers have personal "due diligence" obligations.

- **General Protections**

Prohibits adverse action against employees for discriminatory reasons (race, sex, age, disability), exercising workplace rights, or temporary illness/injury absence.

- **Sham Contracting**

Prevents businesses from misclassifying employment relationships as independent contractor arrangements to avoid employee entitlements.

Additional Requirements

- **Workers Compensation**

All states and territories require employers to maintain workers compensation insurance covering injury/illness wages and medical expenses.

- **Unfair Dismissal**

Eligible employees may claim relief for dismissals in "harsh, unjust or unreasonable manner" or non-genuine redundancies, with potential reinstatement or compensation orders.

Foreign Workers

Australian citizens and permanent residents have unrestricted work rights.

Others require appropriate work visas:

- **Short-stay visas**

Limited business purposes (inquiries, negotiations, working holidays) without general employment rights.

- **Temporary work visas**

Skilled individuals working temporarily (typically for 2~4 years) through employer sponsorship or independent skills demonstration. Temporary Skill Shortage (482) visas allow employer nomination for skilled occupation positions.

- **Permanent work visas**

Grant permanent residency, often requiring particular employable skills or business/entrepreneurial capabilities with employer nomination or sponsorship.

Immigration

The Australian immigration plan includes a number of visa categories enabling non-Australian business people to come to Australia and work.

Visa requirements may vary depending on whether the visa allows permanent or temporary entry, or whether an applicant is a highly skilled individual under the migration legislation. Generally, visa applicants are required to undergo health and character examinations.

Short-Term Stay Visas

- Short-term business visitors

Either an Electronic Travel Authority (ETA – Subclass 601) or an eVisitor Visa (Subclass 651) is available for individuals with genuine business visitor purposes, depending on the visa the applicant holds. These visa holders should note that they can only carry out "business visitor activities", such as making general business inquiries or entering into business contracts. If an applicant does not hold an eligible passport for the ETA or eVisitor visa, Subclass 600 under the Business Visitor stream may be an alternative. All of these visas allow holders to stay in Australia for up to three months each time they enter.

- Short-term working visa (Subclass 400)

Business visitors coming to Australia to perform short-term, highly specialised, non-ongoing work may need to obtain a Subclass 400 visa. Visa holders are usually allowed to stay for up to three months, but the visa may be granted for up to six months if a strong business case is provided.

Medium To Long-Term Stay Visas

- Temporary skills shortage visa (Subclass 482)

Foreign companies wishing to establish an entity in Australia can sponsor their staff to come to Australia on a Subclass 482 Temporary Skills Shortage visa (TSS visa) if their occupations are listed on the skilled occupation list. Once granted, this visa allows individuals to work in Australia for up to 4 years or up to 5 years if they hold a Hong Kong passport. From December 2024, the Skills in Demand visa replaced the TSS visa with three pathways and streamlined processing.

- **Visas for business innovators and investors**

Previously, a Business Innovators and Investment (Provisional) visa (Subclass 188) allowed an individual to operate a business or investment activity in Australia and offered a pathway to permanent residency through its connection with the Subclass 888 visa. However, it has been closed to new applicants since 31 July 2024. In place of the Subclass 188 visa, the National Innovation Visa launched in December 2024, specifically targeting the "most exceptional talent", such as high-performing entrepreneurs and major investors. This visa fulfils the objectives of the Subclass 188 visa with a more specific focus.

Permanent Migration Visa

- **Employer Nomination Scheme Visa (Subclass 186)**

A Subclass 186 visa allows employers to sponsor highly skilled, genuinely needed individuals from overseas and offer them permanent residency. There are three streams under this subclass:

- (1) Direct Entry Stream – ideal for individuals with no or limited work experience in Australia;
- (2) Temporary Residence Transition Stream – typically suitable for individuals who already hold a Subclass 482 Temporary Skills Shortage visa;
- (3) Labour Agreement Stream – allows an employer to sponsor individuals through a labour agreement.

- **Skilled Independent/State or Territory Nominated Visas**

The Skilled Independent visa (Subclass 189) is a points-tested permanent visa suitable for skilled workers not sponsored by an employer.

This visa does not require nomination by a state or territory government. The Skilled Nominated visa (Subclass 190) is another points-tested permanent visa, which caters to applicants nominated by a state or territory government who also demonstrate matching skills, English competency, and work experience.





Taxation in Australia

Australia imposes taxes at both federal and state levels. Key federal taxes include income tax (including capital gains tax), goods and services tax (GST), fringe benefits tax, and superannuation guarantee.

Key state taxes include transfer duty and payroll tax.

The Australian Taxation Office (ATO) administers federal taxes, while each state and territory has its own administrative bodies for local taxes.

Income Tax

The federal government taxes all income of Australian residents, whether individuals or companies. An individual is an Australian resident for tax purposes if they:

- Reside in Australia
- Are domiciled in Australia (unless they have a permanent place of abode overseas)
- Are present in Australia for at least 183 days in a year (unless their usual place of abode is overseas with no intention of becoming a resident)
- Qualify as an eligible employee under specific superannuation laws

A company is resident if incorporated in Australia or if it carries on business in Australia where Australian resident shareholders control it.

Australian-sourced income of non-residents is also subject to taxation. Income is Australian-sourced if contract creation and business activity occurs in Australia. Foreign source income of Australian residents may be subject to taxation regardless of whether it has been brought into the country. Australia's bilateral taxation treaties allow foreign profits made by Australian residents in certain countries to be generally exempt from tax to avoid double taxation.

Australian residents must register with the ATO to obtain a tax file number (TFN) and submit annual income tax returns. Companies are taxed at 30%, though companies with annual turnover under AU\$50 million may qualify for a 25% rate. Individual tax rates vary by income bracket.

Capital Gains Tax (CGT)

Capital gains tax is part of the income tax system, with net capital gains included in taxable income. Capital gains are profits from disposing of assets, including property and shares. Non-residents are subject to CGT only when selling taxable Australian property, including real property and indirect interests in real property or mining rights.

Goods and Services Tax (GST)

A 10% GST applies to most goods and services through production, sale, and importation. GST exemptions include financial products, exports, basic food, and residential accommodation. Businesses with annual turnover exceeding \$75,000 must register for GST and obtain an Australian Business Number (ABN).

Fringe Benefits Tax (FBT)

Employers pay 47% tax on the grossed-up value of non-cash benefits provided to employees, their families, or associates. Benefit recipients are exempt from income tax on these benefits.

Superannuation Guarantee

Employers must contribute at least 12% of each employee's ordinary earnings quarterly to the employee's superannuation fund, with a maximum contribution cap of \$7,500 per quarter for 2025-26. Employers not meeting these requirements face superannuation guarantee charges.

Transfer Duty

Tax rates vary by jurisdiction. State and territory governments impose transfer duty when transferring ownership or interests in land, mining and petroleum rights, leases, buildings, and structures.

Payroll Tax

Employers whose total annual wages exceed the yearly payroll tax threshold must pay payroll tax and file returns. Thresholds and rates vary by state and territory.

Tax Concessions

Australia offers research and development (R&D) incentives. Eligible entities with annual turnover under \$20 million can receive tax refunds equal to the company tax rate plus an 18.5% premium. Larger entities may receive tax offsets of 8.5% or 16.5% above the company tax rate, depending on their R&D expenditure.

Investing in early-stage innovation companies (ESICs) provides tax incentives, including 20% tax offsets on investment value (capped at \$200,000) and potential CGT exemptions on shares held for 12 months to 10 years.

Withholding Tax

Non-resident withholding tax applies to interest payments at 10% (reducible under double taxation agreements), dividend withholding tax at 30% on unfranked dividends (reducible under treaties), and royalty withholding tax at 30% (reducible to 5% or 10% under treaties). Fully franked dividends are exempt from withholding tax.

Australian Business Number (ABN)

The ABN is a unique identifier required for GST-registered businesses and recommended for non-residents conducting business activities in Australia. Without an ABN, Australian customers must withhold 47% of payments to non-residents.

Dividend Imputation System

Australia operates an imputation system preventing double taxation of corporate profits. Dividends from Australian companies come with franking credits matching tax paid by the company. Eligible taxpayers can claim refunds if franking credits exceed tax liability.





Real Estate and Property Law

Australian property law governs ownership, use, and transfer of land and buildings under the Torrens title system, which provides certainty of ownership.

This encompasses residential and commercial leases, property sales and purchases, land development, zoning regulations, and ownership disputes. Property law is primarily regulated by state and territory legislation, with federal laws like the Foreign Acquisitions and Takeovers Act 1975 (Cth) impacting foreign investment transactions.

Land Ownership

Australian land ownership typically involves freehold title, granting extensive rights to use and control land with minimal restrictions. However, mineral rights and certain resources remain with the government. In some jurisdictions, ownership may be available through long-term leases where the government retains land ownership while individuals or companies gain usage rights for specified periods.

Due Diligence for Purchasers

Real estate is sold "as is," meaning buyers accept the property in its current state with limited protection if defects are discovered later. Comprehensive due diligence is critical, including checking title details, reviewing encumbrances such as leases, mortgages, or easements, understanding zoning controls, and inspecting the physical condition. Sellers may need to disclose planning certificates, building warranties, and contamination reports.

Foreign Investment

The Australian government enforces specific policies regarding foreign investment in residential, commercial, agricultural real estate, and mining tenements. Foreign investors must notify the Foreign Investment Review Board (FIRB) unless the investment falls within exempt categories. Exemption certificates enable multiple acquisitions over set periods without reapplying for approval.

Off-the-Plan Properties

Off-the-plan purchases involve contracts for properties yet to be subdivided or constructed. Protections include 10 business day cooling-off periods, deposits held in trust until settlement, and statutory termination rights in case of significant delay from the scheduled completion date or material deviations from the draft documents, including the draft plan.

Strata Title Properties

Strata title arrangements involve individual unit ownership while sharing ownership of common areas managed by owners' corporations. These entities oversee maintenance, enforce rules, and collect levies from unit owners for common property expenses. Strata title laws vary by state but impose specific management and maintenance requirements.

Contracts and eConveyancing

Property sale contracts are typically prepared by the seller's solicitor or conveyancer, containing sale terms including price, settlement date, and special conditions. Electronic conveyancing (eConveyancing) has streamlined transactions through platforms like PEXA, though Tasmania and the Northern Territory have limited access.

Leases vs. Licenses

Leases grant tenants exclusive rights to use and occupy property for specified periods in exchange for rent payments, creating enforceable interests in land. Licenses are more flexible arrangements permitting property use under agreed terms without exclusive possession or proprietary interests, typically used in shared-access situations.

Planning and Environmental Approvals

Local planning authorities control land use and development through zoning regulations, environmental protections, and development restrictions, requiring planning permits and building approvals. The Environment Protection and Biodiversity Conservation Act 1999 (Cth) applies to actions affecting national environmental concerns.

Environmental Management

Environmental laws require pollution-prone activities to obtain licences, particularly for industrial operations. Property occupants and businesses must manage pollution risks and follow regulations to prevent environmental harm, with violations attracting significant penalties.

Indigenous Engagement and Cultural Heritage

Businesses operating near Indigenous lands or cultural sites must comply with Aboriginal and Torres Strait Islander heritage protection legislation (Commonwealth and state/territory). Activities that may impact cultural heritage require consultation with traditional owners and cultural heritage surveys. Indigenous Land Use Agreements (ILUAs) may be required for land development, mining, or infrastructure projects on native title land. Good faith negotiations with traditional owner groups are expected. State and territory legislation establishes specific processes and timelines.

Competition and Consumer Law

The Competition and Consumer Act 2010 (CCA) primarily governs Australian market regulation, maintaining competitive markets and improving consumer welfare through prohibitions on anti-competitive behaviours.

The Australian Competition and Consumer Commission (ACCC) enforces the Act with broad investigative and prosecution powers.

Key Anti-Competitive Prohibitions

- **Cartel Conduct**

Prohibited agreements include:

- Price fixing: agreements fixing, controlling or maintaining prices
- Bid rigging: manipulating bidding processes through coordinated bids, suppressed competition, or rotation schemes
- Production restrictions: limiting production or supply capacity
- Market sharing: dividing customers or supply areas

Agreements need not be express or written. Limited exceptions exist where provisions promote consumer welfare, though these are complex and require legal advice.

- **Exclusive Dealing**

Supplying or acquiring goods/services with conditions restricting others' dealings is illegal if it substantially lessens competition. Third line forcing (requiring purchases from third parties) is included. Companies may seek exemption through ACCC notification processes.

- **Resale Price Maintenance**

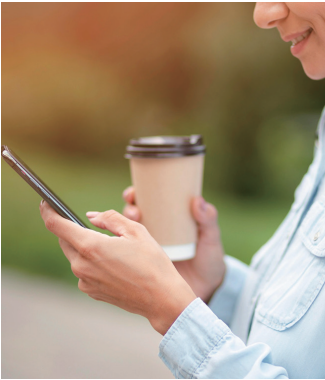
Setting minimum resale prices is generally illegal regardless of competitive effects.

- **Concerted Practices**

Any cooperation between parties (including information exchanges) that substantially lessens competition is prohibited, providing ACCC considerable enforcement flexibility.

- **Mergers and Acquisitions**

Share or asset acquisitions likely to substantially lessen competition are prohibited.



Consequences

CCA breaches may result in penalties up to the greater of \$50 million, three times the reasonably attributable benefit, or 30% of corporation's adjusted turnover during contravention. Individual penalties reach \$2.5 million, with potential director disqualification.

Cartel conduct may attract criminal liability including fines and up to 10 years imprisonment for individuals.

Foreign companies conducting Australian business are subject to CCA prohibitions, even for overseas conduct affecting Australian operations.

Consumer Protection

The Australian Consumer Law (ACL) within the CCA regulates market practices through conduct standards.

- **Misleading or Deceptive Conduct**

The ACL prohibits misleading or deceptive trade or commerce conduct directed at consumers or businesses, preventing false impressions or leading people into error.

- **Consumer Guarantees**

The ACL imposes statutory standards including:

- Proper title to sell goods
- Fitness for purpose (disclosed or intended)
- Acceptable quality
- Matching descriptions
- Services provided with due care and skill
- Service fitness for purpose

Breaches may result in ACCC or ASIC enforcement actions or private litigation, with courts empowered to make various adverse orders including transaction invalidation and compensation.

Maximum penalties equivalent to anti-competitive conduct penalties apply.

Unfair Contract Terms (UCT) Regime

The ACL prohibits the proposal, use, or reliance upon an Unfair Contract Term in a Standard Form Contract with either a consumer or a small business. This regime is a critical compliance focus for all businesses operating in the Australian market, particularly following the significant legislative amendments that commenced on 9 November 2023.

• Scope and Application

The UCT regime applies to any standard form contract for the supply of goods, services, or an interest in land where, at the time the contract is made, one party is considered a "small business" if they meet either of the following criteria:

- They employ fewer than 100 people (expanded from the previous 20-employee limit); or
- They have an annual turnover of less than A\$10 million.

The determination of a "Standard Form Contract" now requires a broader analysis of the bargaining dynamic. A contract may still be considered standard form even if the parties negotiated minor or insubstantial changes, or if one party selected from a range of pre-determined term options.

The key consideration remains whether the non-drafting party had a genuine opportunity to negotiate the terms.

• The Test for "Unfair"

A term in a standard form contract is "unfair" if all three of the following elements are satisfied:

- It would cause a significant imbalance in the parties' rights and obligations under the contract.
- It is not reasonably necessary to protect the legitimate interests of the party who benefits from the term.
- It would cause detriment (financial or otherwise) to the other party if it were to be applied or relied upon.

Terms commonly scrutinised include those that unilaterally permit one party to terminate the contract, vary the price, renew the contract, or broadly exclude their liability/require extensive indemnities from the other party.

• Consequences of Non-Compliance

The 2023 reforms fundamentally changed the consequences of non-compliance, introducing substantial penalties:

- **Void Term:** If a term is found to be unfair by a court, it is void and unenforceable. The remainder of the contract remains valid, provided it can operate without the void term.
- **Pecuniary Penalties:** The legislation now imposes substantial civil penalties for proposing, using, or relying on an unfair term. For a corporation, the maximum penalty for each contravention (i.e., for each unfair term proposed, used, or relied upon) is the greater of:
 - \$50 million
 - Three times the value of the benefit obtained from the conduct (if determinable); or
 - 30% of the corporation's adjusted turnover during the breach period.
- **Court Orders:** Courts have expanded powers to make remedial orders, including declaring the whole contract void or issuing injunctions to prevent the use of the same or a substantially similar term in future contracts.

Investment Funds

Australia ranks 16th globally economically, offering foreign investors opportunities supported by stable growth, mature capital markets, predictable regulatory frameworks, skilled workforce, and strong infrastructure.

The government actively promotes foreign investment for job creation and global market access. As of end-2024, foreign economies had invested \$5.0 trillion (AUD) in Australia, ranking 15th globally for inward foreign direct investment.

Legal Structures

- **Unit Trusts**

Most frequently used for investment funds due to flexibility and flow-through tax treatment. Fund assets are held in trust by trustees for unit-holding investors. Trustees have fiduciary obligations, often delegating powers to investment managers. Many qualify as "managed investment schemes" under the Corporations Act 2001 (Cth), requiring ASIC registration for schemes meeting certain criteria, with strict compliance, governance, and disclosure requirements and responsible entity appointment with appropriate Australian Financial Services Licence (AFSL).

- **Limited Partnerships**

Primarily used for private equity and venture capital with applicable tax concessions. Venture capital limited partnerships (VCLPs) and early-stage venture capital limited partnerships (ESVCLPs) meeting the Venture Capital Act 2002 (Cth) criteria may benefit from tax concessions including flow-through treatment and income tax exemptions.

- **Listed Investment Companies (LICs)**

Public companies providing diversified portfolio exposure to shares, bonds, and fixed income, with shares traded on the Australian Securities Exchange (ASX). LICs are "close-ended," meaning shares cannot usually be created or cancelled.

- **Corporate Collective Investment Vehicles (CCIVs)**

Introduced in 2022 as alternatives to trust-based schemes, CCIVs are companies limited by shares with one or more sub-funds having allocated assets and liabilities. CCIVs cannot employ staff, officers, or directors; instead, appointed "corporate directors" (public companies with AFSL authorisation) operate CCIVs.

- **Private Credit**

Non-publicly traded financing from non-bank institutions like credit managers and insurance companies, typically as loans, bonds, notes, or securitisation. Particularly useful when traditional bank loans are unavailable for complex structures or rapidly growing startups, focusing on small and medium businesses without public debt market access.

- **Compliance Requirements**

Entities conducting financial services businesses generally require AFS licences from ASIC, meeting obligations including adequate risk management systems and reporting compliance. ASIC offers transitional licensing exemptions for foreign financial services providers serving Australian wholesale clients until 31 March 2026.

Additional requirements include:

- Anti-Money Laundering (AML): Entities providing designated services must enrol with AUSTRAC and comply with relevant obligations
- Know Your Customer (KYC): Customer identity verification before providing designated services to prevent money laundering or terrorism financing exploitation

Fund managers face different regulatory frameworks depending on retail or wholesale investor dealings. Wholesale investments target experienced investors understanding risks, while retail investments serve broader ranges with lower minimum investments and stricter compliance requirements.



Dispute Resolution

Australia's legal framework comprises Federal, State and Territory Courts and Tribunals with generally distinct jurisdictions.

Broadly speaking, the Federal Courts handle Commonwealth legislated matters including bankruptcy, industrial relations, taxation, and trade practices. State and Territory Courts have jurisdiction over State and Territory legislated matters such as contract disputes and negligence claims.

Initiating Legal Proceedings

Legal action requires determining the appropriate Court jurisdiction and understanding limitation periods. Court selection depends on dispute type, financial stakes, and specific jurisdiction. Most contract and tort claims have six-year limitation periods from when the cause of action first arises.

Key Features of the Litigation Process

Australian Courts actively manage litigation, scheduling administrative hearings to establish procedural timetables. Civil decisions are typically made by judges, with jury trials uncommon except for specific types of matters such as defamation disputes.

The process generally involves filing pleadings where parties outline their respective claims or defences, document discovery (excluding legally privileged communications), and presenting evidence through affidavits, witness statements, oral testimony, and expert opinions. Witnesses may be cross-examined.

Available Remedies

Courts can grant monetary damages, specific performance orders, injunctions, and declaratory relief, depending on case particulars and relief sought.

Legal Costs

The losing party pays the successful party's legal costs. Standard ordinary costs orders typically cover approximately 60-70% of actual legal expenses. Indemnity costs (80-95% of actual costs) may be awarded for unnecessary delays or unreasonable conduct.

Appeals Process

Appeals may be filed in respect to Federal Court, Supreme Court, District Court, and Local Court decisions. Appeals to the High Court of Australia (Australia's highest Court) may be possible but require permission, granted only in limited circumstances.

Alternative Dispute Resolution

Alternative dispute resolution includes arbitration, mediation, and expert determination, with increasing use of international arbitration and commercial courts for cross-border disputes.

Recourse to arbitration is typically mandated by an arbitration clause set out in a commercial contract. Such a clause may provide for a multi-tier approach requiring initial negotiation or mediation. Decisions ('awards') of an arbitral tribunal are binding and are capable of global enforcement under the New York Convention. In addition, international arbitration offers party autonomy, the ability of parties to shape applicable procedure, a neutral tribunal, and with proper case management – cost effectiveness.

International commercial Courts like the Singapore International Commercial Court and Dubai International Financial Centre Courts combine litigation and arbitration elements with specialised expertise and flexible procedures.

Mediation involves independent third parties facilitating negotiations for mutually agreeable resolutions. Courts often mandate mediation before trial to reduce costs and delays.

Expert determination often provides binding decisions from field experts and is particularly valuable for technical or industry-specific disputes.

Enforcement of Foreign Judgments

Australia recognises and enforces certain foreign judgments through a structured process that requires registration and is governed by the *Foreign Judgments Act 1991 (Cth)* and various common law principles.

Under the Act, plaintiffs can apply to the Federal Court or State Supreme Courts to register judgments from recognised overseas Courts within six years. Once registered, judgments are treated as if originally issued by the registering Australian Court.

For jurisdictions not covered by the Act (including the United States), enforcement follows common law principles.



Data Privacy and Cybersecurity

Australia enforces comprehensive data protection and cybersecurity requirements that apply to businesses collecting, using, or disclosing personal information.

The country's privacy framework is primarily governed by the *Privacy Act 1988 (Cth)* ("Privacy Act"), which establishes the Australian Privacy Principles (APPs). These principles set clear expectation and guidelines on how organisations must handle personal information.

Under strict regulations of the Privacy Act, the Notifiable Data Breaches (NDB) Scheme requires organisations to report serious data breaches to both the OAIC (Office of the Australian Information Commissioner) and affected individuals when there is a serious likelihood of damages. This has significantly increased corporate accountability, encouraging businesses to strengthen their cyber resilience, data security, and incident response planning.

The regulatory space is constantly evolving through advancements in time, technology, and people. With such evolution, major reforms are constantly under consideration which may morph the landscape of the Privacy Act. The most recent proposed changes aim to modernise Australia's privacy regime in response to digital transformation and international standards such as the 'EU's General Data Protection Regulation (GDPR). Key proposals include stronger consent requirements, higher penalties for privacy breaches, broader definitions of personal information, and potentially introducing a direct right of action for individuals.

Cross-Border Data Transfers

Transferring personal information overseas requires reasonable steps ensuring overseas recipients comply with the APPs or binding schemes providing similar protection. Organisations remain accountable for information disclosed to overseas recipients.

Practical mechanisms include binding corporate rules, standard contractual clauses, and individual consent. Countries with substantially similar privacy laws may facilitate transfers. Cloud storage arrangements require careful assessment of data location and access rights.

Privacy Act Reforms

Significant Privacy Act reforms are under consideration, proposing stricter consent requirements, expanded rights (including erasure), mandatory privacy management programs, increased penalties, and new definitions of personal information including technical and inferred data.

Businesses should monitor legislative developments and prepare for enhanced compliance obligations.

Cybersecurity Requirements

The Security of Critical Infrastructure Act 2018 (Cth) imposes cybersecurity obligations on critical infrastructure assets across sectors including telecommunications, energy, water, transport, and data processing. Mandatory reporting of cyber security incidents to the Australian Cyber Security Centre applies to critical infrastructure entities.

Entities must adopt and maintain cyber security programs including risk management plans, incident response procedures, and vulnerability assessments. Government assistance and intervention powers exist during significant cyber incidents affecting critical infrastructure.



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Intellectual Property Protection

Australia offers comprehensive protection for Intellectual Property (IP) through a combination of registered rights and automatic protection under both domestic legislation and international agreements.

designed to safeguard innovation, creativity, and brand value, encouraging businesses to invest confidently in product development and market expansion.

IP Australia, an agency of the Australian Government, administers the registration of trade marks, patents, designs, and plant breeders' rights.

Trademarks

Trademarks protect brands, logos, and distinctive signs identifying goods or services. Registration provides exclusive nationwide rights for ten years (renewable indefinitely). Applications typically take 7-9 months if unopposed. Protection extends to 45 classes of goods and services. Foreign applicants may claim priority under the Paris Convention within six months of home country filing.

Key considerations include conducting comprehensive searches before filing, monitoring for potential infringements, and maintaining proper use to avoid abandonment. Australia participates in the Madrid Protocol for international trademark registration.

Patents

Patents protect inventions and innovations providing novel, useful, and inventive solutions. Standard patents last 20 years (25 years for pharmaceutical substances). Innovation patents were abolished in August 2021, with transitional arrangements for existing grants.

The examination process typically takes 2-3 years. Patent Cooperation Treaty (PCT) applications enable international protection claiming priority within 12 months. Disclosure requirements and prior art searches are rigorous. Patent protection requires active enforcement against infringers.

Copyright

Copyright automatically protects original literary, dramatic, musical, and artistic works without registration. Protection generally lasts for the creator's life plus 70 years. Moral rights (attribution, integrity, and false attribution) exist independently of economic rights.

Foreign works receive protection under the Berne Convention. Digital copyright includes technological protection measures and rights management information. Employers own copyright in works created by employees during employment unless otherwise agreed.

Confidential Information and Trade Secrets

Australian law protects confidential information and trade secrets through common law principles, contractual obligations, and equitable duties. Protection requires information to be confidential in nature, disclosed in circumstances importing an obligation of confidence, and unauthorised use causing detriment.

Robust confidentiality agreements, non-disclosure agreements, and employment contracts with confidentiality clauses are essential. Physical and electronic security measures support legal protection. No registration system exists, making contractual frameworks critical.

Enforcement

IP enforcement includes civil remedies (injunctions, damages, account of profits) and criminal penalties for serious infringements (counterfeiting, piracy). Border protection measures through the Australian Border Force can prevent importation of infringing goods. Alternative dispute resolution through IP Australia's resolution processes provides cost-effective options before litigation.

In addition to the registerable rights above, Australia recognises automatic IP protections through laws such as the Copyright Act 1968 (Cth), which safeguards original literary, artistic, musical, and software works without the need for formal registration. Confidential information and trade secrets are also protected under common law principles of breach of confidence and contractual obligations.

International agreements

Australia is a party to staple international IP treaties, including the Paris Convention, the Patent Cooperation Treaty (PCT), and the Madrid Protocol, which unifies international registrations and aids businesses in extending their IP protection across multiple countries and jurisdictions. Such alignment with global standards ensures that Australian IP law is compatible with leading economies that support cross-border trades and investments.

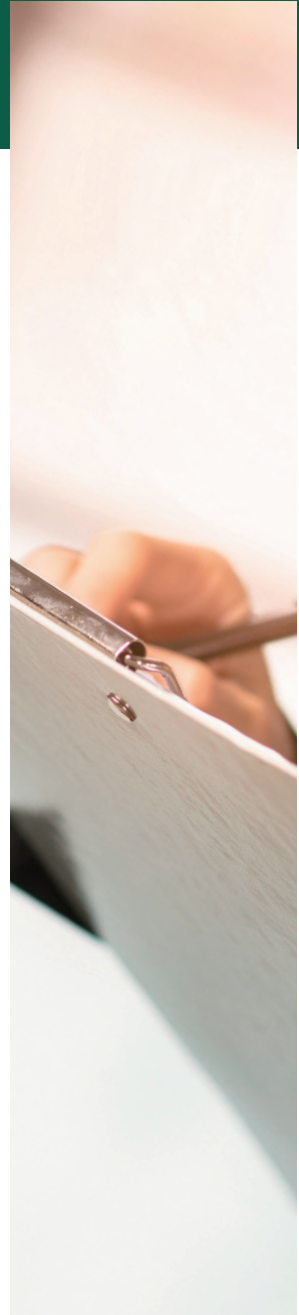
Practical Checklists

Pre-Establishment Checklist

- Select appropriate business structure (subsidiary, branch, partnership, etc.)
- Identify required licences and permits for business activities
- Determine if FIRB approval is required for the proposed investment
- Assess tax residency and structure for optimal tax outcomes
- Plan employment and visa requirements for key personnel
- Secure office premises or service address
- Obtain Director Identification Numbers for all directors
- Prepare the company constitution and shareholders' agreement
- Register intellectual property (trademarks, patents) if required
- Review applicable industry-specific regulations

Post-Incorporation Compliance Checklist

- Register for ABN and TFN with ATO
- Register for GST if annual turnover exceeds \$75,000
- Register for PAYG withholding if employing staff
- Open Australian business bank account
- Register for state payroll tax (if applicable)
- Obtain workers' compensation insurance
- Register for AUSTRAC if providing designated services
- Implement workplace health and safety policies
- Prepare employment contracts and policies complying with *the Fair Work Act 2001 (Cth)*
- Establish record-keeping systems for tax and corporate compliance
- Implement privacy policy complying with APPs
- Arrange necessary business insurance (public liability, professional indemnity)



Annual Compliance Calendar

Timing	Obligation
31 Oct 2025	Lodge company income tax return (if 30 June year-end)
31 Jan 2025	Lodge ASIC annual review for companies with December year-end
Within 3-4 months of year-end	Lodge financial reports with ASIC (if required)
Within 28 days	Notify ASIC of changes to company officers, registered office, or share structure
Quarterly	Lodge BAS and pay GST, PAYG withholding, PAYG instalments
Quarterly	Pay superannuation guarantee for employees
Monthly/Quarterly	Lodge payroll tax returns (if applicable, varies by state)
14 Jul 2025	Lodge payment summaries and annual PAYG withholding report
Annual	Renew workers compensation insurance
Annual	Review and update employment contracts, policies, and WHS procedures



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Regulatory Authorities

Agency	Function	Website
ASIC	Company registration and regulation	asic.gov.au
ATO	Tax administration	ato.gov.au
FIRB	Foreign investment approvals	firb.gov.au
Fair Work Ombudsman	Employment law enforcement	fairwork.gov.au
IP Australia	IP registration	ipaustalia.gov.au
OAIC	Privacy regulation	oaic.gov.au
ACCC	Competition and consumer law	accc.gov.au
AUSTRAC	AML/CTF regulation	austrac.gov.au
APRA	Financial services regulation	apra.gov.au
Department of Home Affairs	Immigration and visas	homeaffairs.gov.au
Australian Border Force	Customs and border protection	abf.gov.au
DFAT	Trade and sanctions	dfat.gov.au

State Transfer Duty Rates (Approximate)

Transfer duty rates vary significantly by state and property value. Below are indicative rates for commercial property transactions:

State/Territory	Rate Range
NSW	Progressive scale: approximately 4-5.5% for commercial property
Victoria	Progressive scale: approximately 5.5-6.5% for commercial property
Queensland	Progressive scale: approximately 4.5-5.75%
South Australia	Progressive scale: approximately 4.95-5.5%
Western Australia	Progressive scale: approximately 5-6%

Note: Foreign purchaser surcharges apply in most states (typically 7-8% additional duty). Rates and thresholds change regularly. Consult state revenue offices for current rates.



Glossary of Key Terms

- **ABN:** Australian Business Number - unique 11-digit identifier for businesses
- **ACN:** Australian Company Number - unique 9-digit identifier for registered companies
- **AFSL:** Australian Financial Services Licence - required to provide financial services
- **APPs:** Australian Privacy Principles – 13 principles governing personal information handling
- **ASIC:** Australian Securities and Investments Commission - corporate regulator
- **ATO:** Australian Taxation Office – federal tax administrator
- **BAS:** Business Activity Statement – report for GST and PAYG obligations
- **DIN:** Director Identification Number – unique lifetime identifier for directors
- **FIRB:** Foreign Investment Review Board – reviews foreign investment proposals
- **GST:** Goods and Services Tax – 10% value-added tax
- **NES:** National Employment Standards – minimum employment entitlements
- **PAYG:** Pay As You Go – tax withholding and instalment system
- **PPSR:** Personal Property Securities Register – register for security interests in personal property
- **TFN:** Tax File Number – unique identifier for tax purposes



Yukio Hayashi

Partner



Commercial & Corporate
Workplace & Employment
Mergers & Acquisitions

- The first Japanese individual to qualify as a lawyer in Australia
- Founding Partner of H & H Lawyers
- Formerly a Partner of Freehills (now Herbert Smith Freehills Kramer)
- Bachelor of Laws and Bachelor of Jurisprudence, University of NSW

John Kim

Partner



Corporate Immigration
Commercial & Corporate
Workplace & Employment

- Lawyer, Fragomen
- Legal advisor, Consulate General of Korea in Sydney (*Present*)
- Legal advisor, Korea Trade-Investment Promotion Agency (KOTRA) in Sydney (*Present*)
- Bachelor of Laws, The University of Auckland

Timothy Chan

Partner



Commercial & Corporate
Dispute Resolution & Litigation

- Special Counsel, HWL Ebsworth Lawyers
- Bachelor of Laws, University of New South Wales
- Bachelor of Commerce, University of New South Wales

Kenneth Hong

Managing Partner



Commercial & Corporate
Workplace & Employment
Dispute Resolution & Litigation

- Notary Public NSW
- President, Korean Australian Lawyers Association (KALA) (*Present*)
- Legal advisor, Consulate General of Korea in Sydney (*Present*)
- Legal advisor, Korea Trade-Investment Promotion Agency(KOTRA) in Sydney (*Present*)
- Bachelor of Laws, Bond University

Tin-Lok Shea

Partner



Commercial & Corporate
Taxation
Foreign Investments

- Jurisdictional Council Member, Australia, Inter-Pacific Bar Association
- Board member, Australian-Japan Society of NSW
- Bachelor of Laws and Bachelor of Arts, University of NSW
- Formerly Account Director, Deloitte Australia

James Jung

Special Counsel



Corporate Governance
Banking and Financial Markets Regulation
Environmental, Social and Governance (ESG)

- Director, International at the College of Law Australia
- Adjunct lecturer at the College of Law (Australia & NZ) & AUTU niversity (Auckland)
- Vice-President of the Inter-Pacific Bar Association (IPBA)
- Regional Governor (Australia) of the International Association of Korean Lawyers (IAKL)
- Master of Laws (Hons) and Master of Arts (Hons), University of Auckland
- Bachelor of Laws and Bachelor of Arts, University of Auckland

Shaun McGushin

Special Counsel



Project & Finance
Infrastructure
Commercial & Corporate

- Director, Ash Street Partners
- Partner, Corrs Chambers Westgarth
- Formerly a Partner of Freehills (now Herbert Smith Freehills Kramer)
- MBA, The University of Sydney
- Bachelor of Laws, The University of Tasmania

Peter Shaw

Special Counsel



Mergers & Acquisitions
Capital Market
Commercial & Corporate

- Director, Ash Street Partners
- Partner, Clayton Utz
- Partner, Maddocks
- MBA, Australian Graduate School of Management, University of NSW
- Bachelor of Science and Bachelor of Laws, The University of Sydney

Reiko Reynolds

Special Counsel



Real Estate
Commercial & Corporate
Foreign Investments

- Graduate Diploma in Legal Practice - College of Law
- Property Practice (Real Estate: Sales/Property Management), UNE Partnerships
- Bachelor of Laws (Hons), University of New England
- Associate Degree in Arts/Music(Hons), Glendale College, USA
- Faculty of Literature, Waseda University, Japan (Incompleted)

Dr Alisha Jung

Special Counsel



Healthcare & Pharmaceutical
Commercial & Corporate

- JD (Juris Doctor), University of Melbourne
- Doctor of Philosophy (PhD), Neuroscience, University of Auckland
- Bachelor of Science Honours (1st Class), University of Auckland
- Bachelor of Science, University of Auckland

Dr Paul Govind

Special Counsel



Environment, Social and Governance (ESG)
Environmental & Planning

- Deputy Director, Centre for Environmental Law, Macquarie University
- Regional Director (Pacific), Global Network for Human Rights and the Environment
- Board Member, National Environmental Law Association
- Doctorate in Law, Macquarie University
- Master of Philosophy/Master of Laws (Hons), The University of Sydney
- Bachelor of Laws (Hons), Macquarie University

Daisuke Ueda

Senior Associate



Workplace & Employment
Commercial & Corporate

- Juris Doctor, University of New South Wales
- Bachelor of Commerce, Macquarie University

Our People

Nicholas Lim

Senior Associate



Banking &
Financial Services

- Formerly Senior Manager (Compliance), Westpac
- Legal Practitioner, Supreme Court of New South Wales
- Barrister and Solicitor of the High Court of New Zealand
- Certified Public Accountant (CPA)
- Bachelor of Laws, University of Auckland
- Bachelor of Commerce (Accounting), University of Auckland

Bella Cho

Foreign Lawyer
(Korea Qualified)



Commercial & Corporate
Dispute Resolution & Litigation
Korean Legal Advisory

- Supreme Court of Republic of Korea Judicial
- Legal Advisor at International Affairs (Korean Ministry of Justice)
- 51st National Judicial Examination of Republic of Korea
- Master of Laws, Macquarie University
- Bachelor of Laws, Ewha Woman's University

Ian Hutchinson

Senior Advisor



Commercial & Corporate
Workplace & Employment

- Professional non-executive company director
- Formerly Chairman and Senior Partner of Freehills (now Herbert Smith Freehills Kramer)
- Formerly Chairman and President of the Global Innovation Foundation in New York

Dennis Wilson

Senior Advisor



Dispute Resolution & Litigation
Environmental & Planning
Environment, Social and Governance (ESG)

- Formerly Barrister, Wardell Chambers
- Accredited Arbitrator and Mediator
- Adjunct Professor, Notre Dame University (Sydney)
- Graduate Diploma of Law, The University of Sydney
- Graduate Diploma of Criminology, The University of Sydney
- Master of Laws (LLM), The University of Sydney Law School
- Master of Business Administration (MBA), Murdoch University

Martin Polaine

Senior Advisor



International Arbitration
Commercial & Corporate

- BA (hons.) in History, University of Manchester
- Diploma in Law, The City University
- Barrister (England & Wales) and Arbitrator
- LLM (Public International Law), Concordia College
- US Constitutional Law, Yale University
- International Criminal Law, Case Western Reserve University

Dr Jenny Buchan

Senior Advisor



Commercial & Corporate
(Franchise Law)

- Professor Emeritus, University of New South Wales
- Bachelor of Laws, Otago University
- Master of Laws, University of Melbourne
- PhD, Queensland University of Technology

We focus on providing practical, effective and innovative advice and solutions, bearing our clients' needs at the core of our services.

Key Contacts



Kenneth Hong
Managing Partner

E : ken.hong@hhlaw.com.au

T : +61 2 9169 3775

M : +61 403 880 551



Tin-Lok Shea
Partner

E : tinlok.shea@hhlaw.com.au

T : +61 2 9169 3752

H&H Lawyers

SYDNEY

LEVEL 5, 32 MARTIN PLACE,
SYDNEY NSW 2000
AUSTRALIA

MELBOURNE

LEVEL 6, NORTH TOWER
80 COLLINS STREET,
MELBOURNE VIC 3000
AUSTRALIA

www.hhlaw.com.au