Piper Alderman

Piper Alderman

Doing Business in Australia

Introduction

Welcome to Piper Alderman's Guide to Doing Business in Australia.

Our experience in providing cross-border legal services to international enterprises means that we understand the issues faced when entering the Australian market. We can advise on the best way to establish new operations in Australia as well as how to ensure businesses prosper.

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Australia: An Overview

Approximately 7.7 million square kilometres in size, Australia is an island continent located in the Asia-Pacific region.

It is the sixth largest country in the world by area, with a population of approximately 25.5 million. Most people live in cities or towns with the majority concentrated in coastal areas, especially around the south east of the country. Major cities include Sydney, Melbourne, Brisbane, Adelaide, Perth, Canberra and Darwin.

Sydney is the largest and most well known city, but the capital of Australia and the seat of the national government is Canberra which is located in the Australian Capital Territory, around 300 kilometres south-west of Sydney and 650 kilometres northeast of Melbourne. Australia is a federation comprising six States (New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania), two internal Territories (the Australian Capital Territory and the Northern Territory) and a number of external Territories.

Australia's climate ranges from tropical in the north to temperate in the south, although in winter snow generally only falls on the mountains. In summer the average temperature for the major coastal cities ranges from approximately 15°C (minimum) to 30°C (maximum) and in winter the average temperature for the major coastal cities ranges from 6°C (minimum) to 20°C (maximum).

Australia's size gives it a wide variety of landscapes, with tropical rainforests in the north-east, mountain ranges in the southeast, south-west and east, and desert in the centre. Desert or semi-arid land (commonly "the outback") makes up by far the largest portion of land. Australia is also the driest inhabited continent with average annual rainfall over the continental area of less than 500mm.

A renowned sporting country, over 25% of Australians over the age of 15 regularly participate in organised sporting activities. At international level, Australia has excelled at golf, track and field, swimming, cricket, field hockey, netball, rugby league and rugby union. Nationally, other popular sports include Australian rules football, horse racing, surfing, soccer and motor racing. The annual Melbourne Cup horse race and the Sydney to Hobart yacht race attract intense interest.

The majority of Australians live within the coastal zone, making the beach a popular recreation spot and an integral part of the nation's identity with water-based sports, such as swimming and surfing being extremely popular. The surf lifesaving movement originated in Australia, and the volunteer lifesaver is one of the country's icons.

Australia is widely known as one of the most multicultural nations in the world. English is the predominant language but migrants from more than 100 countries call Australia home. According to the 2016 census, approximately one third of Australians were born elsewhere and 45.5% of people had at least one overseas-born parent. The five largest immigrant groups in 2018 according to the Australian Bureau of Statistics were those from:

- England
- China
- India
- New Zealand
- Philippines.

Around 3.3% of the population are indigenous, being Aboriginal or Torres Strait Islanders.

The unit of currency is the Australian dollar which comprises 100 cents and Australia uses the metric system for all measurement.

Why Australia?

Strong economy

Australia's Gross Domestic Product (at purchasing power parity) is in the top twenty countries in the world. Australia's economy has been growing for 28 consecutive years - setting a new record among developed economies for uninterrupted expansion.

Global success in key industries

Australia is globally successful in key industries such as energy and resources, agribusiness, education, tourism and financial services. Australia is the world's largest producer of gold, iron ore and uranium and a major producer of agricultural commodities.

Globally integrated

Australia has an open trading economy with strong business and cultural ties with Asia. 10 of Australia's top 12 export markets are within Asia and Oceania. Our top 5 trading partners are China, Japan, USA, Korea and India.

Innovative and highly skilled

Australia is ranked 5th in the world for global entrepreneurship, with almost half of all Australian firms active in innovation. Our population is highly educated (with over 40% of the workforce having a tertiary qualification), culturally diverse and multilingual (where 28% of the population was born overseas).

Ease of doing business

Australia is ranked 5th in the world for economic freedom. Our sound governance and democratic institutions create certainty for foreign investment. We have an economy that is resilient to economic cycles and Australia is a great place to live and work, with six Australian cities ranked in the global top 40 for their quality of living.

(Source: Austrade)

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Economy & Infrastructure

Despite often turbulent global financial conditions, Australia's economy continues to be one of the world's most stable, with a resilient financial system.

Exports and imports

Australia has a significant resources sector and is a major exporter in a range of commodities. Major exports include iron ore, coal, gold, petroleum gas and wheat. Australia has a natural advantage over many of its competitors in producing and processing primary products. This is largely due to advanced transport and telecommunications infrastructure which enables Australia to benefit from an abundance of natural resources. Australia's major imports are refined and crude petroleum, cars, special purpose ships, broadcasting equipment, trucks and computers.

Transport and logistics

Australia has an extensive road and rail network which includes approximately 36,000 kilometres of rail track used in the haulage of freight such as coal, minerals, bulk agricultural produce, general freight and chemicals. Air transport is also an important mode of transport in Australia due to the large distances involved. Australia, being an island country, also utilises maritime transport.

Tourism

Over the last decade, Australia has been viewed increasingly as one of the world's most attractive tourist destinations. Annually, Australia attracts millions of international tourists seeking Australia's natural beauty, relaxed lifestyle and friendly atmosphere whilst generating over $150 billion in tourism expenditure each year and in 2018, contributing 3.1% to Australia's GDP. In the Economist Intelligence Unit's 2019 Liveability Survey, Australian cities occupied three of the top ten places in the world to live.

Strategic positioning

Australia is well positioned to provide a strategic portal to the Asia-Pacific region and this is one of the reasons why it is common for international businesses to locate their regional headquarters in Australia. International business is increasingly recognising the strong relationships Australia has with China, Japan, the United States, Singapore and the United Kingdom, amongst others.

Australia's highly developed financial services sector functions in an efficient and transparent marketplace. The sector is supported by a modern infrastructure and regulatory regime. Australia is one of the key centres for capital markets activity in the Asia-Pacific region with liquid markets in equities, debt, foreign exchange and derivatives.

Over a period of 25 years, traditionally protectionist government policies have been replaced by policies which aim to encourage foreign investment and free trade agreements have been agreed with China, Japan and Korea amongst others. The policy approach of the Australian Government is to encourage foreign investment, that is consistent with community needs. Substantial opportunities exist for foreign investors interested in doing business in Australia.

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Government & Legal Systems

System of government

Australia is a stable parliamentary democracy, which has adopted a modified version of the Westminster system of government. The Australian Government operates nationally and is comprised of three branches, being: the Judiciary, the Executive and the Legislature (Parliament). The Legislature is divided into the lower house (the House of Representatives) and the upper house(the Senate). The Legislature meets at Parliament House, which is located in the National Capital, Canberra. The Australian Government is led by the Prime Minister, who commands a majority of the Members of Parliament (MP) in the House of Representatives.

Australia has three levels of government, being: Federal, State and Local. The Federal Constitution confers specific powers on the Federal Parliament to make laws for the peace, order and good government of Australia as a whole. The Federal Constitution confers upon the Federal Parliament specific powers relating to, inter alia, trade and commerce, defence, external affairs, taxation, banking (other than State banking), communications and quarantine.

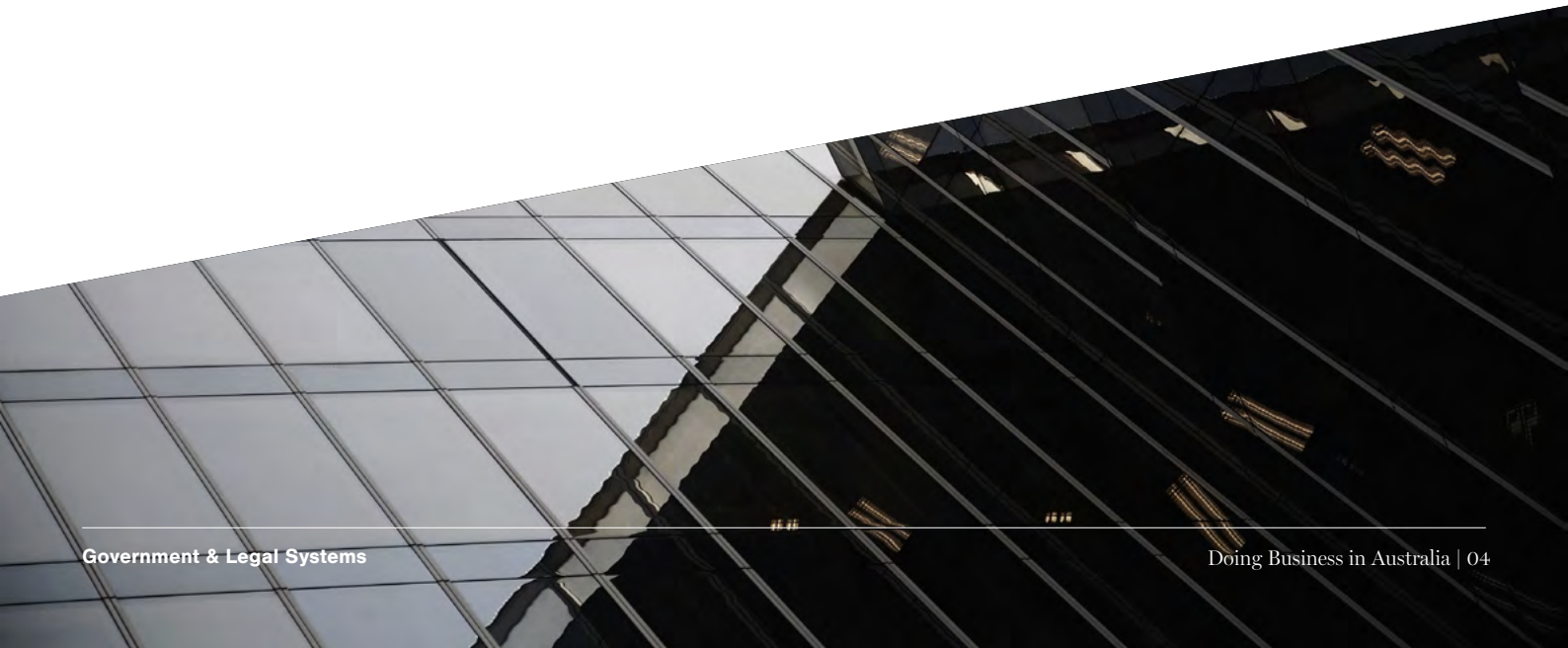
State Constitutions confer specific powers on the six mainland State Parliaments, which may be exercised only to the extent that such power is not conferred upon the Federal Parliament by the Federal Constitution, although valid Federal law prevails in the event of an inconsistency between State and Federal laws. Separately, the two Territories of Australia (the Northern Territory and Australian Capital Territory) have a limited right of self-government conferred by the Federal Constitution. Local Governments exist throughout most of Australia. Local Government consists of city, town, municipal, borough, shire, community, district and regional councils. Local Governments derive powers from the relevant six State Governments and exercise those powers over matters in their local area.

Historically, the laws of Australia are similar to, and derive from, the United Kingdom. The laws of Australia consist of legislation (Acts and Regulations) which are enacted by the Federal, State and Territory Parliaments and the common law, which are referred to in many of the decisions of courts.

Judicial system

The Judiciary of Australia is divided between Federal Courts, State and Territory Courts, and statutory panels and tribunals. The hierarchy of Australian Courts commences with the Federal Courts of which the highest is the High Court, followed by the Federal Court, and the Family Court and Federal Circuit Court. The highest State and Territory Courts are the Supreme Court, followed by the District or County Court and the Magistrates or Local Court. Statutory panels and tribunals are empowered by relevant State or Federal legislation and administer specific areas of law.

The highest tier of the Federal court system is the High Court of Australia. The High Courts function is to interpret and apply the Federal Constitution, to decide cases of special federal significance, and to hear appeals from the Federal and State courts. Unless Applicants are making an application to the High Court in reliance upon the original jurisdiction of the Court, Applicants to the High Court must be granted 'Special Leave' (which is a permission to take an appeal to them). The second highest tier of the Federal court system is the Federal Court of Australia which hears appeals in both criminal and civil matters and has a statutory jurisdiction.



The lowest tier of the Federal court system comprises of the Federal Circuit Court of Australia and the Family Court of Australia. The Federal Circuit Court has statutory jurisdiction over a number of different matters, including administrative law, bankruptcy, copyright, human rights, migration law and competition law, and the Family Court of Australia has jurisdiction over matters pertaining to the *Family Law Act 1975* (Cth).

Although there are differences between States and Territories hierarchies, the highest tier of the State and Territory Court system is the Supreme Court, followed by the District or County Court, rounded out by the lowest tier Magistrates or Local Court. There are also other specific courts in various States including the Land & Environment Court in New South Wales and the Land Court in Queensland.

Alternative Dispute Resolution

The *Civil Dispute Resolution Act 2011* (Cth) requires that, as far as possible, parties take genuine steps to resolve disputes before certain civil proceedings are instituted. Genuine steps to resolving disputes may include:

- Notifying the other person of the issues that are, or may be, in dispute, and offering to discuss them, with a view to resolving the dispute, or responding appropriately to any such notification
- Providing relevant information and documents to the other person to enable the other person to understand the issues involved and how the dispute might be resolved
- Considering whether the dispute could be resolved by a process facilitated by another person, including an alternative dispute resolution process, and considering attending that process, and/or
- Attempting to negotiate with the other person, with a view to resolving some or all the issues in dispute, or authorising a representative to do so.

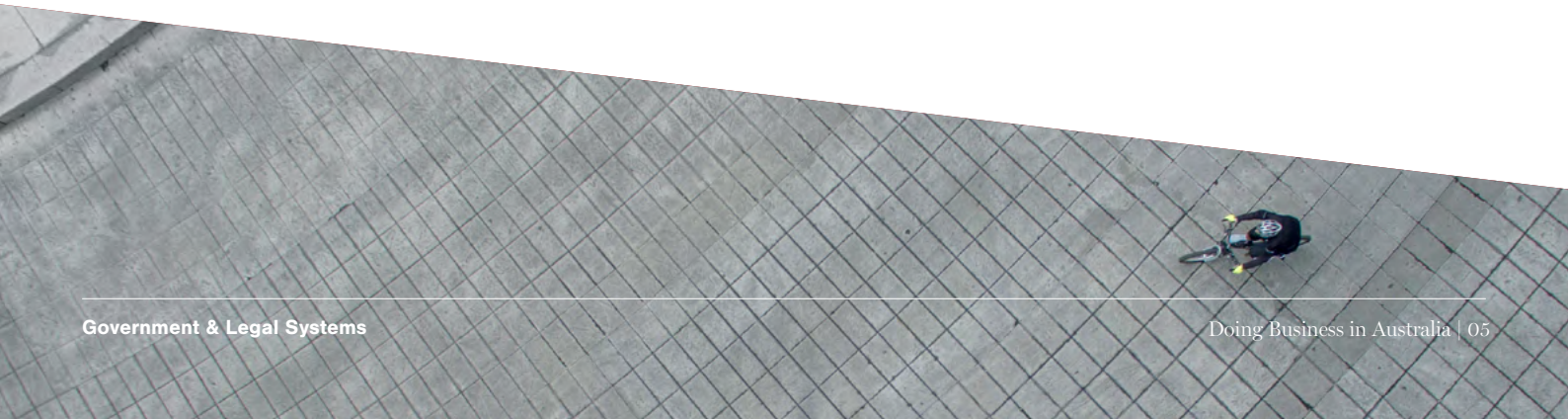
Consequently, the *Civil Dispute Resolution Act 2011* (Cth) to a limited extent obliges, and otherwise strongly encourages, prospective litigants to engage with alternative dispute resolution processes before commencing court proceedings.

The Federal jurisdiction of Australia also compels procedural obligations on each party to broadly ensure the just, quick and cheap resolution of disputes, which usually obliges parties to attempt to resolve their disputes by Alternative Dispute Resolution before hearing. The *Federal Court of Australia Act 1976* (Cth) states at s 37M that 'The overarching purpose of the civil practice and procedure provisions is to facilitate the just resolution of disputes: (a) according to law; and as quickly, inexpensively and efficiently as possible'. Similarly, in the New South Wales *Civil Procedure Act 2005* (NSW) at s 56 (1) states that 'The overriding purpose of this Act and of rules of court, in their application to civil proceedings, is to facilitate the just, quick and cheap resolution of the real issues in the proceedings' and the Uniform Civil Procedure Rules 2005 (NSW) prescribes at rule 2.1 that 'The court may, at any time and from time to time, give such directions and make such orders for the conduct of any proceedings as appear convenient (whether or not inconsistent with these rules or any other rules of court) for the just, quick and cheap disposal of the proceedings.'

Class Actions (Representative Proceedings)

The *Federal Court of Australia Act 1976* (Cth), at Part IVA, prescribes provisions which entitle groups of individuals who have suffered loss arising out of the same, similar or related circumstances to commence proceedings. These proceedings are generally referred to as 'Representative Proceedings' or 'Class Actions'. Class Actions may also be commenced in certain State or Territory Supreme Courts, consistent with the relevant State or Territory's Civil Procedure Acts.

Pursuant to s 33C of the *Federal Court of Australia Act 1976* (Cth), a representative proceeding may be commenced where seven or more persons have claims against the same person; and the claims of all those persons are in respect of, or arise out of, the same, similar or related circumstances; and the claims of all those persons give rise to a substantial common issue of law or fact, by one or more of those persons as representing some or all of them. Individuals may elect to 'opt out,' which allows individuals to exclude themselves from the proceedings, pursuant to s. 33J. However, Courts may also be empowered to order 'closed' actions, whereby only members who have entered into an agreement with a particular law firm or litigation funder are entitled to form membership of the class, which effectively means members 'opt-in' to the class.



In most circumstances, parties to representative proceedings will attempt to negotiate a settlement, usually in order to save time and costs. A major difference between general proceedings and representative proceedings is that settlement agreed between the members of the class and the respondent must be approved by the court, pursuant to s. 33V of the *Federal Court of Australia Act 1976* (Cth).

Class members in representative proceedings in Australia are usually funded by a litigation funder. The litigation funder finances the class members for all costs of pursuing legal claims. In exchange, the funder usually receives an agreed percentage of the amount recovered by the class members, either through an award of the court or a court approved settlement. If the class members are ultimately unsuccessful, they are indemnified by the funder from adverse costs orders.

Arbitration

Australian courts broadly encourage the use of non-court dispute resolution such as mediation or arbitration, especially in commercial disputes. Australia is a signatory to the UNCITRAL 'New York Convention' on the Recognition and Enforcement of Foreign Arbitral Awards, which was ratified domestically by the *International Arbitration Act 1974* (Cth).

Arbitration conducted pursuant to the New York Convention has two considerable advantages over court proceedings. First, parties can conduct their dispute resolution consistent with the arbitration clauses of their agreement. Second, parties can seek international enforcement with signatory countries of the convention. Usually then, parties are entitled to conduct their arbitration consistent with the arbitration clauses of their agreements, which may prescribe procedure, evidence, location of hearing and arbitral members; which provides elements of flexibility not available to parties to court proceedings. Further, parties are entitled to seek enforcement of an arbitral award in any of the 159 countries that are signatories to the convention, which provides international enforcement rights that may not be available to parties to court proceedings, even in consideration of international foreign judgment registration rights.

These considerations have thus led to the growth of arbitration in Australia and internationally, such that parties who frequently engage in cross-border transactions usually prefer the arbitral process to any domestic court processes.

Australia is also a signatory to the ICSID Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which was ratified domestically by the *ICSID Implementation Act 1990* (Cth) (subsequently incorporated into the *International Arbitration Act 1974* (Cth)). The ICSID Convention prescribes alternative dispute resolution process to disputes arising from Bilateral Investment Treaties (BIT) or Free Trade Agreements (FTA). Australia is presently party to 23 BITs and 11 FTAs.

Cross Border Insolvency Act

Finally, Australia has adopted the UNCITRAL Model Law on Cross-Border Insolvency, by the *Cross-Border Insolvency Act 2008* (Cth). The Cross-Border Insolvency Act substantially adopts the Model Laws, and further introduces Australian elements, including: prescribing the jurisdiction of the Federal Courts and State Supreme Courts, harmonizing the operation of the Model Law to the *Corporations Act 2001* (Cth) and *Bankruptcy Act 1966* (Cth), and regulating limited classes of exclusions.

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Business Structures

There are a number of different structures which may be used to carry on business in Australia. The most common legal structures to carry out business are: as a sole trader; as a company; by a joint venture; or by using a trust or partnership. The choice of business structure depends on a number of considerations, including the relationship between participants in the proposed business, the nature of the business activities that are to be undertaken, the level of risk/liability involved and, importantly, the implications under Australian and overseas tax laws of the proposed business transactions.

The Australian Securities and Investments Commission (ASIC) is responsible for administering the registration of companies and business names in Australia. ASIC is the regulatory body responsible for the incorporation, operation, management and control of companies and the enforcement of the obligations of directors and other corporate officers.

Sole trader

An individual may carry on a business in Australia as a sole trader. A sole trader will be held personally liable for all obligations incurred by the business. The business can be carried on under the individual's own name or under a registered business name. Generally, this business structure is suited to small business ventures and is not appropriate for complex or international operations.

Companies

In Australia, companies are subject to the requirements under the *Corporations Act 2001* (Cth) (Corporations Act) which operates on a national basis (i.e. it is uniform across all States and Territories), and is administered by ASIC.

On registration, ASIC issues an Australian company with an Australian Company Number (ACN). The company may use the ACN as its company name or may choose another available name. The use of certain names is also regulated by ASIC (e.g. use of the word 'Bank').

It is desirable to search the availability of the intended company or business name and to secure the business name and any other necessary intellectual property protection well in advance of commencing business in Australia. It is also recommended that the availability of any desired domain name is checked and secured before registering a business name.

The Corporations Act provides for the registration of four types of companies:

A company limited by shares

Most companies in Australia are registered as companies limited by shares. If a company is registered as limited by shares, each shareholder's liability is limited to the amount (if any) unpaid on the shares held by the shareholder.

A company limited by guarantee

Companies limited by guarantee have members rather than shareholders. Member liability is limited to a specified amount in the event that the company is wound up without sufficient funds to pay its liabilities. This structure is typically favoured by not-for-profits.

A company with unlimited liability

Shareholders in a company with unlimited liability have no limit placed on their individual liability to contribute to the debts of the company in the event that it is wound up. This structure is mostly used by certain professional associations where member liability must not be limited.

No liability company

The main feature of a no liability company is that shareholders are not liable for unpaid amounts on their shares, nor are they liable to contribute to debts and liabilities of the company on its winding up. Failure to pay a call on shares will, however, render the shareholder liable to forfeit their shares. This structure is typically limited to mining companies and its special characteristics reflect the speculative nature of investment in mining exploration.

Proprietary and public companies

Companies limited by shares and companies with unlimited liability can be incorporated as either a proprietary (private) company or a public company. In most cases, a proprietary company is cheaper and less complicated to manage and administer than a public company due to having fewer compliance obligations under the Corporations Act.

A proprietary company must not have more than 50 non-employee shareholders and is restricted from offering shares to investors, except to existing shareholders or employees, or where the offer does not require a disclosure document such as a prospectus (see Corporate Finance page 18).

Proprietary companies must have at least one shareholder (who need not be an Australian resident), and they must have at least one director who resides in Australia (additional directors may reside elsewhere). A proprietary company does not need to have a company secretary, but if it does, then at least one must ordinarily reside in Australia.

Proprietary companies are also separated into “small” and “large” proprietary companies. This distinction depends upon the company’s revenue, assets and number of employees. The significance of being a large proprietary company is that, like a public company, the company is required to prepare an annual financial report and a directors’ report. This report must then be audited and sent to its shareholders. In contrast, subject to certain exceptions, a small proprietary company is not required to prepare annual financial reports or directors’ reports.

Any company that is not a proprietary company is a public company. A public company must have at least one shareholder (who need not be an Australian resident), must have at least three directors (of whom at least two must reside in Australia) and at least one Australian resident company secretary. Public companies limited by shares may offer their shares to investors in a wider range of circumstances than proprietary companies limited by shares, and may also apply to list on the securities markets operated by ASX Limited.

When carrying on a business in Australia, both proprietary and public companies must appoint a public officer (who must be an Australian resident) to act as the primary point of contact with the Commissioner of Taxation in relation to the company’s tax affairs.

Australian law imposes duties upon directors of companies and certain other officers of the company including the company secretary. In particular, the Corporations Act sets out requirements in relation to such persons to:

- exercise powers and discharge duties with care and diligence
- exercise powers and discharge duties in good faith in the best interests of the company and for a proper purpose
- not improperly use their position
- not improperly use information gained from their position, and
- ensure that the company does not trade whilst insolvent.

The common law also imposes similar duties, reflecting the fiduciary nature of the role such persons hold with respect to their company.

Registered foreign company

A foreign company carrying on business in Australia must register as a foreign company with ASIC under the Corporations Act. Upon registration, ASIC will issue the foreign company an Australian Registered Body Number. No separate legal entity or limitation is established on registration with ASIC, and therefore the foreign company will remain liable for any obligations incurred through carrying on business in Australia.

A registered foreign company must maintain a registered office in Australia and appoint a local agent (who must be an individual or company that resides in Australia) responsible for the obligations that the foreign company must meet under the Corporations Act. There is no requirement that a director of a registered foreign company ordinarily reside in Australia.

A registered foreign company must, unless exempted, provide to ASIC annually a balance sheet, cash flow statement and profit and loss statement, prepared in accordance with the laws applicable to the company in its place of origin.

Joint venture

A joint venture involves two or more individuals or corporations joining together to carry on a joint commercial enterprise. This structure may be the preferred choice where participants can create value by pooling their resources and expertise. It is often used in mining ventures, technological research projects and property developments. A joint venture is distinguished from a partnership in that it is usually entered into by participants to undertake a specific project rather than a continuous business.

Joint ventures may be incorporated or unincorporated. Where they are incorporated the business of the joint venture will operate through a separate legal entity (usually a company, but a trust or other structure may also be used) with each participant holding an equity style interest in that entity. An incorporated joint venture will generally be governed by the terms of the constituent documents of the chosen vehicle, together with a shareholders' or similar agreement, and any applicable laws (e.g. where a company is being used, the joint venture entity will also be subject to the Corporations Act).

Under an unincorporated joint venture, participants agree to work with each other under a purely contractual relationship, rather than running a joint business through a separate entity. However, a separate entity may sometimes be established for the purpose of administering or managing the joint venture.

Trusts

A trust is a legal relationship. It involves a trustee, as the legal owner of trust property, holding and dealing with the trust property for the benefit of others (beneficiaries) or for some other purpose (for example, charitable trusts). A trustee will generally have a right to be indemnified for costs and expenses reasonably incurred in the proper administration of the trust. A trust is not a separate legal entity and does not have the benefit of limited liability although it is common to utilise a company as the trustee to deal with this issue.

A trustee is a fiduciary and therefore owes a high standard of care to the beneficiaries of the trust. The trustee is subject to a number of duties such as the duty to act in good faith, to avoid conflicts of interest, to make full disclosure to beneficiaries and not to make a secret profit or gain.

Trusts used to carry on a business are frequently in the form of either a unit trust or a discretionary trust. In a unit trust the beneficial interest in the trust is divided into units. The holder of a unit is entitled to a fixed proportion of the profits (and possibly capital) from the trust and may also enjoy certain voting and other rights that provide them with a position that is not dissimilar to that enjoyed by shareholders of a company. Trust units may be transferred in a similar way as shares in a company. A discretionary trust is different in that the trustee has a discretion when distributing profits (and possibly capital) from the trust. Beneficiaries do not have any fixed interest in respect of the trust or its assets.

While trusts are often chosen due to their typically 'tax transparent' nature, the tax implications in using a trust are complex and professional advice should be sought from the outset.

Partnership

A partnership consists of two or more individuals or companies who carry on a business in common with a view to a profit. Except for certain professional partnerships (for example lawyers and accountants) there is a limit of 20 partners.

A partnership does not have a separate legal identity. Unless otherwise provided by a partnership agreement, partners will generally be jointly liable with the partner's co-partners and also severally liable for all the debts and obligations that arise from the partnership. It is possible to form a limited partnership (whether incorporated or unincorporated) in most state jurisdictions. A limited partnership is comprised of at least one limited partner and at least one general partner.

A limited partner contributes capital to the partnership but does not take part in its management. A general partner is responsible for the management of the business. Whilst the liability of a limited partner is limited to the amount of capital contributed by that partner, a general partner has unlimited liability.

Partnerships are governed by State and Territory legislation, contract law and other common law. In Australia it is generally not necessary to have a written partnership deed to constitute an ordinary partnership (although it is advisable to have one). Each partner acts as agent for the other partners when entering into contracts for the purposes of the partnership's business. In an ordinary partnership, partners are taxed on their respective interests in the net income of the partnership.

Australian Business Number

All businesses registered for goods and services tax (GST) (generally businesses of whatever nature with annual turnover of more than $75,000) must have a unique Australian Business Number (ABN) for its dealings with the Australian Tax Office (ATO).

Comparison of business structures

	Advantages	Disadvantages
Sole trader	• Inexpensive to set up and simple to maintain • The individual has full ownership and control of the business • Fewer regulatory requirements	• Individual is exposed to unlimited liability for business debts • Tax is paid at individual's marginal rate, which may be higher than the company rate • Potentially less flexibility for ownership changes, and tax planning
Company Limited by shares	• The personal liability of each shareholder is limited to the amount unpaid on the shares held by that shareholder (if any) • A company is able to exist indefinitely, irrespective of the retirement or death of its directors and shareholders • Easier to attract investment/capital • Share capital helps individual shareholders to facilitate transfers of interests and/or an exit from the business	• Cost in establishing, maintaining and winding-up • Must comply with the requirements in the Corporations Act including reporting and notification requirements • Potential for conflict between shareholders (owners) and directors (managers) • Numerous duties and obligations imposed on directors and certain other officers • Tax typically applies at the company level which may lead to tax 'leakage'
Registered foreign company	• Allows the foreign company to operate within Australia subject to certain ongoing obligations • May be more advantageous tax treatment • No auditing requirements (unless requested by ASIC)	• Foreign company name cannot be the same as company or business name already registered in Australia • Establishment involves lodging considerable supporting documentation to ASIC and appointing a local agent • Obligation to lodge yearly financial statements with ASIC
Trust	• Beneficiaries of the trust are not liable for the trust debts • May be more advantageous tax treatment (e.g. 'tax transparency') although some potential for 'tax leakage' • Can often be more flexible in their operation than a company structure	• Cost in establishing, maintaining and winding-up • There are strict fiduciary obligations imposed on the trustee • Trusts must typically "vest", that is, come to an end after a period of approximately 80 years • Trusts are relatively less common than companies, however they are still well understood structures in the Australian market

Comparison of business structures (continued)

	Advantages	Disadvantages
Incorporated joint venture	• Participants typically have limited liability in relation to the joint venture's activities • A corporate vehicle is a well understood management model and provides a clear structure for dealing with counterparties • Typically allows for different rights and obligations to be attached to a participant's equity interests allowing for flexibility in structuring	• Cost in establishing, maintaining and winding-up • Additional reporting and auditing requirements • Where a company is chosen, numerous duties and obligations imposed on directors and certain other officers (including obligations that may require them to prefer the interests of the joint venture vehicle over the interests of the joint venture parties) • Tax will need to be considered at the joint venture entity level, which may not always be desirable from a tax planning perspective
Unincorporated joint venture	• Participants are treated independently for tax purposes • Typically provides greater flexibility in management and less regulatory requirements, however will typically create more complexity in dealing with counterparties and in properly accounting for the joint venture activities	• No separate legal identity, and liability of the participants is not limited • If the joint venture agreement is not appropriately drafted, a court may find that the joint venture is actually a partnership leading to certain additional obligations being imposed
Partnership General	• Typically provides greater flexibility in management and less regulatory requirements • Allows for sharing of labour, expertise and financial resources	• Partners owe fiduciary duties to act in the best interest of the other partners • Each partner is jointly and severally liable for the debts of the partnership • No separate legal identity • Each partners is an agent for the partnership and can bind other partners through their actions

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Regulation of Business

Competition regulation

Competition and fair dealing in the market place is promoted by the *Competition and Consumer Act 2010* (Cth) (CCA) which is administered by the Australian Competition and Consumer Commission (ACCC).

The ACCC's primary responsibility is to ensure that individuals and businesses comply with the Australian Government's competition, fair trading and consumer protection laws. The CCA broadly covers anti-competitive and unfair market practices, mergers and acquisitions, product safety and liability and third party access to facilities of national significance and is supported by complementary State and Territory fair trading legislation.

Contract regulation & consumer protection

The CCA incorporates the Australian Consumer Law (ACL) which contains a variety of consumer protections. The ACL imposes obligations on manufacturers and importers of products and service providers in Australia to provide appropriate refund and replacements or repairs for defective goods and services. The ACL renders void any unfair terms in standard form consumer contracts that are not reasonably necessary.

Prudential regulation

The supervision of banks, credit unions, building societies, general insurance and reinsurance companies, life insurance, friendly societies, and most members of the superannuation (pensions) industry is carried on by the Australian Prudential Regulation Authority (APRA). APRA enforces prudential standards to ensure a stable, efficient and competitive financial system.

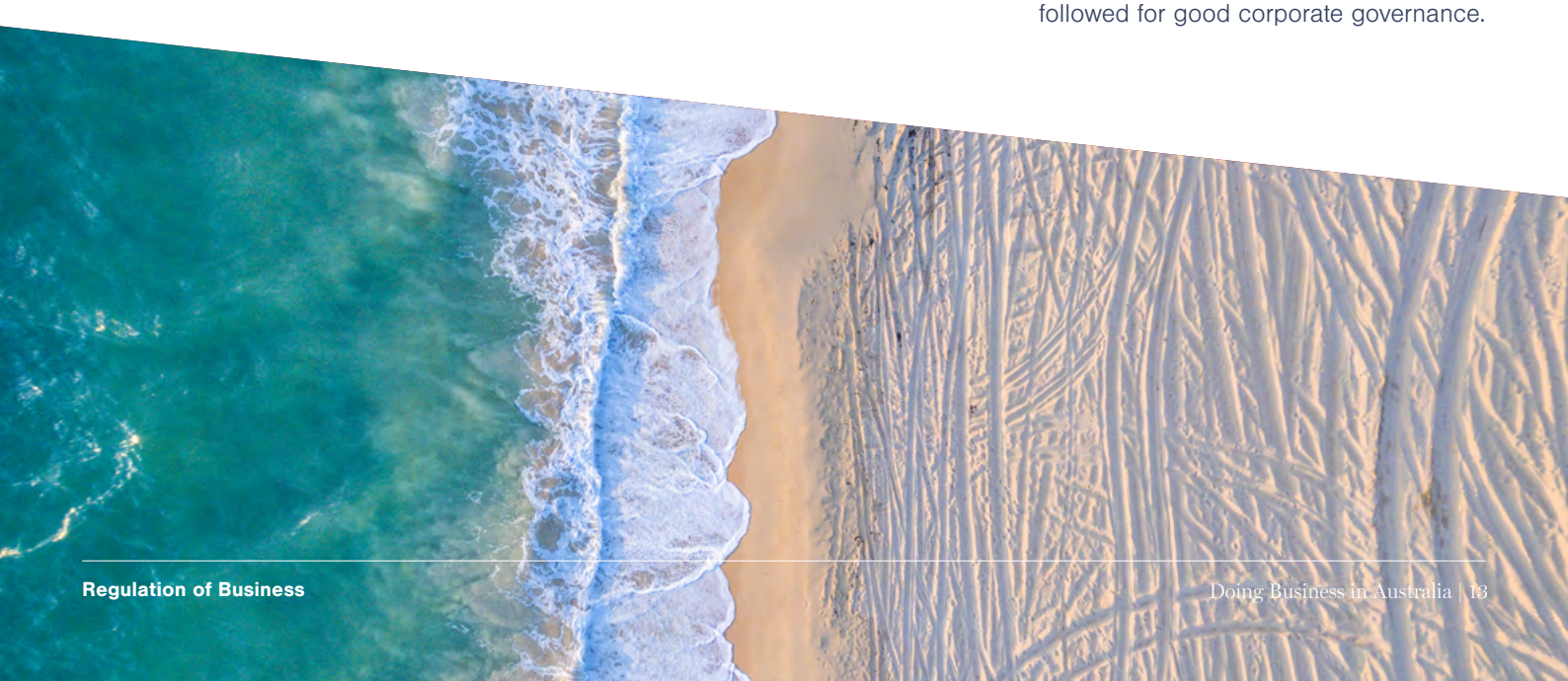
Regulation of corporations and financial services

ASIC is the regulator of Australian registered companies and is responsible for the administration of the *Corporations Act 2001* (Cth). ASIC is also responsible for the regulation of financial markets, financial services organisations and professionals who deal and advise in investments, superannuation, insurance, deposit taking and credit.

Australian Securities Exchange

ASX Limited (ASX) is the operator of Australia's main securities exchange, which has diversified its operations to include various derivative products, including energy, grain and index based derivative products. It is one of Asia's largest interest rates derivatives markets and in the world's top 20 listed equity markets measured by market capitalisation. Companies listing on the ASX are required to abide by the ASX Listing Rules which ensures certain standards are maintained.

The ASX's Corporate Governance Council has released the "Corporate Governance Principles and Recommendations" which is a set of eight guidelines which should be followed for good corporate governance.



Taxation regulation

The Australian Taxation Office (ATO), headed by the Commissioner of Taxation, is responsible for administering Australia's federal taxation system. There are a variety of sources of tax law in Australia for which the ATO is responsible, including the *Income Tax Assessment Act 1936* (Cth), *Income Tax Assessment Act 1997* (Cth), *Taxation Administration Act 1953* (Cth), ATO taxation rulings and common law. An important role of the ATO is the administration of the annual self-assessment of taxation and the conducting of random audits to verify individual and company assessments.

Foreign investment regulation

The Foreign Investment Review Board (FIRB) makes recommendations to the Australian Government regarding foreign entities or individuals who wish to undertake investment in Australia. FIRB assesses the compatibility of foreign investment proposals with the Government's foreign investment policy and the *Foreign Acquisitions and Takeovers Act 1975* (Cth). Before undertaking an investment in Australia (including any acquisition of residential, commercial or agricultural property), a foreign entity or individual may need prior approval from FIRB (see Foreign Investment & Acquisitions page 15).

Central bank

Australia's central banking functions are performed by the Reserve Bank of Australia (RBA). The RBA is an independent central bank established under the *Reserve Bank Act 1959*. The RBA's main responsibility is monetary policy but it also maintains financial system stability and promotes the safety and efficiency of the payments system.

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Foreign Investment & Acquisitions

Foreign investment

The Australian Government recognises the substantial advantages of encouraging foreign investment. The Australian community benefits from the wealth created by its open economy and the engagement of Australian business in international trade and investment.

The Australian Government established the Australian Trade Commission (Austrade) in 1986 as a national investment agency designed to help international companies build their business in Australia. Austrade provides prospective foreign investors with information on the Australian business environment including specific information on Australia's capabilities across a wide range of industry sectors, assistance in identifying suitable locations and potential partners and advice on applicable industry development programmes and government approvals required for business.

Foreign investment in Australia is governed by the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (FATA). It is administered by the Australian Government, through the Department of Treasury and the Foreign Investment Review Board (FIRB).

The FIRB screens foreign investment proposals on a case-by-case basis to determine whether the relevant proposal is contrary to the national interest.

Investment is regulated for "foreign persons" which includes persons not ordinarily resident in Australia, and corporations in which such a person or a foreign corporation, has a substantial interest (currently 20% or more).

Under the FATA, certain proposals are considered to be "significant actions", which may be notified to the FIRB. Unless these types of transactions are notified to the FIRB and "approved" (by the issue of a no objection notification), the Treasurer has the power to make orders in relation to the action (including after the transaction takes place), if the action is considered to be contrary to the national interest.

The FATA also identifies "notifiable actions", which must be notified to the FIRB. It is an offence to take a notifiable action without notifying the FIRB and obtaining approval for the action by the issue of a no objection notification.

Irrespective of the value or nationality of the investor, all foreign persons must notify FIRB of all proposed acquisitions of:

- vacant commercial land
- residential land (subject to some exemptions)
- mining and production tenements (subject to some exemptions)
- an interest of 5% or more in the media sector.

Further, irrespective of the value or nationality, all foreign government investors must notify the FIRB of all:

- direct investments by them
- proposals by them to establish new businesses in Australia
- proposals by them to acquire interests in land.

These all represent notifiable actions with a $0 monetary threshold.

For all notifiable actions other than the types of transactions listed above, foreign persons must notify the FIRB where the target is valued at or above the applicable monetary thresholds provided for by the Foreign Acquisitions and Takeovers Regulations 1989 (Cth).

The relevant monetary thresholds are often higher for investors from countries with which Australia has free trade agreements in place, although the application of these higher thresholds is narrowly applied and will generally only be available for direct investments by those qualifying investors.

Lower thresholds also apply to proposals concerning sensitive sectors and proposals including land on which critical infrastructure is located (such as such as energy, food, water, transport, communications, health and banking and finance).

Notably, offshore transactions can be captured and therefore it is important to consider Australian regulatory requirements where a target has an Australian connection.

The Treasurer can block a proposed acquisition if the applicable monetary threshold is exceeded and the acquisition or proposed acquisition is considered contrary to the national interest. Further, the Treasurer can impose conditions on the way in which a proposal is implemented in respect of an acquisition, if such conditions are considered necessary to ensure that the proposal is not contrary to the national interest.

Current monetary thresholds

For all non-government foreign persons (excluding foreign persons from a country that is party to a free trade agreement with Australia and is entitled to higher monetary thresholds), the following monetary thresholds generally apply:

- $266 million threshold for:
  - the acquisition of an interest in an Australian business, having regard to the value of the consideration
  - the acquisition of an interest of 20% or more in an Australian entity (and in some cases, in an offshore entity that holds Australian assets or conducts a business in Australia, where the Australian assets or businesses of the target company are valued above such threshold), having regard to the value of the target
  - the acquisition of an interest in developed commercial land (excluding certain sensitive low threshold land, such as mines and public infrastructure), having regard to the value of the consideration
- $58 million threshold for the acquisition of an interest in an Australian agribusiness, having regard to the value of the foreign person's existing and proposed investments in the target, including interests of its associates
- $15 million cumulative threshold for agricultural land, having regard to the value of the consideration and the value of agricultural land that the foreign person (and any associates) already holds, or is likely to hold immediately following a proposed acquisition.

Investors from countries that have a free trade agreement in place with Australia and are entitled to higher thresholds for particular investment proposals currently include Canadian, Chilean, Chinese, Japanese, Mexican, New Zealand, Singaporean, South Korean, United States and Vietnamese investors, and investors from any country for which the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP-11) subsequently comes into force.

Notably, as referred to above, foreign government investors generally have a $0 monetary threshold applicable to proposed investments in Australian businesses or land assets.

Application process & fees

Applications for FIRB "approval", in the form of a no objection notification, must be submitted online and must contain basic information about the applicant(s) and the nature of the proposed transaction(s). Applications must be accompanied by a cover letter setting out more detailed particulars and addressing the information requirements of the FIRB. For example, this includes:

- an analysis of the application of the FATA to the proposal and the relevant significant or notifiable actions
- details of all investors holding an interest of 5% or more in the acquirer and ultimate beneficial owners
- existing investments or assets in Australia held by the acquirer or its associates
- information concerning the source of funding for the proposed transaction and the flow of funds through to the acquirer
- particulars concerning the acquirer's commercial rationale for the transaction and its future intentions for the target business, land or entity.

A fee is payable in respect of each application filed with the FIRB. In some cases, one application can cover a number of proposed actions or transactions. The fee is calculated by reference to the type of transaction and the consideration payable. Fees can range from $2,000 to as high as $103,400.

A statutory 30 day examination period and additional 10 day notification period applies to FIRB proposals. The examination period does not commence until the correct fee has been paid. The examination period can be extended by agreement or by the Treasurer by up to 90 days for complex transactions.

Approval of a proposed transaction will be given unless the proposal is considered to be contrary to the national interest. There is a presumption that foreign investment is generally in the national interest.

As noted above, the Treasurer can also impose conditions on the way in which a proposal is implemented in respect of proposed transaction, if those conditions are considered necessary to ensure that the proposal is not contrary to the national interest.

It is now common for standard tax conditions to be imposed as part of a no objection notification for many notifiable actions. These standard tax conditions, by their nature, require compliance with Australia's tax laws, co-operation with the Australian Taxation Office by producing information in a timely and complete manner, payment of outstanding tax debts and reporting on compliance with the conditions and the holding of the asset.

Penalties for non-compliance

Penalties for non-compliance with Australia's foreign investment legislation include:

- criminal penalties of up to $157,500 or 3 years' imprisonment (or both) for individuals and up to $787,500 for companies
- civil penalties which vary depending on the nature of the breach but include a fine of up to $52,500 for individuals and up to $262,500 for companies.

The FATA also provides for civil and criminal liability of officers of companies involved in a breach in certain circumstances and can extend liability to third parties who knowingly assist a breach.

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Corporate Finance

Corporate finance in Australia usually takes the form of either debt or equity finance. In some cases it is also possible to raise finance through the issue of hybrid or convertible securities that possess features of both debt and equity.

Corporate finance activity in Australia for companies is generally regulated by the Corporations Act. That legislation applies to all financial products and securities offered within Australia irrespective of whether the financial product or security, is issued by a foreign Issuer or an Australian issuer. For these purposes a security is defined to include a share, debenture, legal or equitable right or interest in a security, or an option to acquire a security by way of issue. These rules apply to offers or invitations for issue or sale of securities that are received in Australia irrespective of where any resulting issue, sale or transfer occurs.

Debt Finance

Debt finance usually takes the form of borrowings lent by creditors such as banks and financers to the company. They may also include suppliers of goods and services on credit, and lessors under certain hire purchase or finance lease arrangements.

Companies are able to borrow money in the same way as an individual. They also have specific powers under the Corporations Act to issue debentures and to give security for loans by granting security interests over fixed or circulating assets under either a general security agreement or a specific security agreement which is registered on the Personal Property Securities Register.

As indicated above, debt finance may also be raised from the issue of debentures. The definition of a debenture is broad and includes an undertaking by a body to repay the debt, money deposited or lent to it. Debentures may or may not be secured over assets of the company. Typically the term debenture is used where the company borrows from a large number of individuals on the same basis. Where the issue of debentures requires the use of a disclosure document (such as a prospectus) to investors under the Corporations Act there are additional requirements applying to the issue such as:

- the need to have a debenture trust deed and trustee to coordinate how the company deals with the debenture holders and restrictions on who can be a trustee
- the imposition of duties on the company issuing the debentures in relation to conduct and financial records
- provisions in relation to holding meetings of debenture holders
- the duty to notify ASIC of certain information.

The Corporations Act provides a number of safeguards to protect providers of debt finance such as giving them priority over shareholders of the company in being repaid when a company is wound up, imposing personal liability on directors of the company for incurring debts while the company is insolvent, and prohibiting certain transactions which have the effect of defeating creditors or unfairly giving preference to some creditors over other creditors.

Equity Finance

Under the Corporations Act, apart from certain exempt issues of securities, all offers of securities are required to comply with specific disclosure requirements. The disclosure requirements are designed to protect investors by ensuring that the offering and trading of securities occurs in a market that is efficient and informed.

Generally, a person must lodge a disclosure document with ASIC before they may offer for subscription or purchase, or issue invitations to subscribe for or purchase, securities of a corporation.

Corporate advisory firms offering advice on financial products such as shares must also maintain an Australian financial services licence.

There are four categories of disclosure documents for offers of securities: prospectuses, short-form prospectuses, profile statements and offer information statements. The most commonly used disclosure document is a prospectus. The Corporations Act specifies a number of procedural and content requirements for disclosure documents.

There are a number of exemptions from the obligation to prepare and lodge a disclosure document which may be available. Amongst others, exemptions are available for issues made to sophisticated investors and professional investors. To qualify as a sophisticated investor a person must either invest more than $500,000 in the securities or provide an accountant's certificate stating that either the investor earned $250,000 gross income for each of the last two financial years or has net assets in excess of $2.5 million. The definition of a professional investor includes a person who has or controls at least $10 million in gross assets or is a financial services licensee. There are also useful exemptions for small scale offerings relating to personal offers received in Australia for issue or sale of securities in which 20 investors or less acquire securities in a rolling 12 month period and which do not result in a breach of a specified $2 million ceiling.

There are also laws which regulate advertisements for offers of securities and provisions which make it an offence to make misleading or deceptive statements when offering securities. The offeror and its directors, underwriters and other persons who have made statements in the disclosure document may be held liable to pay compensation to a person who suffers loss or damage due to a misleading or deceptive statement. There are, however, various defences to liability available under the relevant provisions of the Corporations Act, one of which is that appropriate due diligence was undertaken.

A product disclosure statement (often called a PDS) is used for the offer of financial products. A financial product includes a facility through which, or through the acquisition of which, a person makes a financial investment, manages financial risk, or makes non-cash payments.

The ASX is Australia's primary national stock exchange for equities, derivatives and fixed interest securities. Entities listing on the ASX need to comply with the ASX Listing Rules as well as the Corporations Act. Foreign entities may apply for listing on the ASX and may also apply to be granted exempt foreign entity status. Exempt foreign entity status grants a foreign entity exemption from complying with many of the rules applicable to Australian entities (although, depending on the circumstances the ASX may impose further requirements).

Crowd Funding

Certain small unlisted companies may raise up to $5 million by offering ordinary shares to the public through a crowd-sourced funding (CSF) intermediary. Offers through CSF intermediaries have reduced disclosure requirements, with the prescribed disclosure document being much simpler in form and content than the abovementioned disclosure documents. For such offers, the CSF intermediary must hold an Australian financial services licence and performs a 'gatekeeper' function to ensure that retail investors are adequately informed and protected. This type of fundraising is useful for newly commenced business ventures for whom the costs of preparing a traditional disclosure document would be disproportionate to the amount of funds raised. Retail clients are limited to subscribing for no more than $10,000 under a CSF offer in any 12 month period from the same issuer, and have a 5 business day cooling off period during which they can withdraw their offer to subscribe.

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Mergers & Acquisitions

Mergers and acquisitions in Australia are regulated by a variety of legislation:

- the *Corporations Act 2001* (Cth) regulates on and off market takeovers, takeovers by scheme of arrangement, reductions of capital, compulsory acquisitions and related party transactions
- the *Foreign Acquisitions and Takeovers Act 1975* (Cth) requires that certain significant foreign investments be approved by the Treasurer
- the *Competition and Consumer Act 2010* (Cth) (CCA) contains Australian anti-trust law which regulates mergers and acquisitions which would have the effect of substantially lessening market competition, and
- the ASX Listing Rules apply to entities listed on the Australian Stock Exchange and regulate scrip for scrip takeover offers, backdoor listings, transactions with persons of influence and other significant transactions.

Acquisitions are typically implemented by way of a share or asset sale. Strictly speaking, in Australia there is no formal concept of a merger. As an alternative to a merger, transactions may be structured as a scrip for scrip transaction, where one entity buys out the other and issues shares in itself as consideration.

Acquisitions of small companies

Acquisitions of proprietary companies with less than 50 shareholders are typically implemented by private agreement between the vendors and purchaser. This will typically take the form of a share sale agreement which contains the types of provisions you would customarily expect to see in an English speaking common law jurisdiction.

Takeovers

Australia has a legislative takeovers regime which applies to listed companies, unlisted companies with more than 50 members and listed managed investment schemes.

A takeover involves a bidder company making an offer for the shares to the target's shareholders. Generally, and subject to exceptions, a person is prohibited from acquiring a "relevant interest" in certain companies if, because of the transaction, any person's voting power in the entity:

- increases from 20% or below to more than 20%, or
- increases from a starting point that is above 20% and below 90%

(**Takeovers prohibition**).

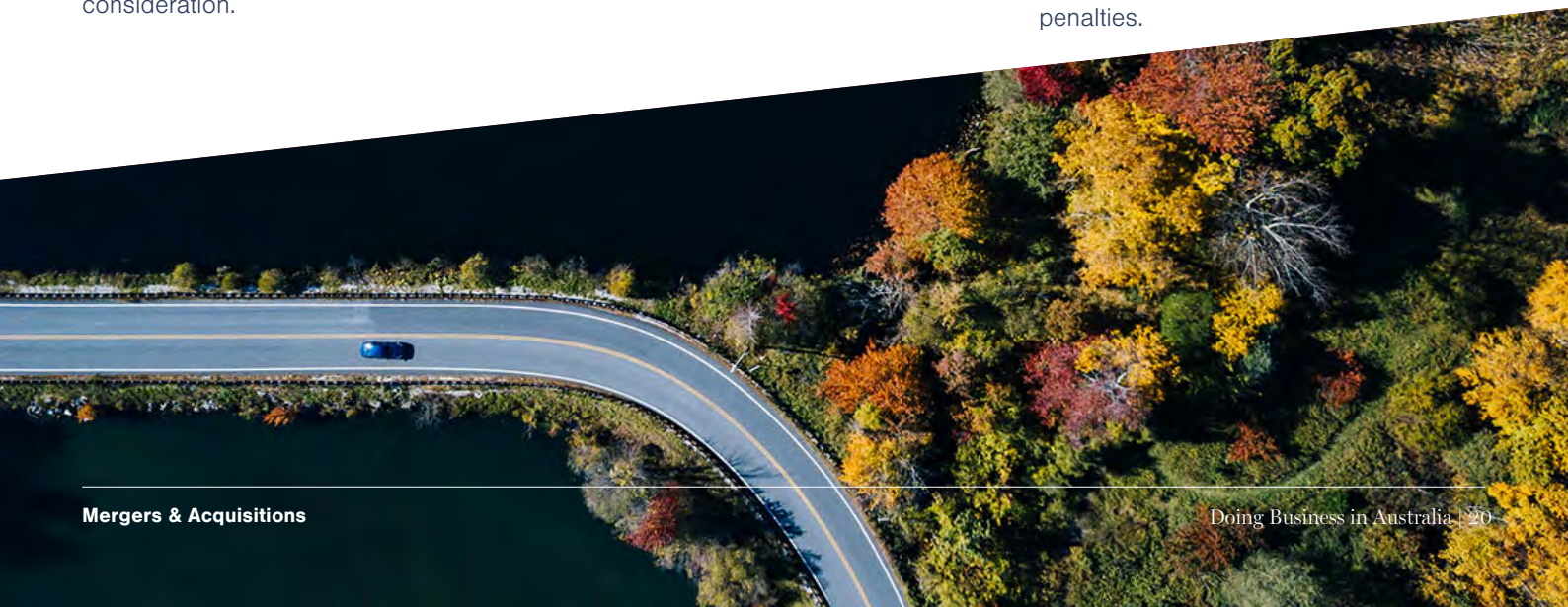
Generally, a person has a relevant interest in securities if they are the holder of the securities, they have the power to exercise (or control the exercise of) a right to vote attached to the securities, or they have the power to dispose of (or control the exercise of a power to dispose of) the securities. A person's voting power is the aggregate of their relevant interest with the relevant interests of their associates.

Exceptions to the Takeovers prohibition include acquisitions:

- under a formal takeover bid
- under a scheme of arrangement
- with the approval of a majority of securityholders in the target
- of no more than 3% of the voting rights every six months (known as the "creep rule"), and
- of shares in listed companies holding securities in a target entity.

There are several regulatory bodies which may be involved in a takeover process: the Takeovers Panel, the Australian Securities and Investments Commission, the Australian Securities Exchange, the Foreign Investment Review Board, Australian Treasury, and the Australian Competition & Consumer Commission (ACCC).

Failure to comply with Australian takeovers rules may lead to civil and/or criminal liability as well as various penalties.



A formal takeover bid may be on or off market, and may be subject to various conditions, including a minimum acceptance condition.

Key thresholds for takeovers include:

50%, where a shareholder may pass ordinary resolutions

75%, where a shareholder may pass special resolutions for certain prescribed matters (for example, amending the company's constitution;

90% or more, after which a compulsory acquisition procedure may be triggered.

An estimated timeline from announcement to compulsory acquisition for Australian takeovers is around four to five months.

Takeovers Panel

The Takeovers Panel is a body established by the *Corporations Act 2001* which acts as the primary forum for resolving disputes about takeover bids during the bid period. It has wide legislative powers, in particular to declare circumstances in a takeover unacceptable where those circumstances may otherwise be permissible at law.

Schemes of arrangement

Australian law provides a mechanism by which takeovers may be implemented by court order where a shareholder meeting approves the arrangement. The scheme of arrangement process involves a court ordered shareholder meeting which considers a takeover bid or corporate restructuring proposal. The scheme is approved if it the resolution is passed by each class of shareholders by both:

- 75% of votes cast on the resolution, and
- more than 50% in number of the shareholders voting on the resolution (in person or by proxy).

If shareholder approval is obtained, the Court will generally approve the scheme at a second court hearing.

Competition regulation in mergers and acquisitions

The CCA prohibits mergers and acquisitions that have the effect of substantially lessening competition. It sets out a number of matters which may be considered when determining whether an acquisition is likely to substantially lessen competition in a market. The ACCC's merger guidelines set out the analytical and evaluative framework applied by the ACCC when reviewing mergers under the CCA. It provides guidance on the factors the ACCC considers relevant to its consideration of mergers and includes discussion of the issues relevant to enforceable undertakings.

Asset sales

An alternative option to acquiring a company is to acquire its business assets. Whether to pursue a share or asset sale is a strategic decision which involves various considerations including tax and the target's historical liabilities and risk profile.

An asset sale will generally be documented in a business or asset sale agreement. This agreement will typically set out what assets are being sold, the price, and any other conditions of sale. An asset or business sale agreement will also generally include provisions dealing with purchase price adjustments, warranties and indemnities, conditions precedent to completion and restrictive covenants.

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Competition & Consumer Law

The *Competition and Consumer Act 2010* (Cth) (the Act) regulates and promotes competition, fair trading and consumer protection. The Act incorporates the Australian Consumer Law (schedule 2 of the Act). The Act is a revision of the *Trade Practices Act 1974* (Cth).

A significant amount of litigation is commenced under provisions of the Act in comparison to other Australian legislation. The principal administrator of the Act, the Australian Competition & Consumer Commission (ACCC), is an active and high-profile regulator. The ACCC works cooperatively with State and Territory consumer law regulators and with the Australian Securities and Investments Commission (ASIC), industry bodies and the legal profession in relation to competition law and consumer law issues.

Competition (Anti Trust)

The Act prohibits a range of anti-competitive conduct including:

- cartel (collusive) conduct
- resale price maintenance
- misuse of market power
- exclusive dealing
- price fixing
- arrangements (including mergers takeovers and acquisitions) which have the purpose or effect of substantially lessening competition in a market for goods or services in Australia.

The ACCC regulates processes and enforces competition law in Australia.

Cartel conduct

There are various specific prohibitions in the Act on entering or giving effect to a contract, arrangement or understanding that contains a cartel provision. A cartel provision is a provision between competitors which has (or is likely to have) the purpose or effect of:

- fixing, controlling or maintaining prices for goods and services
- restricting outputs in the production or supply chain
- allocating customers, suppliers or geographical areas between competitors
- rigging bids made by the competitors for the supply or acquisition of services.

There are some limited exceptions to the prohibitions relating to cartel conduct, including:

- joint ventures
- the buying and selling activities of joint buying and selling groups (including cooperatives)
- the joint advertising and resupply of collectively acquired goods or services
- genuine recommended price arrangements. That is, there is some scope to recommend resale prices but only if there is a statement on the goods or an advertisement that the resale price is a recommendation only. Generally, a supplier can not arrange with, persuade or influence a person below it in the distribution chain to maintain a minimum price for goods.

Nevertheless, if a matter falling within an exception has the purpose or effect of substantially lessening competition, it may still be prohibited.

The ACCC administers an immunity policy for companies and individuals who alert the ACCC to cartel conduct. The policy is quite detailed and subject to many conditions. The policy favours those who first alert the ACCC and the timing of any notification to the ACCC can be of considerable significance.

Cartel conduct in Australia is capable of attracting criminal liability.

The ACCC has recently instituted proceedings (through the Commonwealth Director of Public Prosecutions) a number of criminal proceedings against both individuals and companies for alleged cartel conduct.

Anti-competitive arrangements

The Act prohibits a contract, arrangement or understanding which has the purpose or effect of substantially lessening competition. This includes competitors seeking to divide up markets or to provide for particular prices. Corporations are also prohibited from entering into contracts, arrangements or understandings among themselves to boycott any supplier or customer or to only trade with selected suppliers or customers on certain terms.

Concerted practices

The Act prohibits any form of cooperative behaviour or communication between two or more businesses (or persons) that have the purpose, effect or likely effect of substantially lessening competition. This new offence commenced on 6 November 2017 to capture anti-competitive conduct that fell short of being a "contract, arrangement or understanding" and may involve a single instance of information being provided by one person.

Misuse of market power

A corporation that has a substantial degree of power in a market is prohibited in certain instances from taking advantage of that power in that or any other market. The corporation must not use its power for the purpose of:

- eliminating or substantially damaging a competitor in that or any other market
- preventing the entry of a person into that or any other market
- deterring or preventing a person from engaging in competitive conduct in that or any other market.

Further, a corporation cannot have any one of these purposes when supplying goods or services below cost for a sustained period (predatory pricing).

Exclusive dealing/supply chain tying arrangements

The Act contains provisions regarding exclusive dealing. Arrangements which involve a supplier refusing to supply goods or services unless the proposed purchaser agrees to certain restrictions, for example, not to buy goods of a particular kind from a competitor, may contravene the Act if they have the effect of substantially lessening competition in the relevant market.

Another example of exclusive dealing is third line forcing, which involves the supply of goods or services on condition that the purchaser buys goods or services from a specified third party, or a refusal to supply because the purchaser contravenes that condition. That practice breaches the Act even if there is no substantial lessening of competition.

Anti-competitive mergers and acquisitions

The Act prohibits a corporation from acquiring shares in a body corporate or assets from a body corporate or individual if the effect would be a substantial lessening of competition in a market for goods or services.

A list of matters to be taken to account are outlined in the Act in determining the effect on competition, including:

- the actual and potential level of import competition
- the barriers to entry
- whether the acquisition would result in the acquirer being able to significantly and substantially increase prices or profit margins
- whether the acquisition would result in the removal of certain competitors.

The ACCC has published guidelines with respect to mergers. While it is not necessary to consult the ACCC with respect to such transactions, in certain circumstances the ACCC may grant clearances of a proposed merger or acquisition. The ACCC also has the power to commence proceedings to prevent a contravention or to seek a divestiture of shares or assets.

Penalties

For corporations, penalties for contravening competition provisions of the Act will be the greater of: $10 million; or if the court can determine the value of the benefit obtained from the offence by the corporation (and any related bodies corporate) – three times the value of the benefit; or if the court cannot determine the value of the benefit – 10% of the annual turnover of the corporation in the preceding 12 months.

In some instances, penalties of up to $500,000 can also extend to directors and employees. In addition, in certain instances of cartel conduct, not only may significant fines apply but also jail terms of up to 10 years or fines of up to $420,000 per criminal cartel offence.

The Act provides for a range of orders which may be made including:

- pecuniary penalties
- injunctions
- divestiture (in the case of a breach of the merger provisions)
- damages
- non-punitive orders (such as a community service order or probation orders, in relation to a breach of the cartel provisions)
- punitive orders for adverse publicity
- orders disqualifying persons from managing corporations
- orders in favour of non party consumers
- enforceable undertakings.

Consumer protection

Australia has an extensive regime of consumer law that seeks to establish fairness in trade or commerce and generally amongst consumers. The Act incorporates the Australian Consumer Law (ACL), a national legislation which on 1 January 2011 was also adopted by all the States and Territories of Australia.

The ACL is concerned with conduct and representations in relation to goods and services, as well as standards. It contains far reaching provisions for the protection of consumers as well as business to business transactions including:

- prohibiting conduct that is misleading or deceptive
- prohibiting unconscionable conduct in connection with the supply of goods or services to a person
- prohibiting the making of false or misleading representations
- in relation to contracts
- guarantees
- product safety and standards
- recalls.

The ACCC and state based regulators regulate processes and enforce consumer law in Australia.

Misleading or Deceptive Conduct and Unconscionable Conduct

Section 18 of the ACL states that "A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive". This section is one of the most often referred to sections of law in Australia.

It should be noted that a person includes a corporation.

Further, the ACL contains prohibitions on engaging in unconscionable conduct in trade or commerce, picking up concepts developed in the common law as well as supplementing them with ACL defined concepts of unconscionability. Unconscionable conduct includes:

- the exploitation by a stronger party of a weaker party
- a party taking advantage where there is a significant difference in the relative bargaining positions
- the exertion of pressure or undue influence over a vulnerable party.

In addition to damages, a person may seek a wide variety of remedies under the ACL for misleading or deceptive conduct or unconscionable conduct. The ACL contains some wide ranging and powerful remedies so as to ensure fairness is achieved.

Further, the ACCC and other regulators can also seek damages, pecuniary penalties, injunctions and other orders in favour of consumers for breaches of these provisions.

Significant ACL contract provisions

Certain types of contracts and documents in business to consumer transactions are regulated and certain unfair contract terms may contravene the ACL. The ACL has specific implications for:

- standard form contracts
- suppliers of goods and services
- guarantees and warranties
- invoices, statements and receipts
- leases and other documents relating to interests in land
- unsolicited (door to door) agreements
- lay-by and hire purchase type agreements.

Representations and the Supply of Goods and Services

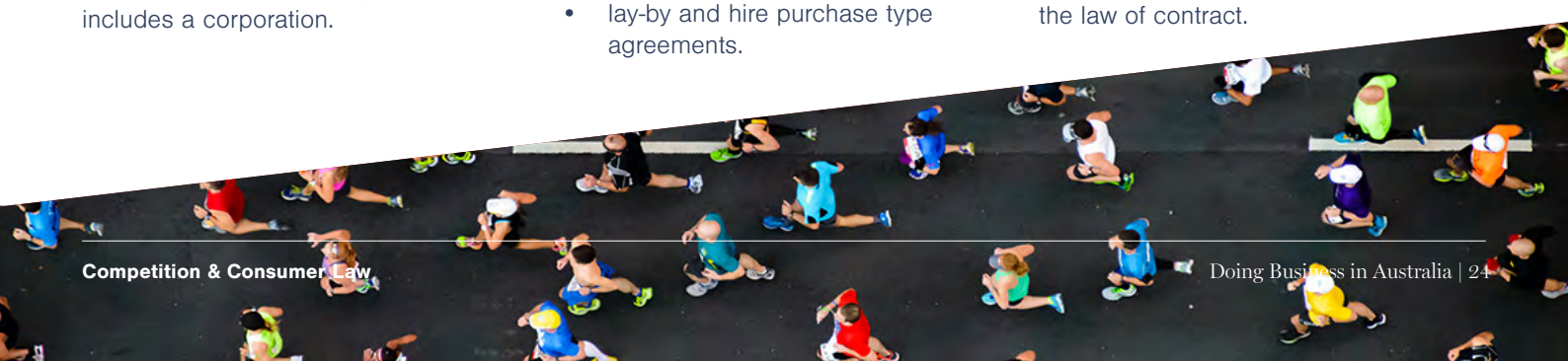
The ACL includes prohibitions on making false or misleading representations in relation to but not limited to:

- a particular standard, quality, value or grade of goods or services
- bait advertising
- employment
- unsolicited goods or services
- testimonials (where a person endorses goods or services)
- guarantees and warranties (where a requirement to pay for a contractual right is claimed which is wholly or partly equivalent to any condition, warranty, guarantee, right or remedy a person has under law)
- land and interests in land
- timeframes and delays (where it is claimed goods or services will be provided within a certain time).

In relation to the supply of goods and services the ACL also covers topics including pricing (the goods have more than one price and the supply takes place for the price that is not the lower or lowest of the prices) as well as harassment and coercion.

Guarantees (previously warranties)

The consumer guarantee provisions of the ACL create a number of standards with respect to the supply of goods or services to a consumer. The definition of consumer transactions includes business to business transactions where the price of the goods or services does not exceed $40,000. These statutory causes of action arise independently of the law of contract.



By application of the ACL, when providing goods or services a supplier provides certain guarantees with respect to those goods or services.

Guarantees in relation to goods include:

- acceptable quality*
- matching description*
- express warranties*
- fitness for any disclosed purpose
- matching sample or demonstration model
- title
- undisturbed possession
- undisclosed securities.

** these apply to manufacturers also.*

Manufacturers may also be required in certain circumstances to provide a guarantee as to repairs and the availability as to spare parts.

Guarantees in relation to services include:

- due care and skill
- fitness for particular purpose.

A breach of any of these guarantees is actionable pursuant to provisions of the ACL and the ACL sets out the available remedies. For example, this may include a right to return goods (a right generally not available at common law) and to recover any loss or damage that was reasonably foreseeable as a result of breach of a consumer guarantee.

The ACL also regulates the manner in which warranties against defects are communicated to consumers. That is, in the instance where a representation is made to a consumer regarding remedies available to a consumer in the event goods or services are defective, the regulations under the Act specify that particular information is to be provided to consumers. Often such information is included on goods packaging and warranty cards supplied with goods.

Product Safety

The ACCC has the power to implement product safety standards and extended bans and make regulations for standards and bans on services related to consumer goods.

It is mandatory for suppliers (and those providing product related services) to advise the ACCC within 48 hours of becoming aware of an incident involving the death or serious injury or illness that was caused by or may have been caused by the foreseeable misuse of consumer goods which the supplier had actually supplied. Penalties apply for failure to provide the requisite notification.

Remedies

The Act and the ACL include a number of sections that outline the remedies available to parties. This includes general provisions relating to injunctions, damages, compensation and other orders for relief. The Act and the ACL contain a wide array of remedies that may be available to a party taking action against another and who has proved a contravention. The Act and ACL is appealing to litigants given the flexibility a Court has in customising a remedy specific to a given breach.

Penalties

Non-compliance with provisions of the ACL may result in action by the ACCC or state-based regulators. Criminal penalties for corporations and for other persons apply for breaches of the ACL. The ACL also outlines statutory defences which are available to persons. Provisions relating to timeframes for the prosecution, compensation for victims and penalties are also outlined in the ACL.

Following amendments introduced in 2011, civil pecuniary penalties also exist in the ACL, and can be sought by regulators for conduct where criminal sanction may not be appropriate. Following further amendments to the ACL in 2018, the maximum civil pecuniary penalties for breach of the ACL provisions outlined above include, for corporations (previously $1.1 million), the greater of: $10 million; or if the court can determine the value of the benefit obtained from the offence by the corporation (and any related bodies corporate) – three times the value of the benefit; or if the court cannot determine the value of the benefit – 10% of the annual turnover of the corporation in the preceding 12 months. The maximum civil penalty for individuals is $500,000 (previously $220,000).

Infringement notices may also be issued by regulators for certain breaches.

The ACCC and other regulators have a range of powers available to them without the need to go to Court. This includes the power to:

- obtain enforceable undertakings
- issue substantiation notices
- issue public warnings notices
- undertake search and seizure.

Regulators can also apply to the Court to seek the following for breaches of the ACL:

- disqualification orders
- non punitive orders
- adverse publicity orders
- injunctions/declarations
- damages
- compensatory orders (this can be done by consumers or by a regulator on behalf of consumers)
- redress for non-parties.

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Financial Regulation

Australia has a sophisticated financial system which is primarily regulated by three entities which oversee the various laws that govern this system. The entities are the RBA, APRA and ASIC. Together these entities are responsible for the stability of the financial system and regulation of the entities that operate within that system.

Banking

Australia has four major banks: Australia and New Zealand Banking Group Limited (commonly referred to as ANZ), Commonwealth Bank of Australia (CBA), National Australia Bank Limited (NAB) and Westpac Banking Corporation (Westpac), as well as a number of regional banks.

A significant number of global banks and non-bank financial institutions such as credit unions, building societies, friendly societies and finance companies also operate within Australia's financial system. Collectively these institutions provide Australian businesses and consumers with a comprehensive array of banking and financial services and products.

Reserve Bank of Australia (RBA)

The RBA is Australia's central bank. It is the obligation of the RBA to maximise the beneficial effects of its monetary and banking policy, to keep the financial system stable and to ensure the efficacy of Australia's payment systems. Among other things the RBA uses its powers to contribute towards:

- the stability of Australian currency
- the maintenance of full employment in Australia
- the economic prosperity and welfare of the people of Australia.

Australian Prudential Regulation Authority (APRA)

APRA is the regulator which licences and supervises banks, insurance companies, superannuation funds, credit unions and building societies. APRA's main tasks include establishing and enforcing prudential standards and practices and ensuring that organisations in the banking and financial services sector manage their risk appropriately. APRA achieves its objectives by:

- establishing the standards to be followed by financial institutions
- regulating the licensing of financial institutions
- assessing the financial soundness of the institutions it governs
- when applicable, undertaking remediation, crisis response and enforcement.

Australian Securities and Investments Commission (ASIC)

ASIC is Australia's corporate, markets, financial services and consumer credit regulator. It plays an important role in maintaining, facilitating and improving Australia's financial systems and the various entities that function within that system. In fulfilling its roles, ASIC's priorities include:

- giving assistance to and protecting retail investors and consumers in the financial economy
- building confidence in the integrity of Australia's capital markets
- facilitating international capital flows and international enforcement
- managing the domestic and international implications of global and financial turmoil.

Australia's licensing requirements

All banks, insurance companies, building societies, credit unions, friendly societies and trustees of superannuation funds that operate in Australia are required to be licensed by APRA and participants in Australia's banking and financial system may be required to hold one or more licences to conduct different aspects of their business. When determining if an organisation needs to be licensed it is necessary to carefully consider the types of services the business is offering. Generally, if an organisation provides financial services (e.g. dealing in or advising on a financial product such as interests in managed investment schemes or shares), they will be required to hold an Australian financial services licence. If an organisation engages in consumer credit activities (e.g. lending or related activities such as broking, loan management and debt collection) with individuals it will be required to hold a credit licence. A person who engages in commercial credit activities should not be required to hold an Australian financial services licence or credit licence. The demarcation between financial services, commercial credit and consumer credit activities is not always clear and often requires detailed analysis in the context of the particular business. Financial services and Australian financial services licences and credit activities and credit licences are explained further below.

Financial services licences

When assessing the need for an Australian financial services licence it is important to carefully consider whether a person is carrying on a financial services business in Australia. A person provides a financial service if the person provides financial product advice, deals (including assisting a person to deal in) a financial product, makes a market for a financial product, operates a registered investment scheme, provides custodial or depository services and/or provides a crowd-funding service. A financial product includes such things as shares, derivatives, interests in managed investment schemes and life insurance policies. However, a financial product does not include the provision of consumer or commercial credit facilities and credit related products like mortgages securing obligations under a credit contract and guarantees of obligations under credit contracts.

A person will conduct a financial services business within Australia if the person intends to induce people in Australia to use the financial service and this will be the case irrespective of whether or not the person providing the financial service is actually located in Australia. With increased use of the internet it is more likely than ever that the provision of financial services may have multi-jurisdictional effects.

Managed investment schemes (also known as collective investment schemes) can have various legal forms. Commonly, they take the form of a unit trust. A managed investment scheme is a scheme in which investors contribute funds to a collective pool which is then invested on their behalf to produce financial benefits for the investors. Investors do not have day-to-day control over the operation of the scheme which is usually undertaken by a professional funds manager. In most cases, an Australian financial services licence is required to operate a managed investment scheme. Certain managed investment schemes must be registered with ASIC.

Credit licences

The *National Consumer Credit Protection Act 2009* (Cth) (NCCPA) and the code established under it provides for the regulation of consumer credit activities in Australia. Regulation of credit activities is based on a two-tiered regime. The first tier creates a licensing scheme (the credit licence) and the second tier manages the relationship between the persons that engage in consumer credit activities and their customers. A person may engage in a credit activity if they provide or carry on a business of providing consumer credit or leases, take the benefit of a mortgage or guarantee securing consumer credit or perform a credit service (e.g. acting as a an intermediary).

The NCCPA only governs credit activities in relation to credit (or leases) provided to natural persons or strata corporations for personal, domestic or household purposes, or in respect of the purchase, renovation or improvement of residential property for investment purposes, or to refinance credit provided for those investment purposes. It does not govern or regulate the provision of commercial credit and related mortgages or guarantees.

All persons who engage in consumer credit activities in Australia, unless exempt, must hold a credit licence and comply with the conditions and business standards applicable to that licence. Credit licences are issued and regulated by ASIC. Persons who wish to engage in credit activities in Australia need to carefully consider their licensing obligations under the NCCPA.

Consumer protection

Financial products and services (including credit facilities) are also regulated by the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act), which applies some of the key consumer law provisions to financial products and services (including, in some cases, where the financial products and services are not being provided to consumers or retail clients). This includes prohibitions on misleading or deceptive conduct and unconscionable conduct and the voidance of unfair terms in standard-form consumer and small business contracts.

ASIC has also recently granted a power to intervene in financial product and credit markets and order persons to do things, or refrain from doing things, in order to prevent significant detriment to consumers or retail investors.

Privacy

Regulation of Australia's banking and financial systems includes compliance with Australia's privacy laws. Businesses who deal with or obtain personal information are required to comply with the provisions of the *Privacy Act 1988* (Cth) which includes the Australian Privacy Principles (APPs). The APPs deal with the gathering, use, dissemination and storage of personal information obtained from individuals. The APPs also impose requirements on businesses to develop privacy policies and to include privacy statements in their documents when collecting personal information from individuals. The Privacy Act also regulates the way in which credit information and credit reporting information about individuals may be dealt with.

More information can be found in the Privacy section on page 46.

Anti-Money Laundering

There are few restrictions on dealing with Australian currency since Australia operates a deregulated floating exchange rate. The few restrictions which do apply are present to address the risk of money laundering and the financing of terrorism. The *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Cth) was designed to bring Australia into line with international money laundering and counter terrorism financing standards established by the Financial Action Task Force.

That legislation requires "reporting entities" (for example businesses operating in the financial services sector, bullion dealers and providers of gambling services) to comply with various reporting obligations to AUSTRAC. Obligations on reporting entities include:

- collecting information about and verifying a customer's identity before a designated service is provided
- reporting certain transactions and suspicious matters
- reporting cross border movements of physical currency above a threshold amount
- keeping accurate records.

Other regulation

Voluntary codes of conduct have been developed to self-regulate the financial services industry. These codes of conduct are typically incorporated into contracts with customers pursuant to a condition of membership of the industry body. Notable examples include the Australian Banking Association's Banking Code of Practice, the Customer Owned Banking Association's Customer Owned Banking Code of Practice and ASIC's ePayments Code.

Australian Financial Complaints Authority (AFCA)

Credit licensees and Australian financial services licensees who provide financial services to retail clients are required to be members of the AFCA external dispute resolution scheme. The AFCA scheme provides a non-judicial dispute resolution service for aggrieved clients and is empowered to look beyond strict legal doctrines when determining disputes.

FinTech

The FinTech sector in Australia is evolving rapidly, as companies, investors, regulators and education institutions have been working together towards transforming the industry from one that lacked definition and structure, to one that is re-shaping the provision of financial services in Australia. There are over 700 FinTech companies operating in Australia, a marked increase from previous years. EY's Global Adoption Index 2019 found that the rate of FinTech adoption in Australia has steadily increased from 33% in 2017, to 64% in 2019. Like Atlassian, FinTech innovation in Australia has grown from a group of small start-ups and speculative ventures into a larger ecosystem comprising startups, scale ups and seasoned companies. Regulators, including the Australian Securities and Investment Commission (ASIC) have been engaging with FinTech's with a regulatory sandbox and an Innovation Hub providing support to early stage FinTech businesses. In 2019, Australia's first ever FinTech minister was sworn in, with Assistant Minster the Hon. Jane Hume holding a technology oriented portfolio, recognising the importance of FinTech to the Australian economy.

Government Support for FinTech

While various regulators and government departments offer FinTech specific services or benefits, there is no overarching FinTech strategy yet implemented by the government, but the current Federal Government has an Assistant Minister for FinTech and recently announced a government blockchain roadmap would be developed.

The Australian financial services regulator, ASIC, operates an Innovation Hub and encourages any eligible business to apply for informal assistance and guidance on Australia's financial services laws. Unfortunately, the ASIC Innovation Hub does not go so far as to offer businesses any legally binding guidance or specific confirmations about whether exemptions to certain regulatory requirements will apply. The Innovation Hub does provide a designated contact for applicants and 12 months of informal guidance.

ASIC also operates a FinTech regulatory sandbox, which allows eligible FinTech companies to test certain products or services for a period of up to 12 months without an Australian Financial Services (AFS) license. The sandbox is limited to services offering advice or dealing in products, and then only in limit deposit or payment products (up to $10,000 but only if issued by an Authorised Deposit-taking Institution), general insurance (up to $50,000 insured), liquid securities (up to $10,000) and limited consumer credit contracts (with certain features and between $2,001 and $25,000).

ASIC has also signed international cooperation agreements designed to break down market entry barriers with regulatory counterparts in the following countries:

In 2017, the Australian Transaction Reports and Analysis Centre (AUSTRAC), the main anti-money laundering regulator in Australia, launched the Fintel Alliance Innovation Hub in an attempt to broaden the opportunity for partnering organisations to co-design and test solutions to new technology that can assist in obtaining and evaluating financial intelligence at an operational level. Further, AUSTRAC have implemented the Operations Hub, where data is combined with tracking tools in order to identify the most effective practice methodologies, and provide a platform for financial intelligence to be exchanged on a face-to-face level.

The Australian Government has emphasized its commitment to progressing the implementation of the Consumer Data Right (CDR). The CDR regime seeks to ensure that information is accessed and transferred to accredited data recipients in a safe, effective and efficient manner. Although the 2018-19 Budget has broadly recognised FinTech innovation, for the first time FinTech has been recognised by way of a dedicated Ministry role, held by the Hon Jane Hume at the time of publication.

On 14 June 2019, the Australian Treasury released the revised draft Open Banking designation instrument for consultation, which was made under subsection 56AC(2) of the *Competition and Consumer Act 2010* (Cth). This designation sets out the classes of data that are included and excluded from the CDR regime in a bid to help consumers unlock their data and move more easily between financial service providers.

Government support for blockchain initiatives has been growing, on 18 March 2019 by the Hon Karen Andrews, Minister for Industry, Science and Technology, announced that the Department of Industry, Innovation and Science will be investing in the development of a national blockchain strategy. To further this initiative, AUSTRADE funded 30 organisations to join a Mission to Consensus, one of the largest annual Blockchain conferences and which is held in New York City.

The Australian Treasury is due this year to publish their report on Initial Coin Offerings, arising from a consultation on ICOs held in early 2019. This consultation is hoped to focus more on support for Fintech's involved in blockchain and digital security offerings rather than the, now past, ICO wave.

Peer-to-peer marketplace lending

Australia has no specific legislation dealing with peer-to-peer lending. However, the investment aspect of such a marketplace will often be structured to be a 'managed investment scheme' thereby falling within the ambit of the Corporations Act. The operator of the managed investment scheme must hold an AFSL in order to provide general advice and deal in the interests managed by the scheme.

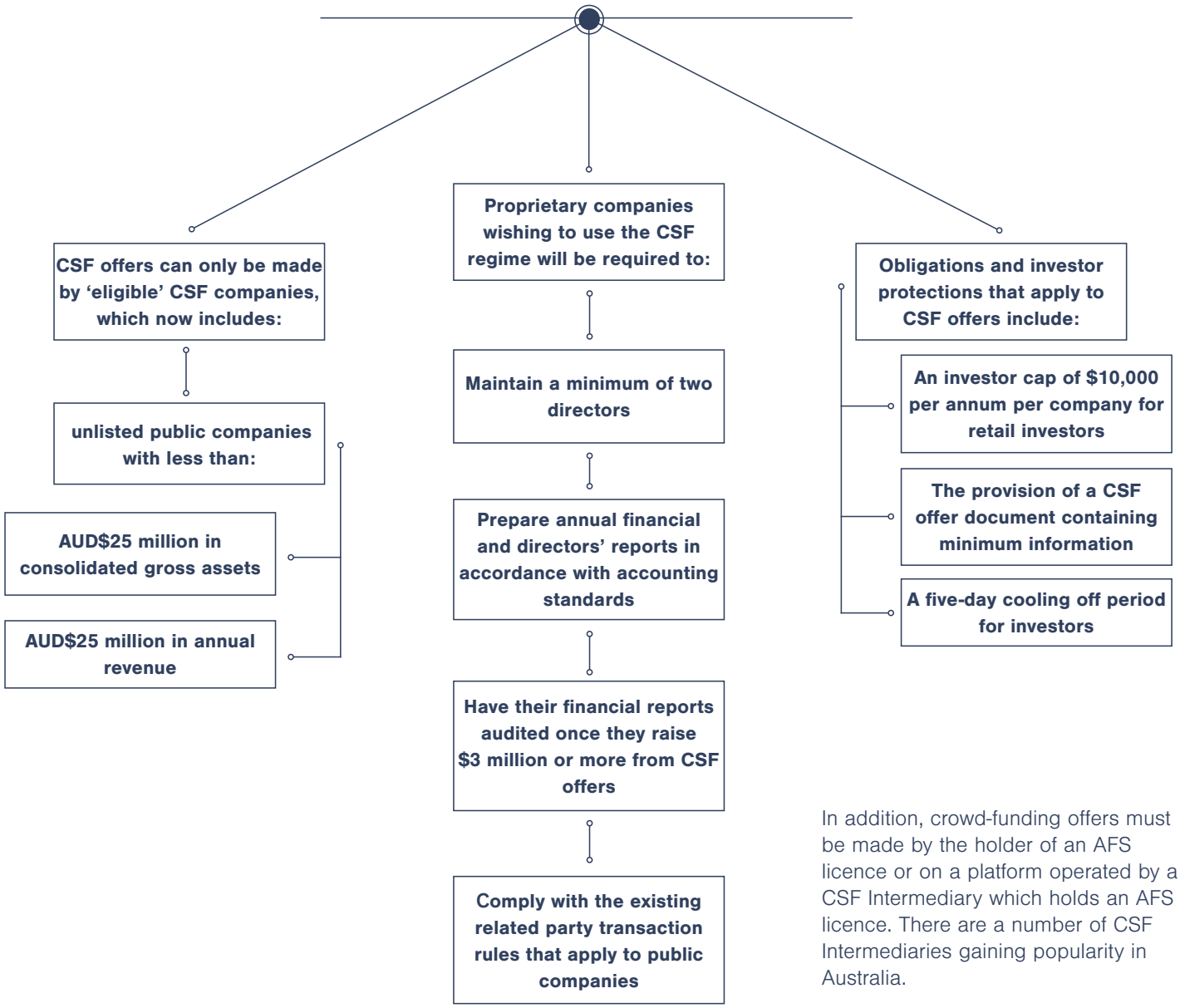
Where consumer credit is provided, it will be regulated under the *National Consumer Credit Protection Act 2009* (Cth) (NCCPA), as the operator must hold an ACL authorising it to provide consumer credit. In regards to consumer protections, the NCCPA and the NCC contain consumer protection provisions which require the operator to assess whether credit is unsuitable to a consumer prior to providing it. Further protections prescribe procedures to be followed in the event of default. Credit provided for investment purposes, business purposes or to non-natural persons is not regulated by the NCCPA but may be subject to the ASIC Act if it is provided to small businesses.

Regulation of peer-to-peer lending falls within ASIC's jurisdiction. There are no limits on the amounts that can be lent and no restrictions on the types of people who can borrow. Whilst there are no general restrictions on the types of people who can lend under this scheme, whether a person can be a lender will depend on whether the person is a retail or wholesale investor and if the operator is authorised to provide services relating to peer-to-peer lending managed investment scheme to wholesale and/or retail investors. Additional advertising guidance has been published by ASIC for marketplace lending products.

Crowdfunding

Australia's regulatory framework for equity based crowd sourced funding (CSF) was established in March 2017, and commenced on 29 September 2017 through amendments to the Corporations Act to permit public companies to conduct limited crowd-funding. The reach of the CSF regime was subsequently expanded by the *Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Act 2018* (Cth), with eligible proprietary companies permitted to raise up to AUD$5 million of funds using CSF.

Australia's CSF regime has the following features:



In addition, crowd-funding offers must be made by the holder of an AFS licence or on a platform operated by a CSF Intermediary which holds an AFS licence. There are a number of CSF Intermediaries gaining popularity in Australia.

Artificial Intelligence and Robo-Advice

Robo-advice is defined in the ASIC Regulatory Guide 255 as the provision of financial product advice through the use of algorithms and digital technology without the involvement of a human. These algorithms gather information about a client and provides product and investment recommendations based on income, assets and risk tolerance. The advice provided can be general or specific.

The obligations that apply to the provision of traditional financial product advice and digital advice are considered to be identical. For example, no AFS is required for the provision of factual information only. However, if robo-advice is generating general or personal financial product advice then that advice itself will likely be a financial service and fall under the *Corporations Act 2001*, unless an exemption under s911A applies.

ASIC has provided specific relief from holding a licence to providers of generic financial calculators under Regulatory Guide 167 and ASIC Instrument 2016/207. A generic financial calculator is defined as a facility, device, table or thing which is used to make general calculations and which does not advertise or promote a specific product.

Once an AFS is required, the rules relating to compliance as a licence holder apply. In particular a FinTech operating AI or robo-advice needs to ensure they have people within their business who understand the technology and algorithms used in the business and, critically, are able to review the advice generated by the algorithms. In addition, such businesses should ensure they review the digital advice provided to ensure it is legally compliant. Data retention and security are other areas which will need close attention to ensure that licence obligations are met.

To the extent AI or robo-advice is used to provide a designated service under the AML/CTF Act, then the business providing that service, even if automated, may have reporting obligations to AUSTRAC in relation to suspicious and threshold transactions.

Distributed Ledger Technology and Blockchain

There are no specific rules or regulations governing the use of distributed ledger technology or blockchain.

Australian regulation is technologically neutral, and FinTechs are expected to consider the nature of services being offered to determine whether any rules or regulations specifically apply.

For example, ASIC's INFO 219, sets out an assessment tool for businesses to identify whether an AFSL may be required for DLT-based services. This tool includes a set of factors to be considered by the business, such as; which DLT platform is being used, how it will be run, how does it work under law, how is the DLT using data, and how does the DLT affect others.

ASIC's view is that many cryptographic token offerings will likely be managed investment schemes, and that FinTech providers who are offering market infrastructure or clearing and settlement will require licensing or an exemption to offer such services.

Crypto-Assets, Digital Currencies and Digital Wallets

Australia was early in amending the Anti-Money Laundering and Counter Terrorism Financing Act to provide a definition of a 'digital currency' as:

a. A digital representation of value which (i) functions as a medium of exchange, a store of economic value, or a unit of account; and (ii) is not issued by or under the authority of a government body; and (iii) is interchangeable with money (including through the crediting of an account) and may be used as consideration for the supply of goods or services; and (iv) is generally available to members of the public without any restriction on its use or consideration; or

b. A means of exchange or digital process or crediting declared to be digital currency under the AML/CTF Rules.

The AML/CTF Rules may be updated by the CEO of Austrac and do not require parliament to change underlying legislation, but the definition of 'digital currency' has not been expanded as yet. Where a business wishes to offer a service of converting fiat currency to crypto currency, it will be providing a designated service under the AML/CTF Act and that business will be required to be registered as a Digital Currency Exchange (DCE) with AUSTRAC unless an exemption applies. This is expected to be expanded in the near future to capture the offer of conversion services from crypto-to-crypto.

The need for registration has seen over 250 crypto-exchanges global register their businesses into Australia since the registration system was introduced.

For businesses that plan to issue crypto-assets, or to offer to deal in crypto-assets, the starting point is to determine if the crypt-asset or tokens are a financial product within the definition of the Corporations Act. If so, a business issuing crypto-assets will be required to hold an AFS licence and will likely be operating a MIS in issuing a crypto-asset. A business offering to deal in crypto-assets, such as by operating a market, must also obtain an AFS licence if it is dealing with, giving advice or providing intermediary services for crypto-assets that fall within the definition of financial products.

If a business is offering payment services, such as to accept crypto-assets and to make a payment to a nominated other party or bank account, then assuming the crypto-asset is not a financial product, the business will still be providing a 'non-cash payment facility' as defined in s 763D of the Corporations Act, and the entity will be required to hold an AFS licence unless it can fall within an exemption, such as the 'low-value NCP exemption' set out in RG185. Digital wallets in Australia will most likely constitute non-cash payment facilities. The Non-cash payment facility concept in Australia is broadly analogous to the e-money regulatory system in Europe.

Finally, if a crypto-asset stored by a business is a financial product, that business must ensure that it holds the appropriate custodial and depository authorisations, i.e. an AFS licence.

Digital Currency Exchanges

As set out above, a business providing the designated service of the conversion of fiat currency to a crypto-asset will be required to register as a Digital Currency Exchange with AUSTRAC. In order to register as a DCE, a business will need to prepare an Anti-Money Laundering & Counter Terrorism Financing Program and meet specified threshold and suspicious transaction reporting obligations. Over 250 digital currency exchanges and brokerages around the world have registered with AUSTRAC to date and processing times have risen to 90 days given the demand.

In addition to the need to register with AUSTRAC, if a digital currency exchange is issuing tokens which are a financial product (for example via an "Initial Exchange Offering" or listing a token which was part of an "Initial Coin Offering" if the tokens in question constitute financial products or interests in a MIS), then the exchange, will need to hold an Australian financial services licence to deal in those tokens and may need a market authorisation on that licence.

Depending on the structuring of an exchange, and how crypto-assets are cleared or settled, an exchange may be operating a clearing settlement facility and as a result be required to hold a CS facility license under Pt 7.3 of the Corporations Act.

Initial Coin Offerings

In May 2019, ASIC updated its INFO225 guidance in relation to ICOs. ASIC's view that there is a high risk that most ICOs or token generation events will be considered a managed investment scheme (MIS) requiring the responsible entity to hold an AFS licence. ASIC emphasises in the updated guidance that it expects entities which do not have an AFSL to be able to justify a conclusion that their token or ICO is not a financial product, and to know who their investors are if the entity intends to rely on wholesale/sophisticated investor exemptions to the requirement that a MIS which accepts investment from retail investors above certain limits be registered with ASIC.

Unfortunately, ASIC's updated INFO225 does not provide clear guidance on how entities can undertake a token offering which is compliant with the obligations of a MIS operated by an AFS licence holder in relation to matters such as custody or secondary trading of crypto-assets or provide any categories of crypto-tokens which will not be considered financial products.

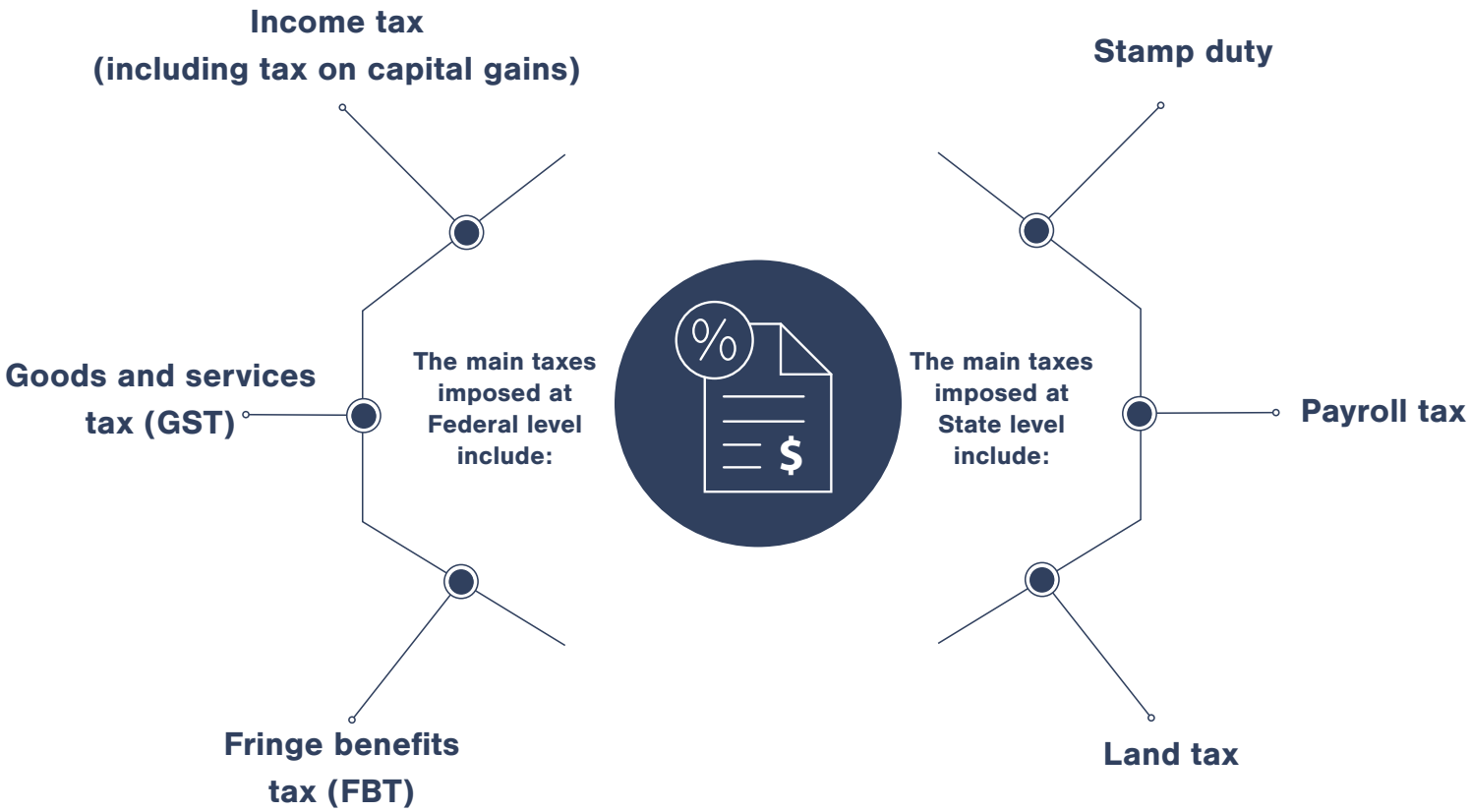
Taxation

Structuring the acquisition or establishment of a business in Australia (e.g. choosing a branch or local subsidiary and the method of financing a subsidiary by debt or equity) requires detailed consideration of the implications under Australian and overseas tax laws (and any double tax agreement between Australia and relevant overseas jurisdictions) which is beyond the scope of this publication.

The following summary describes the Australian taxation landscape.

Types of taxes

Tax in Australia is imposed at both the Federal and State level.



Federal taxes

Income tax

In Australia, income tax is payable by a range of taxpayers, including companies and individuals. Residents are liable to tax on their worldwide income whereas non-residents will only be liable to tax on their Australian sourced income.

A taxpayer's assessable income will be reduced by allowable deductions. If a taxpayer's allowable deductions in any given year exceed assessable income, these revenue losses can be offset against future assessable income provided certain conditions are met. Income tax is also payable by foreign individuals who work in Australia, with different calculations applying depending on whether they are a resident or non-resident of Australia for tax purposes. Certain individual taxpayers are also subject to additional levies on their taxable income, such as the Medicare levy.

Tax on net capital gains

Generally speaking, when a taxpayer disposes of capital gains tax (CGT) assets, they may make either capital gains or capital losses. Net capital gains are subject to Australian income tax. Australian resident taxpayers are subject to tax on net capital gains derived from the sale of their worldwide CGT assets. However, non-resident taxpayers are only subject to tax on net capital gains derived from the sale of certain Australian CGT assets.

The capital gains made by a taxpayer are reduced by their capital losses to determine their net capital gains which are included in the taxpayer's total assessable income in the same way as other items of assessable income, such as employment earnings. Capital losses can only be offset by capital gains and carried forward to offset capital gains in future years.

Tax administration

Taxpayers are assessed for income tax on their income (including net capital gains) each year ending 30 June (financial year) and are required to lodge an income tax return each financial year. The rate of tax for individuals is based on marginal tax rates ranging from 0% to 45% (for 2019-20), however this does not include the 2% Medicare Levy. The rate of tax for companies is between 27.5% and 30% (as at January 2020). A subsidiary of a foreign company may apply for a substituted accounting period in order to coincide with the balance dates of its foreign parent entity. Partnerships, joint ventures and trusts are usually treated as conduits in relation to income tax, and income earned through these structures is usually taxed in the hands of the underlying entities involved.

In addition, some taxpayers are required to remit instalments of income tax (companies usually remit each quarter and individuals have instalments withheld from their payments on their behalf) to the ATO under a Pay-As-You-Go (PAYG) instalment system. However, any overpayments/underpayments of tax made during the year will be adjusted in the taxpayer's income tax return for each financial year.

Goods and services tax

GST, similar to many other value added taxes around the world, is an indirect broad-based consumption tax. It is imposed at the standard rate of 10% on most goods and services supplied by businesses at each step along the production chain that occurs in Australia (although a credit system ensures that the tax is generally only borne by the final consumer). Some supplies are classified as GST free supplies, input taxed supplies or are otherwise exempt from the GST regime (for example, if there is no connection between the supply and Australia).

Generally, an entity will be required to register for GST if its annual turnover for the previous 12 month period (or projected annual turnover for the next 12 months) in relation to supplies which are connected with Australia exceeds $75,000. All businesses registered for GST purposes must have an Australian Business Number which is a unique identifying number issued to businesses for their dealings with the ATO. Registered entities are liable to account for GST on supplies made by them to customers, but also entitled to obtain GST credits for the amount of GST paid by them in acquiring supplies in the course of their business. The net GST calculated for the entity is then remitted either monthly or quarterly in conjunction with a Business Activity Statement.

Fringe benefits tax

FBT applies to taxpayers who provide non-cash benefits and reimbursements to employees, their employees' associates, and in some circumstances contractors. Because the supplier of the benefit pays tax on the provision of the benefit, the recipient of the benefits are not assessed on the value of the benefit.

Debt/equity rules

While Australia has no general rule governing how companies are to be capitalised, under the debt/equity rules, taxpayers are required to determine whether a financial instrument is classified as debt or equity for taxation purposes. This will in turn affect the tax treatment of payments made on such instruments. A financial instrument which takes the legal form of debt may be classified as equity. As such, interest payments will not be deductible and will be treated as dividends for tax purposes. On the other hand, a financial instrument which takes the legal form of equity may be classified as debt with the associated tax consequences.

Thin capitalisation

Thin capitalisation rules may operate when the amount of debt used to finance the company's Australian operations exceeds specified limits. The rules disallow a proportion of the otherwise deductible finance expenses (such as interest payments on debt) attributable to the Australian operations of both Australian and foreign multinational investors. However, where a taxpayer can establish that the interest is paid at arms length rates, the excess interest may be allowed.

Withholding tax

Dividends, interest and royalties paid by residents of Australia to non-residents (who do not have a permanent presence in Australia) are subject to withholding tax at the rate of 30%, 10% and 30% respectively. However, these rates may be reduced where Australia has a double tax agreement with a country in which the non-resident resides. Also Australia has a dividend imputation system where the tax paid by the Company is imputed to the shareholders in the form of a franking credit. Where a dividend is fully franked there is no withholding tax on the dividend although the non-resident cannot use the franking credit which is lost.

Withholding tax also applies to certain types of payments made to non-residents who do not have a permanent presence in Australia. The types of payments to which withholding tax applies include: entertainment and sports activities, construction, installation and upgrading of buildings, plant and fixtures and associated activities and promoting or organising casino gaming junket arrangements.

There is also a recently introduced withholding tax in relation to real property transactions in Australia involving sales by non-residents.

Transfer pricing

Australia's transfer pricing rules seek to reduce the risk that taxable income gained by Australian entities is shifted outside the scope of the Australian tax system through international dealings with related parties. This is usually done through the use of non-arm's length prices for goods and services or through low or no-interest loans. In certain circumstances arm's length prices will be substituted by the Commissioner of Taxation. The OECD Transfer Pricing Guidelines are incorporated into the transfer pricing provisions and therefore may be relied upon in determining the principles that apply.

State taxes

Stamp duty

Stamp duty is a State tax that is generally payable on transactions including the transfer or conveyance of property or assets, situated in, or otherwise attributed to, the relevant State or Territory. Stamp duty is usually payable by the purchaser or transferee and is calculated on the amount of the higher of the consideration or the unencumbered value of the property transferred. Stamp duty may amount to a considerable sum and is an important consideration in many business transactions including the purchase of a business or the acquisition of assets such as land interests. In addition, special rules apply which impose a higher rate of duty (equal to the rate applicable to a transfer of land) where a share or unit is transferred in a company or that which holds land above a threshold value. In some cases non-residents pay higher amounts of stamp duty on the acquisition of certain real property.

Payroll tax

Payroll tax is a State tax levied at specified rates by reference to annual wages and salaries of employees that exceed prescribed threshold amounts in each relevant State or Territory. The taxes are similar in each State and Territory but they are not uniform. Rates currently range from 4.75% to 6.85%. It is necessary for employers to be registered for payroll tax with each relevant State or Territory revenue authority.

Land tax

Land tax is an annual tax levied (except in the Northern Territory) on the owner of land based on the unimproved capital value of the land in most States and Territories. The rate of land tax varies from State to State. Land tax is generally not assessed on an individual's primary place of residence.

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Property

Land tenure in Australia

Land in Australia is generally referred to as freehold land or leasehold land.

Freehold land (or fee simple) is the most complete form of land ownership in Australia. It allows the owner of the land to deal with the land subject to compliance with applicable planning and environmental laws. Owners of land can deal with freehold land in a number of ways, including selling, leasing, licensing and mortgaging the land. Most privately owned land in Australia is freehold land.

Leasehold land refers to land that is leased to a legal entity by the Crown. The legal entity is granted the right to exclusive occupation of the land. Some leasehold interests are perpetual in nature, and others are granted for fixed periods of time, usually between 1 to 100 years for a specified purpose.

A lease of freehold land is not leasehold land.

Both individuals and companies can own land in Australia, either in full or in shares.

Title systems

There are six principal title systems in Australia, including:

- Torrens title
- Strata title
- Crown land title
- Aboriginal and native title
- Old system title
- Possessory title.

The majority of land in Australia is held under the Torrens title system. Torrens title is the name given to a simple and unique land title registration system developed in Australia. It is a system of title by registration. Torrens title operates by ensuring that legal title to land is only acquired by an actual recording of a transaction on the register (in the absence of fraud).

Strata title is a form of Torrens title as titles in strata schemes are registered under the Torrens system. Strata title covers most multiple occupancy premises in Australia.

Legislative regime

Each Australian State and Territory has its own conveyancing processes and separate legislative regime in relation to the property and title.

Foreign Investment Review Board (FIRB) approval

Generally, an acquisition of an interest in Australian urban land by a foreign interest will require prior approval from FIRB under the *Foreign Acquisitions and Takeovers Act 1975* (Cth). Australian urban land is defined to mean all land in Australia other than Australian land used wholly and exclusively for carrying on a business of primary production. However, there are exemptions available in certain circumstances. Approval will usually be given unless the acquisition is contrary to the national interest.

Acquiring real estate in Australia

Contracts for the conveyance of land in Australia must be in writing and signed by each party to the transaction.

Usually a sale contract comprises the commercial details, industry approved standard terms (which vary between each State and Territory) and special conditions. In some Australian States and Territories there is a duty to also disclose in a contract certain prescribed documents.

Purchasers of land can undertake due diligence either before or after a contract has been executed.

In most circumstances a purchaser will only undertake due diligence after a sale contract has been executed if there is a special condition in the contract which allows the purchaser to be released from the contract if the outcome of the due diligence is unfavourable for any reason.

A purchaser's solicitor will review and negotiate the sale contract, review the title particulars and carry out standard conveyancing searches to ascertain whether the land is subject to any adverse affectations.

Employment

Australian employment law has for many years had a strong tendency towards worker protection. International companies acquiring or establishing business in Australia need to carry out due diligence on the prevailing employment conditions in the industry to understand costs and management issues affecting the proposed business.

Minimum employee entitlements

The *Fair Work Act 2009* (Cth) provides two layers of minimum employee entitlements through the National Employment Standards (NES) and modern awards.

The NES provides for minimum employment entitlements which cover:

The provision of the Fair Work Information Statement for new employees, which provides certain information to employees about employment rights in the workplace		Personal/carers and compassionate leave		Public holidays
Requests for flexible working arrangements		Family and domestic violence leave	Unpaid parental leave	Community service leave
Maximum hours of work	Long service leave	Annual leave	Severance payment due to redundancy	Notice of termination

In addition to the minimum entitlements set out under the NES, modern awards apply to various different industries or occupations and set out terms of employment for certain classes of employees. Terms in a modern award cover wages, allowances, overtime and other employee benefits.

Other workplace laws

In Australia it is also mandatory for employers to contribute to a superannuation (pension) fund on behalf of their employees. Federal law currently requires employers to contribute at least 9.5% of each employee's pay into a superannuation fund on their behalf. This percentage is slated to increase in the future.

Employers must also abide by a wide range of rules directly imposed by both Federal and State or Territory legislation, which cover matters such as, dismissal, workplace health and safety, training and discrimination. Breaches of the legislation expose employers to hefty fines and in some cases, criminal prosecution.

All employers in Australia are required to obtain workers compensation insurance which provides for weekly compensation and lump sum benefits for employees who are injured at work.

Federal legislation also provides eligible working parents with up to 18 weeks Government funded paid parental leave, in addition to an entitlement of up to two years unpaid parental leave.

Agreements

Notwithstanding the above, employers and employees in Australia enter into individual employment contracts which are enforceable so long as they comply with any applicable legislation and minimum entitlements.

It is also possible for employers and employees to agree to collective agreements at the enterprise level, known as "enterprise agreements". Employees must be better off overall than under the relevant modern award under these agreements.

Worker rights and protections

Protections against termination of employment

Australian laws provide a number of protections for workers against unfair or unlawful termination of employment. There are many ways for workers to challenge the termination of their employment, as there are protections under both Federal and State/Territory legislation, as well as under common law. Under unfair dismissal laws, certain employees are able to challenge whether there was a valid reason for the dismissal and whether a fair process, including allowing the employee an opportunity to improve, was adopted before the termination.

That said, for employers acquiring businesses in Australia, a new employer can usually decide whether to offer jobs to any or all of an existing workforce although there are laws prohibiting discrimination on a wide range of grounds, including race, sex, disability, age and trade union membership.

Unions and industrial action

All employees in Australia are free to join, or not join, a trade union. It is unlawful for employers to discriminate against persons on the basis of their union membership or non-membership. Union officials have a right to enter workplaces. The official must obtain a permit and comply with the conditions of entry laid down by legislation.

Industrial action, such as strikes, overtime bans and lockouts are generally unlawful in Australia unless the action meets specific criteria. Industrial action may only lawfully be taken during a period of bargaining for a new enterprise agreement. In certain cases, industrial tribunals and courts can exercise powers to bring industrial action to an end, including where the action threatens to harm the economy.

Employment laws in Australia have constantly changed in recent years with successive changes of government. Consequently, it is vital that anyone wishing to do business in Australia as an employer obtains specialist legal advice before establishing a new business or taking over an existing one.

Immigration

Australia has a universal visa system which requires all non-Australian citizens in Australia to hold visas or visa equivalents. Migration and temporary entry into Australia is administered by the Department of Home Affairs. There are a number of different categories of visas which may be applied for depending on the length of stay and the purpose of the visit.

Australia's visa application system takes into account the applicant's risk profile, reason for travel to Australia and individual characteristics. This is designed to operate as a screening mechanism to exclude individuals who pose a security, criminal or health risk.

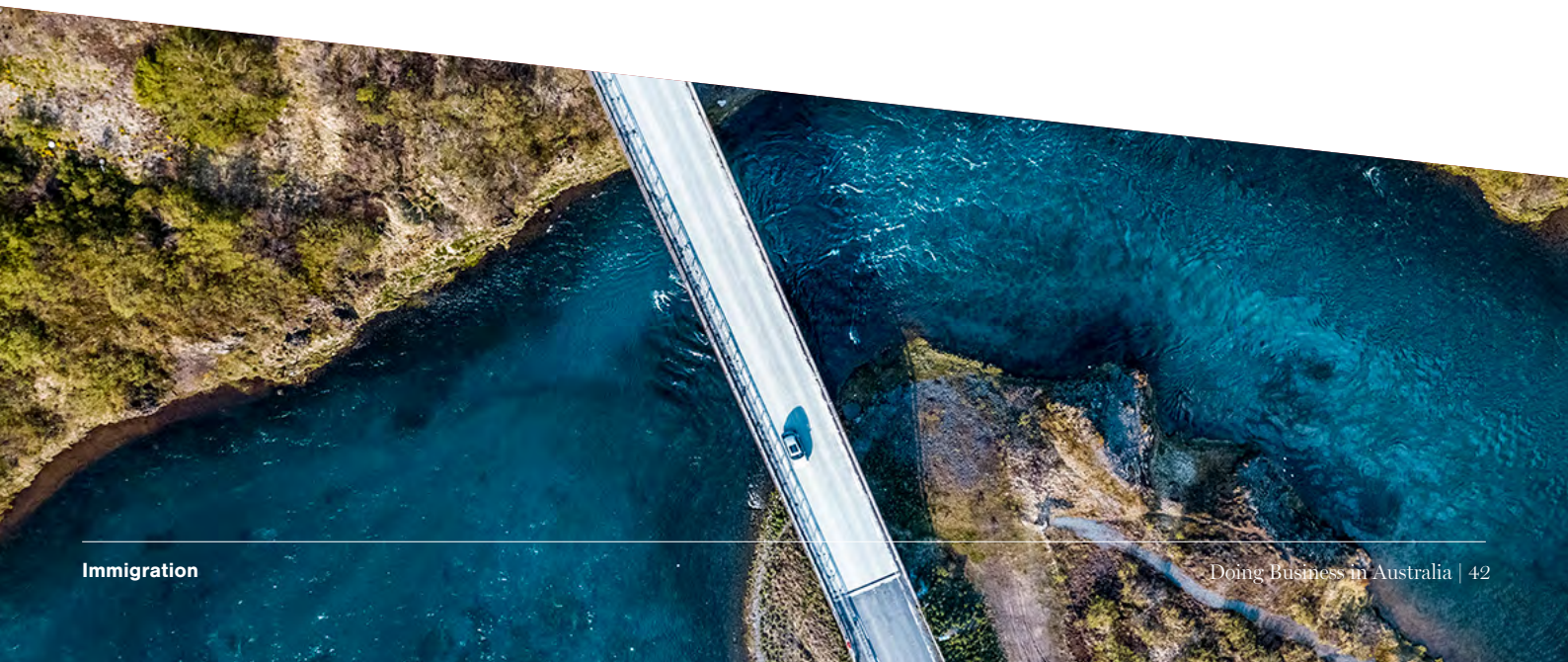
The Australian Government has introduced a number of reforms over recent years aimed at encouraging business migration by making it easier to enter Australia for business purposes. This is in recognition of the benefits international business people have made, and continue to make, to the Australian economy.

The Business Talent Visa, for instance, is a permanent residence visa for business people who wish to establish a new or develop an existing business in Australia. The visa is available to certain nominated individuals who have:

- net business and personal assets, and an annual business turnover of at least prescribed amounts
- obtained certain levels of venture capital funding to start the commercialisation and development of a high-value business idea in Australia.

Another example of a recent business related migration reform initiative is the Investor Visa, which is a visa for migrant investors that invest a prescribed amount into complying investments for a designated minimum period.

Australia's migration policy does not discriminate on the basis of race, sex or religion. Anyone from any country, regardless of ethnic origin, gender or colour, may apply to migrate provided they meet the legal criteria.



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Intellectual Property

Copyright

Copyright is protected in Australia under the *Copyright Act 1968* (Cth) (Copyright Act) and extends to works (literary, dramatic, musical or artistic) and subject matter other than works (such as sound recordings, cinematograph films, television broadcasts and sound broadcasts, and published editions of works). Computer software is protected as a literary work.

Copyright protection gives the copyright owner certain exclusive rights in respect of the particular work or subject matter, including exclusive rights to reproduce or copy, publish, communicate to the public and to authorise others to do any of these things.

In Australia, copyright protection does not require formal registration and, in fact, there is no provision for government registration. Copyright arises upon the creation of the work or subject matter. In order to attract copyright protection, the work or subject matter must be original, must be in material form and there must be a relevant connection with the Australian jurisdiction. Generally, copyright protection lasts for 70 years after the end of the year of the death of the author or 70 years from the end of the year the material was first published.

Australia is also a signatory to the Berne Convention for the Protection of Literary and Artistic Works and the TRIPS Agreement which provides for the protection of copyright works and certain subject matter in other countries that are party to those international treaties.

The Copyright Act includes provisions for the recognition of three Moral Rights which are afforded to the author of a work. The three moral rights are the right to be attributed as the author, the right not to have others falsely attributed as the author, and the right not to have the work subjected to derogatory treatment. Authors may consent to acts or omissions which would otherwise amount to an infringement of moral rights if such consent is in writing.

In certain circumstances a work in which copyright might ordinarily subsist, will not have copyright protection because the work qualifies for protection under the *Designs Act 2003* (Cth) (whether or not design registration has been applied for).

Patents

Patents are protected in Australia under the *Patents Act 1990* (Cth) which is administered by the Australian Patents Office. There are two forms of patents: a standard patent which generally (subject to certain rights of extension in some cases) has a term of 20 years from the date of the patent; and an innovation patent which has a term of eight years from the date of the patent. An innovation patent is cheaper and easier to obtain than a standard patent but lasts for a shorter time. Note that from late 2019, the availability of the innovation patent will be phased out. In Australia patents may be granted for a broad range of subject matter including, for example, computer software, business methods and biotechnology.

Patent rights give the patentee the exclusive rights, during the term of the patent, to exploit the invention and to authorise another person to exploit the invention. The exclusive rights are personal property of the patentee and capable of assignment and of devolution by law.

Australia is also a member of the Patent Cooperation Treaty which provides an international application process to allow Australian applicants to file for patent protection in each member country.

Designs

New designs registered are protected by the *Designs Act 2003* (Cth).

A design qualifies for registration if it is new and distinctive when compared to the prior art base.

Registration is effective for 10 years from the date of filing.

Registration is granted without examination, but cannot be enforced until the design is examined and certified.

The rights afforded by the registered design are infringed if one commercially exploits a product which embodies a design which is identical to, or substantially similar in overall appearance to the registered design.

Trade Marks

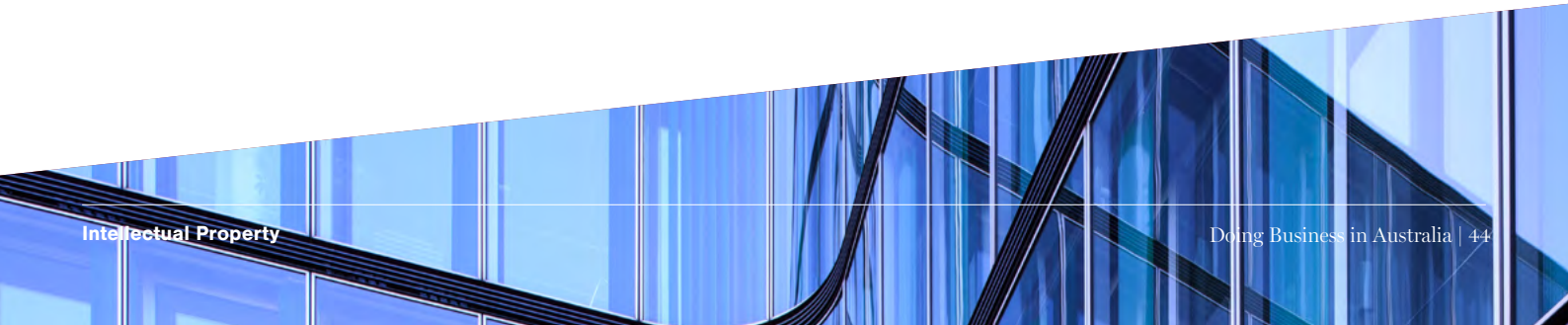
Trade marks in Australia may be registered under the *Trade Marks Act 1995* (Cth) which is administered by the Australian Trade Marks Office.

A trade mark is a sign, such as a word, device, symbol, shape, colour or sound, which is used to distinguish the source providing goods or services from others providing similar goods or services. A registered trade mark is personal property that can be assigned or licensed. The registered owner of the trade mark has exclusive rights to use the trade mark and authorise other persons to use the trade mark in relation to the goods or services for which it is registered.

Unregistered trade mark rights may also be enforceable through an action for passing off or for misleading or deceptive conduct under Australian Consumer Law (replacing the *Trade Practices Act 1974* (Cth)).

Confidential Information

Misuse of confidential information, or trade secrets, may be addressed through the equitable action of breach of confidence. Unlike copyright, patents, designs and trademarks, this is not a statutory right but is rather an equitable right enforceable by the owner of the confidential information.



IT & e-Commerce

Australia's digital economy is diverse and rapidly expanding. This is especially accelerated by the increased levels of internet connectivity in Australia in recent years. More than 86% of Australian households have internet access from their homes and there are now over 40 million internet subscribers in Australia indicating many Australians have multiple subscriptions. The implementation of the National Broadband Network (NBN) and the construction of the 5G network will only serve to increase and improve this connectivity. With the spread of connectivity, there is an increasing focus to ensure IT users and consumers are protected.

In Australia, the *Electronic Transactions Act 1999* (Cth) and the supporting State and Territory legislation recognise that electronic transactions are not invalid merely because they rely upon electronic communications or electronic signatures. This recognition is in line with the burgeoning practice of e-commerce in Australia where $21.3 billion was spent in 2017 with an estimated 1 in 10 items to be bought online by 2020. There are, however, a number of legal and business process issues that remain to be resolved (including in relation to appropriate means of authentication of electronic transactions) that have held back the widespread adoption of electronic transactions in large commercial dealings. Issues such as the protection of intellectual property online, competition and consumer law issues, censorship regulations, privacy and spam regulations and contract law also require careful consideration.

Businesses operating in Australia often benefit from having an online presence. The .au Domain Administration Ltd (often called auDA) is an independent non-profit Australian company entrusted as the policy authority and industry self-regulatory body for the .au domain space and is recognised by the Internet Corporation for Assigned Names and Numbers (ICANN). It has adopted a dispute resolution procedure based on ICANN's Uniform Domain Name Dispute Resolution Policy (often called UDRP) (but with some important modifications) to deal with disputes relating to .au domain names. The rise of city-specific domain names such as .melbourne and .sydney, which have also been approved by ICANN, has presented new opportunities for businesses to utilise a new range of domain names in Australia.

Other issues facing businesses with an online presence relate to security and privacy. Increasingly, customers' personal information stored by businesses becomes a prized target for hackers and failure to adequately protect customer data from unauthorised access could result in breaches of the *Privacy Act 1988* (Cth). Mandatory data breach reporting laws came into force on 22 February 2018 requiring mandatory notification to the Privacy Commissioner and affected individuals in the event of a data breach.

Furthermore, many consumer protection laws in Australia are similarly applicable to online transactions. Businesses should be aware of the broad scope of the Australian Consumer Law, particularly as it relates to representations made by businesses about their goods and services sold online. There are potential legal obligations for businesses to monitor their online presence (including social media sites) to ensure any posted content, whether by the business itself or third parties, are compliant with Australian consumer protections laws. Importantly, Australian courts have held that the Australian Consumer Law applies to transactions in Australia regardless of whether the business selling the product has any physical presence in Australia.

The sending of unsolicited commercial electronic messages (spam) is prohibited by the *Spam Act 2003* (Cth). A commercial electronic message must not be unsolicited, must contain information which accurately identifies the sender and must contain a functional unsubscribe facility. Significant financial penalties may apply for contraventions. Messages sent by way of voice call (for example, for the purposes of telephone marketing) are regulated under the *Do Not Call Register Act 2006* (Cth). More information on this area can be found in the Privacy section on page 46.

Another major change which has recently occurred is the introduction of GST (a local goods and services tax) applying to online purchases from overseas vendors (such as Amazon). Previously, only overseas purchases greater than $1,000 attracted GST, however from 1 July 2018, all purchases are now subject to GST, with overseas vendors required to collect and remit GST (for purchases equal to or less than $1,000).

There is no doubt that the IT and e-commerce space will continue to undergo changes. Legal issues around enforcement by copyright owners of their copyright against online infringement continue to be the subject of government review and industry lobbying. A recent example is the amendment to the *Copyright Act 1968* (Cth) to provide copyright owners an ability to seek an injunction to require internet service providers to disable access to copyright-infringing websites overseas.

Privacy

Privacy Act Overview

The principal legislation in Australia protecting Privacy is the *Privacy Act 1988* (Cth). The Act regulates the collection, storage, quality, use and disclosure of personal information. The Act broadly defines "personal information" so that it includes any information or opinion about an identified individual or an individual who is reasonably identifiable:

- whether the information or opinion is true or not, and
- whether the information or opinion is recorded in a material form or not.

There are 13 'Australian Privacy Principles' (APPs) which govern how Australian businesses or businesses with an Australian link and government agencies must handle, use and manage with personal information.

In very broad terms the Act restricts organisations from collecting personal information from individuals unless the collection is reasonably necessary for the organisation's business activities and collection is disclosed to the individual in advance (or individuals are notified as soon as possible in relation to unsolicited personal information). An organisation is only permitted to use the personal information for the purpose it was collected unless the individual has otherwise consented or an exception applies. An organisation is also obliged to have systems in place in order to enable an individual to access and correct the personal information that has been collected about them.

Additional restrictions apply in respect of collection of 'sensitive information' (which includes information about an individual's ethnicity, political opinions, religious believes, sexual preferences and health information) where organisations require the consent of the individual along with additional criteria (e.g. that the information is reasonably necessary for the organisation's functions or activities). Organisations are also obliged to take reasonable steps to ensure that the personal information they collect, use or disclose is complete, accurate and up to date, and to protect the information from misuse or loss from unauthorised access, modification or disclosure.

There are exemptions for employers in relation to employee records, who are separately required under the Fair Work Act to keep certain records of current and former employees for a period of 7 years.

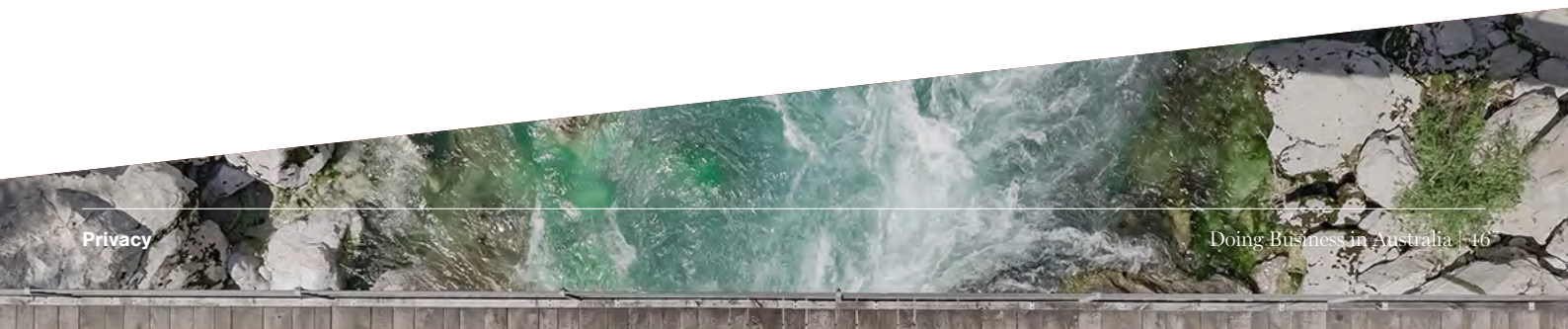
The Act appoints a Privacy Commissioner who is responsible for dealing with and investigating breaches of the Privacy Act. An individual aggrieved by an interference with their personal information is first obliged to take their grievance to the organisation which has interfered with their privacy, but failing a satisfactory resolution of their grievance, may make a complaint to the Privacy Commissioner. The Privacy Commissioner has power to investigate and to make binding determinations in respect of privacy grievances. The Privacy Commissioner's determinations may be enforced by Court order in the Federal Court of Australia or the Federal Circuit Court of Australia.

Cross-border Disclosure of Personal Information

Organisations may only disclose personal information about an individual to an overseas recipient where it has taken steps, reasonable in the circumstances, to ensure the overseas recipient does not breach the APPs or it has satisfied one of the following exceptions:

- the organisation reasonably believes that the overseas recipient is bound by a law or binding scheme which protects privacy in a manner which is substantially equivalent to the protection under the APPs and the individual can access mechanisms to enforce those protections
- the individual has been specifically informed about the disclosure and after being informed, consents to the disclosure
- the disclosure is required or authorised by an Australian law or court/tribunal order (a disclosure required or authorised by overseas jurisdiction is not exempted), or
- other permitted general situations apply (including circumstances such as involving threats to life, health or safety of an individual, public health, unlawful activities or missing persons).

An organisation is required to ensure that it has taken reasonable steps to ensure the individual, from which it has collected personal information, is notified at, or as soon as practicable after, the time of collection, whether the organisation is likely to disclose the personal information to overseas recipients.



Mandatory Data Breach Notification Scheme

Australia introduced a mandatory data breach notification scheme (NDB Scheme) which commenced on 22 February 2018.

The NDB Scheme introduces mandatory obligations on organisations to notify:

- the Privacy Commissioner, and
- individuals, whose personal information it holds and whose information is involved, in respect of an "eligible data breach".

The notification must include a description of the eligible data breach, the kind or kinds of information concerned and recommendations about the steps that individuals should take in response to the data breach.

The NDB Scheme requires organisations to notify affected individuals and the Privacy Commissioner only of "eligible data breaches". An "eligible data breach" occurs where a reasonable person would conclude that access or disclosure of personal information would be likely to result in serious harm to any of the individuals to whom the information relates in cases where:

- there is unauthorised access to or unauthorised disclosure of information held by an organisation, or
- the information is lost in circumstances where unauthorised access to or unauthorised disclosure of the information is likely to occur.

Enforcement and penalties under the Privacy Act

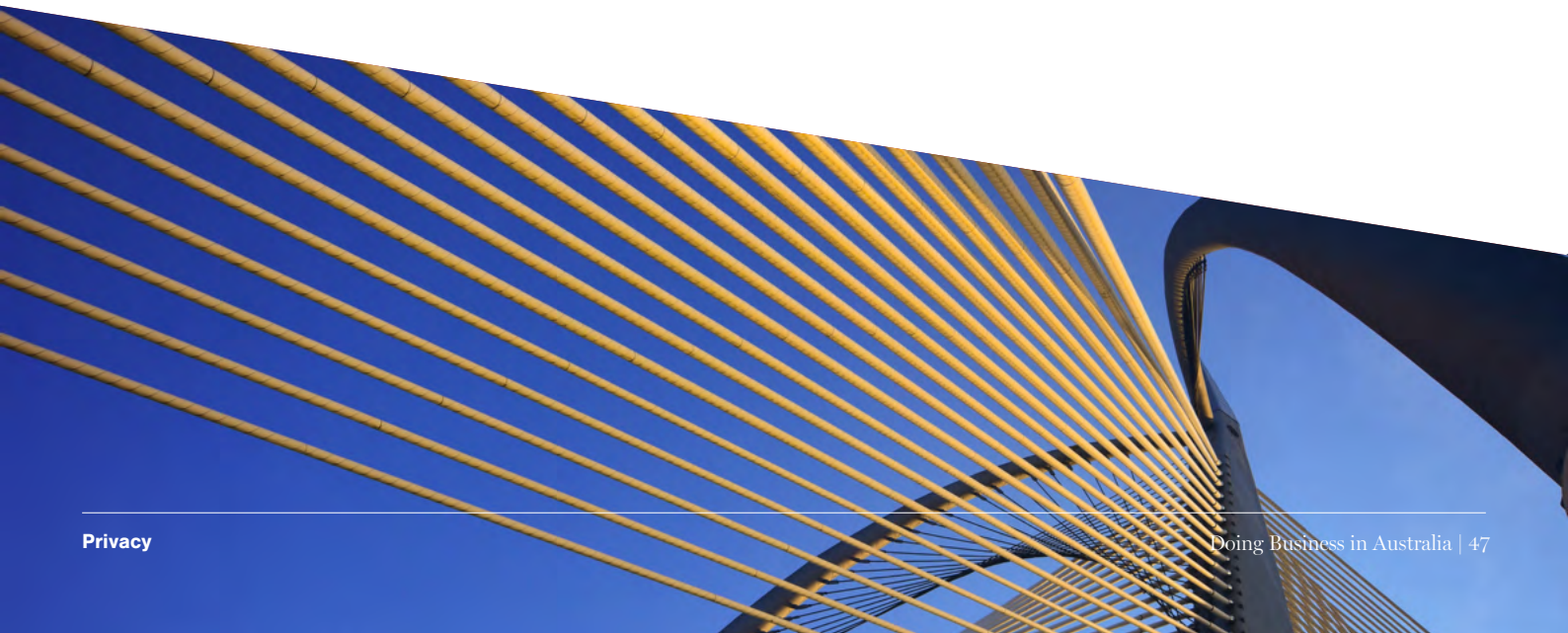
The main function and role of the Privacy Commissioner is to ensure the proper handling of personal information in accordance with the Privacy Act. This role includes day to day administration of privacy enquiries and complaints and investigation of potential contraventions of the Privacy Act. The Privacy Commissioner may also take civil enforcement action against a party in contravention of the Privacy Act.

The Privacy Commissioner has wide powers of investigation to obtain information, documents and other evidence where it believes an act or conduct may constitute a contravention of the Privacy Act and in particular the APPs. Investigations by the Privacy Commissioner may arise as a result of a complaint by an individual or at the Privacy Commissioner's own initiative. The Privacy Commissioner's powers also include the ability to interview witnesses.

The complainant or the Privacy Commissioner can commence proceedings in the Federal Court or the Federal Circuit Court of Australia for an order to enforce a determination made by the Privacy Commissioner.

If the Court is satisfied that the conduct constitutes an interference with the privacy of an individual in contravention of the Privacy Act, the Court may make such orders as it thinks fit, including:

- a declaration of rights
- fines or penalties (including a fine of up to $2,100,000 for serious and repeated breaches)
- an order granting an injunction
- an order for corrective advertising
- an order of compensation, or
- an order for the payment of legal costs.



Spam Act

The Spam Act regulates the sending of unsolicited commercial electronic messages in Australia.

An organisation must not send, or cause to be sent, a commercial electronic message, that has an Australian link (e.g. the message originates in Australia, the organisation that sent the message is physically in Australia or the organisation that sent the message has its central management in Australia, or the computer, server or device used to access the message is located in Australia) and is not a designated commercial electronic message, unless the electronic account holder has consented to the sending of the message.

A commercial electronic message is an electronic message including emails, instant messaging, SMS and MMS messages that is of a commercial nature.

A designated commercial electronic message is a message which includes:

- no more than a factual message
- messages authorised by a government body, registered political party or a registered charity, and
- messages authorised by an educational institution whether the relevant electronic account holder is or was an enrolled student.

Consent to the sending of a commercial message can be either express or inferred. Organisations sending commercial messages must also comply with additional conditions under the Spam Act including providing specific information in relation to the authorised sender of the commercial message and an appropriate unsubscribe facility.

Do Not Call Register

The Do Not Call Register Act regulates the making of telemarketing class to an Australian number.

A person must not make, or cause to be made, a telemarketing call to an Australian number where the number is registered on the Do Not Call Register and the call is not a designated telemarketing call unless the relevant account-holder or a nominee of the relevant account-holder has consented to the making of the call.

The kinds of calls which are not telemarketing calls include:

- product recall calls
- fault rectification calls
- appointment rescheduling and reminder calls
- calls relating to payments, and
- solicited calls.

Designated telemarketing calls include:

- a call authorised by either a government body or registered charity
- a call authorised by a registered political party, member of parliament or candidate in election for parliament, or
- a call authorised by an educational institution.

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Bribery & Corruption

Bribery of foreign and Commonwealth public officials is regulated in the *Criminal Code Act 1995* (Cth). A foreign public official is defined broadly and includes employees and officials of foreign public enterprises and public international organisations. The offences carry financial penalties and, additionally, the risk of imprisonment for individuals.

Offences for bribery of persons in public office also exist among Australia's States and Territories. These offences are varyingly established in the common law or statute.

The offences are intended to apply to a wide range of persons and body corporates. This was highlighted by the prosecutions of and the imposition of record fines on two companies tied to Australia's central bank, the Reserve Bank of Australia.

Australian businesses should also be conscious of any exposure to foreign bribery and corruption regulations, including the US *Foreign Corrupt Practices Act 1997* and the UK *Bribery Act 2010*. The statutory regimes in the United States and United Kingdom have established a broad jurisdiction and potentially increase a business's exposure to liability from the actions of third parties.

Proposed changes to Federal Bribery and Corruption Laws

Amendments to Australia's bribery and corruption laws were introduced in December 2019. The proposed changes include amendments to the offence of bribery of a foreign public official in order to broaden the scope of the offence and the introduction of a new offence for failing to prevent foreign bribery by an associate. Additionally, the Bill seeks to implement a "Deferred Prosecution Agreements" scheme (similar to the scheme already in place in the United Kingdom, Canada and the United States) which will allow the Commonwealth Director of Public Prosecutions to enter into deferred prosecution agreements with serious corporate criminal offenders, imposing certain conditions on the offender. The amendments proposed have not yet been enacted.

Crime and Corruption Commissions

Corruption Commissions of varying names and mandates exist in Australia's States and Territories. Their role includes investigating corrupt conduct of politicians or public organisations (including government departments and statutory bodies).

There is currently also a proposal to introduce a Commonwealth Integrity Commission to monitor corruption and investigate corruption issues relating to the Commonwealth Government.

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Energy & Resources

Petroleum

While petroleum exploration activity has been falling gradually over several years, the Australian Government has affirmed its commitment to the development of Australia's petroleum resources, both for domestic energy security purposes but also due to the significant economic benefits that the petroleum industry provides to Australia.

Onshore

Onshore petroleum exploration and production is regulated by each State and Territory. The regulatory principles are similar, but each State and Territory has separate petroleum and environmental legislation that differ in detail.

Offshore

Although Australia is a major exporter of natural gas (which it converts into LNG for that purpose) it produces less oil than it consumes. For its energy security, Australia, therefore, requires more oil from indigenous sources, for which most of the prospective areas are offshore.

Australia has one of the world's largest exploitable areas of seabed, 8.2 million square kilometres, larger than its land area of 7.7 million square kilometres.

Coastal Waters

Coastal waters are regulated by State legislation alone. Outside the 3 mile limit, the Commonwealth exercises exclusive jurisdiction.

Offshore Bidding System

Each year, the Australian Government releases additional offshore acreage, through a work program bidding system. Under this system:

- an applicant is required to propose a six-year exploration program
- the first three years are referred to as the "primary term", and a successful applicant must complete all of the minimum work requirements in order to avoid cancellation of the permit, and
- the second three years is the "secondary term", whereby the applicant may undertake the relevant work program on a yearly basis, providing the permit holder with a degree of flexibility.

In most circumstances, permits are renewable for two further terms of five years. However, the permit holder must nominate 50% of the blocks within the permit area as being relinquished at each renewal.

Discoveries

On the discovery of petroleum, the permit holder has two years to apply for a production licence.

If the discovery is not currently considered to be commercially viable, but is expected to become commercially viable within 15 years, the permit holder may apply for a 5 year retention lease, allowing it to retain the exclusive right to explore for petroleum in the area.

Environmental issues

The government has power to direct the clean-up of oil spills or to direct a licensee to eliminate, mitigate, manage or remediate a serious situation.

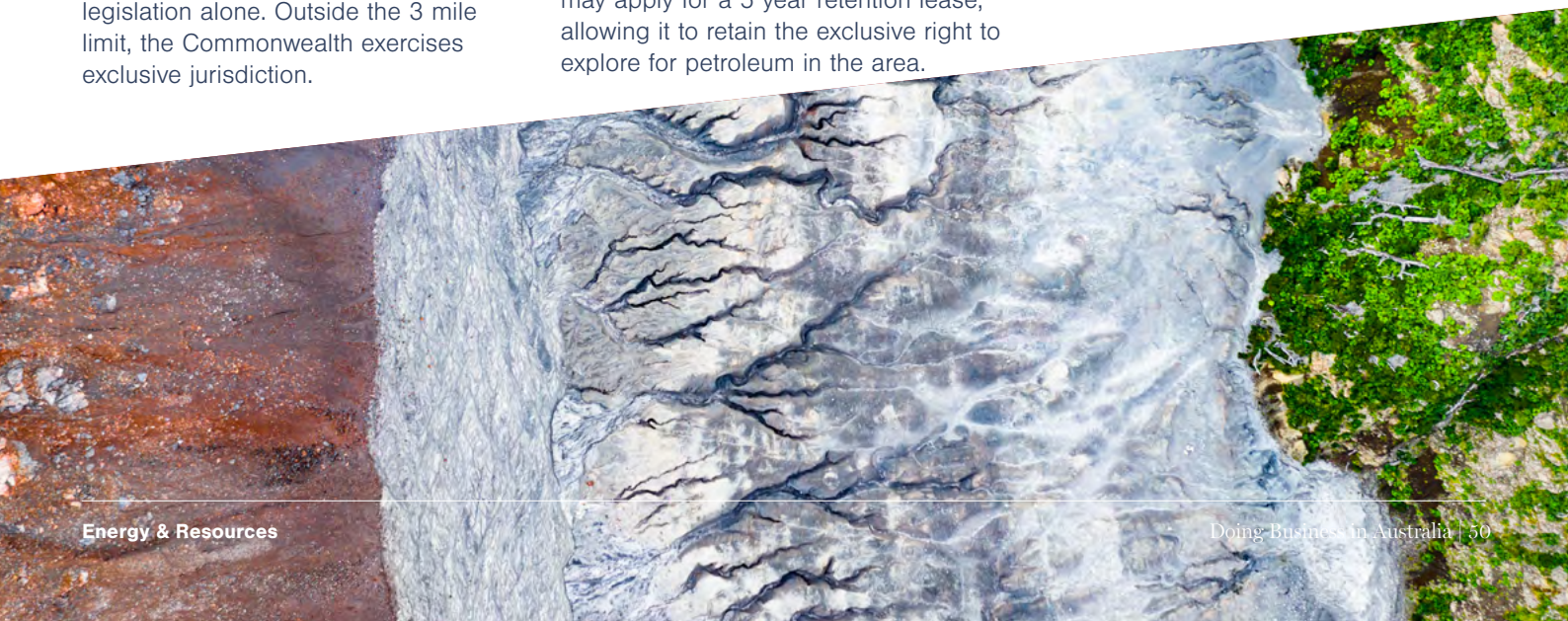
The consequence of breaching any governmental direction is a penalty of up to 100 penalty units.

Resource Rent

The Petroleum Resource Rent Tax applies to all Australian onshore and offshore oil and gas projects, which is a profit based tax levied at 40% of net revenues from a project.

Offshore petroleum royalties currently apply to the North West Shelf production area and State and Territory waters.

Onshore, royalties are levied on petroleum production and are collected by the States and Territories. The rate is generally set at approximately 10% of net wellhead value of production.



Mining and minerals

The permitting regime for the exploration and mining of minerals is regulated at a State and Territory level.

Exploration licence/permit

The regulatory principles for the exploration of minerals in Australia is similar but differs in details for each State and Territory.

Generally, an exploration licence/permit will entitle the holder to undertake activities that are in the nature of 'exploration' only and do not involve any substantive disturbance to the land, and will be granted for an initial term of up to five years depending on the State or Territory.

Exploration licences/permits are often granted subject to minimum expenditure or work program obligations, the failure to comply with which may result in the forfeiture of the license/permit.

In some States and Territories, holders of an exploration licence/permit may be required to relinquish a percentage of the area of the permit at the end of each year (e.g. 40 – 50%).

Mining leases

Generally, in order to extract and/or process ore/ minerals, the holder of an exploration license/permit is required to first obtain a mining lease.

A mining lease/license:

- will have a term of up to 21 years and may be renewed for successive periods in accordance with the relevant State/Territory legislation
- entitles the holder to mine for and dispose of any minerals on the land in respect of which the lease was granted and to conduct mining works relating to the minerals noted on the lease or licence.

Retention leases

In most States and Territories, the holder of an exploration authority may also apply for a retention/development license. This may occur where the applicant has identified a mineral resource but it is currently impractical to mine the resource.

Royalties, rent and expenditure

Royalties are enforced by the relevant State or Territory and each the amount payable for royalties within each state and territory vary depending on a variety of statutory considerations (generally this will be 10% or less).

Renewable Energy

Australia is committed to matching the greenhouse gas emission reduction targets of other developed economies. It offers a number of incentives for investors.

Renewable Energy Target (RET) Scheme

Australia has adopted a Renewable Energy Target of 20% by 2020. This is implemented via Renewable Energy Certificates (RECs).

Most renewable energy systems are eligible to create RECs corresponding to the amount of MWh produced, regardless of whether they are grid-connected or off-grid.

Power stations accredited in the Large-scale Renewable Energy Target are able to create large-scale generation certificates (LGCs) for electricity generated from that power station's renewable energy sources. Small-scale technology certificates (STCs) are provided to the purchasers of small-scale renewable energy systems 'up front' for the systems' expected power generation from the installation year until 2030, when the scheme ends. RECs can be bought and sold on the primary and secondary markets and are created, registered and transferred by way of the REC Registry.

The RET scheme obliges electricity retailers to source a proportion of their electricity from renewable energy sources. It does this by requiring electricity retailers to surrender a number of LGCs annually and STCs quarterly to the Clean Energy Regulator based on the amount of electricity acquired for that year.

Australian Renewable Energy Agency (ARENA)

ARENA was established in 2012 as an independent agency. Its purpose is to accelerate Australia's shift to affordable and reliable renewable energy.

ARENA announced three priorities for new investment in its 2019 Investment Plan:

- integrating renewables into the electricity system
- accelerating hydrogen
- supporting industry to reduce emissions.

Clean Energy Finance Corporation (CEFC)

CEFC is the Australian government-owned finance corporation that supports investment in renewable energy, energy efficiency and low emissions technologies. Since its inception in 2012, CEFC has committed over $10 billion in finance for investments in clean energy projects valued at over $19 billion.

CEFC does not provide grants like ARENA; instead it invests through a variety of financing mechanisms. CEFC also collaborates with banks and other financing institutions to provide co-financing.

Environment, Native Title and Land Access

In addition to obtaining permits to explore for and extract minerals, oil and gas, there are a number of ancillary environmental, land access and native title issues that need to be considered and catered for.

Environmental issues

In addition to the relevant exploration licence/ mineral lease, persons wanting to explore, mine and/or obtain a production lease, will be required to observe various environmental obligations arising in accordance with the relevant State or Territory legislation, including obtaining an environmental authority.

Generally, this will require that the holder rehabilitate and restore the land to the same condition it was in prior to the relevant activity occurring and to provide some form of financial security to secure their rehabilitation and other environmental related obligations.

The form of security varies between States and Territories, but may be in the form of a surety bond covering some or all of the anticipated rehabilitation costs and/ or require the relevant holder to contribute to a centralised fund that is used to contribute to anticipated rehabilitation costs based upon a levy calculation.

Environmental licences/authorities will be required for operations and those licences/authorities will contain conditions such as reporting requirements, discharge limits, storage limits and monitoring requirements.

Native title

Native title has been recognised to exist at common law, however, this recognition is subject to partial extinguishment in the case of pastoral leases, mining leases and the creation of certain reserves.

Prior to the grant or renewal of a mining tenement, an applicant or tenement holder must undertake a Federal statutory process which generally involves agreeing to certain conditions and compensation with the native title parties which will apply to certain mining activities that it and subsequent transferees carry out in the relevant area.

The agreement is recorded in an Indigenous Land Use Agreement (ILUA) which is registered with the Native Title Tribunal. ILUAs can cover the agreement of Native Title holders to current and future activities in the land, access, cultural heritage, employment opportunities for Native Title groups and compensation.

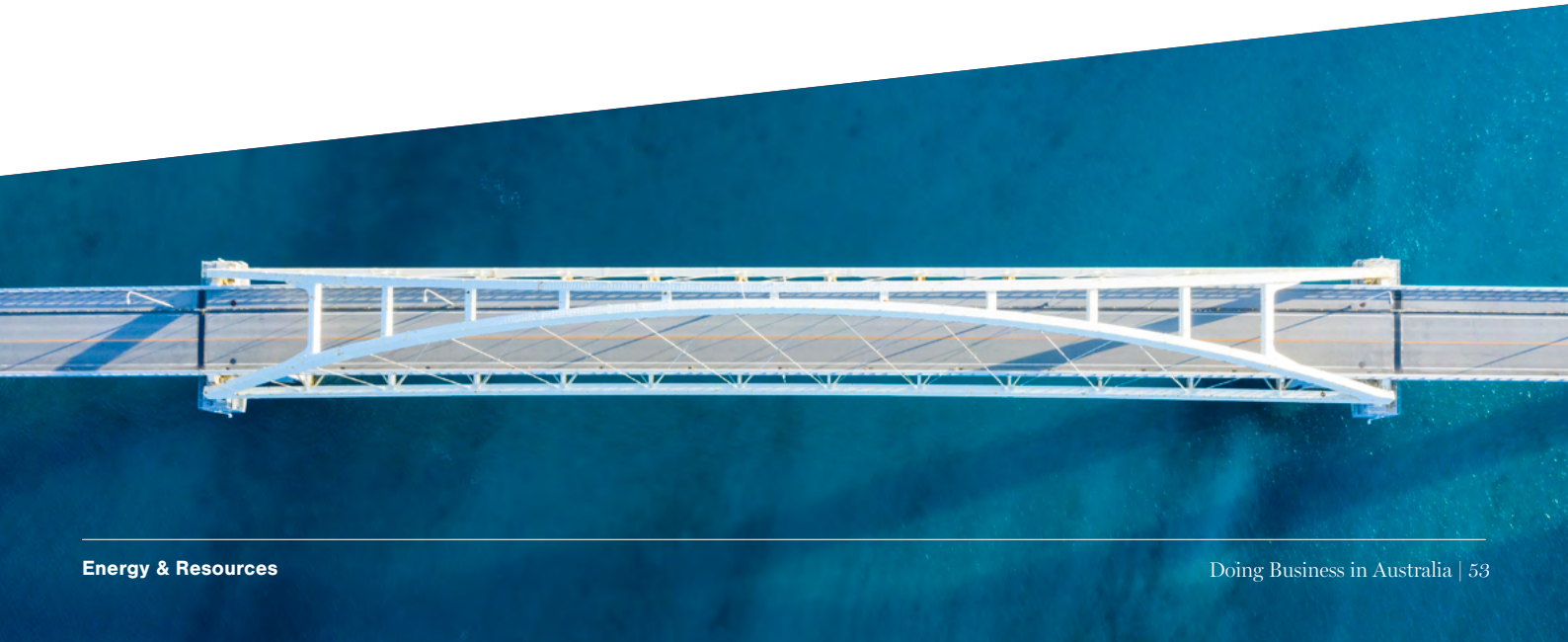
Cultural heritage

Exploration licences and mining leases are granted subject to a condition requiring observance with the cultural heritage legislation of the relevant state or territory. The consent of the relevant Minister is required where any use of land is likely to result in the excavation, alteration or damage to an Aboriginal site or any objects on or under that site.

A cultural heritage management system should be developed to help you know and understand cultural heritage considerations, have inclusive engagement, communicate and monitor and evaluate impacts on cultural heritage.

Land access

Land access is governed by legislation specific to each State and Territory. In some jurisdictions such as Western Australia, certain obligations and restrictions apply in relation to land access on non-freehold land, which may require the consent of the lessee of the relevant lease. In other states like New South Wales, the Department of Planning and Environment publishes land access arrangement templates to assist in negotiations between parties and in Queensland there is a Land Access Code which specifies mandatory matters to be covered in land access agreements. In the absence of agreement between the parties, compensation payable is determined by the relevant court within the jurisdiction.



Therapeutic Goods

In Australia, therapeutic goods are regulated under the *Therapeutic Goods Act 1989* (Act). 'Therapeutic goods' includes goods that are represented to be, or that are, used in or in connection with:

- preventing, diagnosing, curing or alleviating a disease, ailment, defect or injury in persons
- influencing, inhibiting or modifying a physiological process in persons
- testing the susceptibility of persons to a disease or ailment
- influencing, controlling or preventing conception in persons
- testing for pregnancy in persons
- the replacement or modification of parts of the anatomy in persons.

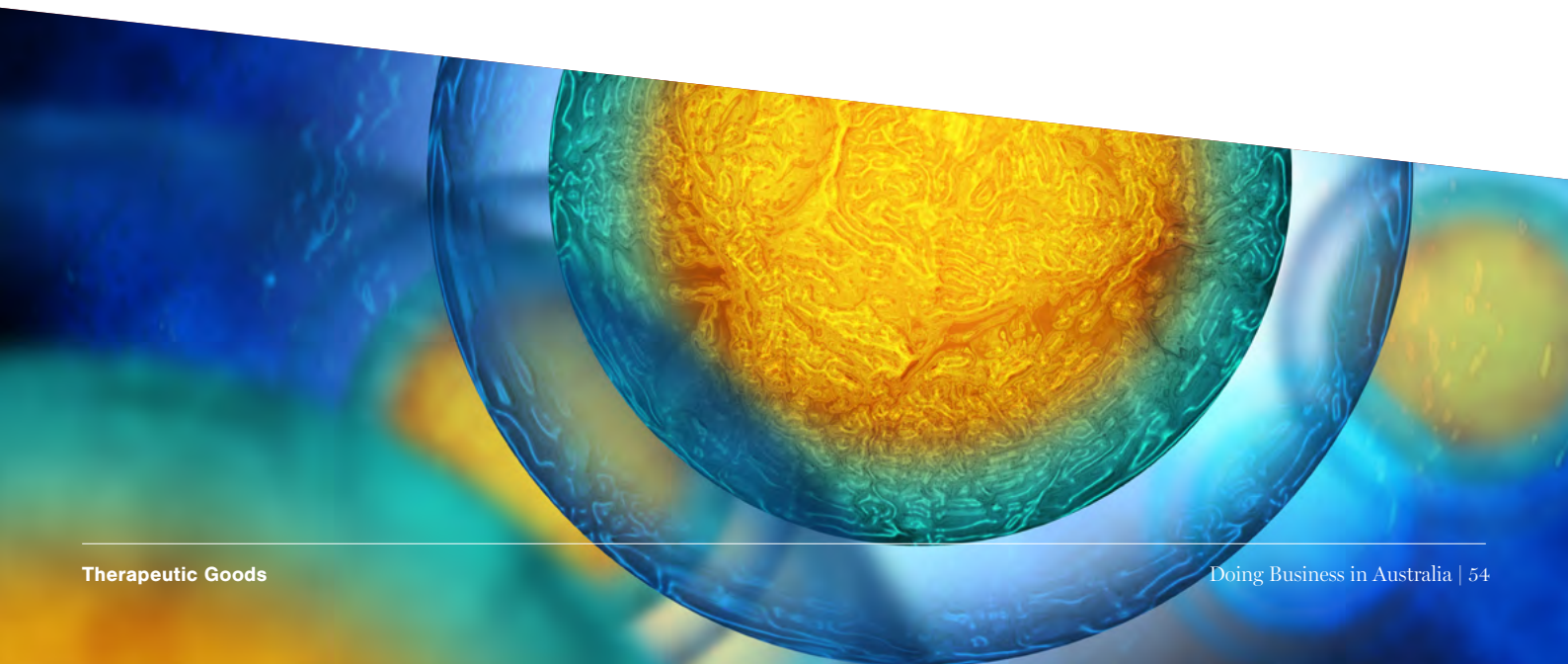
Based on the above definition, therapeutic goods include prescription medicines, biologicals, over-the-counter medicines, complementary medicines, medical devices (including in vitro diagnostic medical devices), vaccines, blood and blood products, sunscreens and cosmetics that make therapeutic claims.

The Therapeutic Goods Administration (TGA) is the regulatory authority that administers the Act, its Regulations and various legislative instruments. Its object is to protect public health and safety by regulating therapeutic goods. It does this by adopting a risk-based approach that allows the Australian public to have timely access to therapeutic goods which are consistently safe, effective and of a high quality. To this end, the TGA regulates the manufacture, advertising and supply of therapeutic goods in Australia.

Any product for which therapeutic claims are made must be listed, registered or included in the Australian Register of Therapeutic Goods (ARTG) before it can be legally manufactured, exported, imported and supplied in Australia. However, there are exceptions to this rule in certain circumstances which provide for limited and restricted use of unapproved products.

In order for therapeutic goods to be listed, registered or included in the ARTG, the goods have to satisfy certain standards relating to quality, safety and efficacy. Different requirements and standards apply for different types of therapeutic goods according to its level of risk to consumers.

The regulatory framework for the promotion and advertising of therapeutic goods seeks to ensure that they are properly promoted as to their uses, effects, risks and benefits and to encourage the safe use of therapeutic goods by consumers. The TGA regulates the advertising of therapeutic goods in conjunction with various industry associations which administer and enforce their own Codes of Practice which regulate industry conduct. Advertisements for therapeutic goods in Australia are subject to the Act, the *Competition and Consumer Act 2010* and other relevant laws. Advertising to the general public is permitted for the majority of over-the-counter whilst the advertising of prescription-only medicines to the general public is prohibited. Certain advertisements directed at the general public require approval prior to being broadcast or published. A new Therapeutic Goods Advertising Code took effect on 1 January 2019 which streamlined general requirements for advertisements and clarified certain advertising requirements.



About Piper Alderman

A premier commercial law firm, Piper Alderman has offices in Adelaide, Brisbane, Melbourne and Sydney. We work with clients across Australia and internationally to achieve optimum legal and commercial solutions.

Our legal expertise has been built on nearly two centuries of industry experience. Piper Alderman has been a leading advisor to commercial Australian interests for more than 175 years and we continue to advance in knowledge, skills and commitment. We listen to our clients, respond to their needs and guide them through increasingly complex regulatory and business landscapes.

As a united, national partnership we are able to work in teams and collaborate in a manner that enables us to harness our skills and network effectively for our clients. We understand the importance of building enduring client relationships and are absolutely committed to advancing our clients' interests and helping them achieve their business goals.

Piper Alderman has a proud history of being at the forefront of many emerging areas of law, from landmark rulings to new legislation. In this way, our lawyers understand and contribute to Australia's legal framework in ways that give our clients a special edge.

International focus

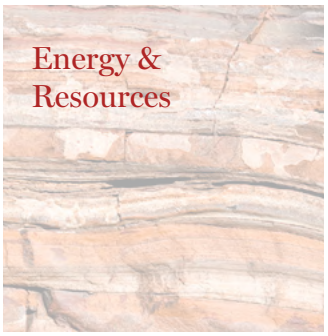
The nature of business is becoming increasingly global and a thorough understanding of the complexities involved with international dealings and disputes is critical.

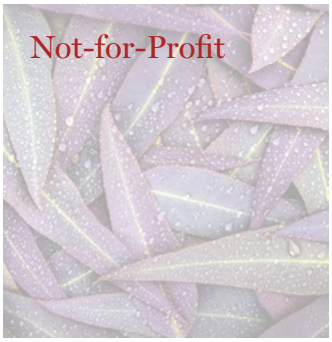
Acting for multinational corporations as well as the Australian branches of many organisations listed in offshore markets, Piper Alderman is regularly involved in complex negotiations across a wide variety of industries and countries. Many of our lawyers hold international qualifications and have practised in other jurisdictions, allowing us to offer our clients effective cross-border legal services backed by extensive experience.

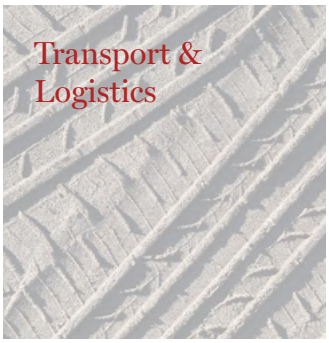
Our international networks are extensive, allowing us to draw upon the expertise of lawyers in local jurisdictions across the globe. We are often selected by clients and overseas law firms because of our expertise as well as our independence, as we are not formally aligned with a global law firm. We are also a single, united partnership which facilitates a unified approach to legal services nationally. Our national presence also helps overseas companies negotiate the daunting and often complex mix of state and federal legislature across Australia.

Sectors

We work across multiple industries and sectors, advising clients from start-ups to major corporates and multinational companies.

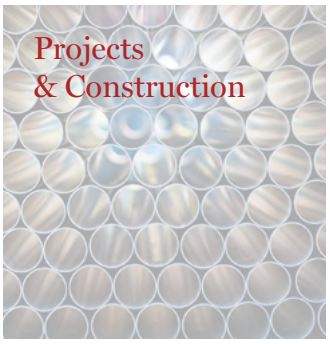






Services

We offer a comprehensive legal service spanning all areas of commercial practice.



Glossary

The following is a glossary of some Australian (business and legal) expressions and acronyms which are used in this Guide:

$ means Australian dollars.

ABN means Australian Business Number. It is the single identifier for all business dealings with the ATO.

ACCC means Australian Competition & Consumer Commission. The ACCC administers the CCA and was formed to promote fair trade in the marketplace.

ACL means the Australian Consumer Law which promotes consumer protection.

ACN means Australian Company Number. It is given by ASIC to an Australian company on incorporation and serves as the primary means of identification of that company.

APRA means Australian Prudential Regulation Authority. APRA is the prudential regulator of the Australian financial services industry.

ARBN means Australian Registered Body Number. It is given by ASIC to a foreign company registering in Australia.

ASIC means Australian Securities and Investments Commission. ASIC is Australia's corporate, markets and financial services regulator.

ASX means the Australian Securities Exchange. The ASX is Australia's primary national stock exchange for equities, derivatives and fixed interest securities.

ATO means Australian Taxation Office. The ATO is the Australian Government's principal revenue collection agency.

auDA means .au Domain Administration Limited. It is the policy authority and industry self-regulatory body for the .au domain space.

AUSTRAC means Australian Transaction Reports and Analysis Centre. AUSTRAC's role is to protect the integrity of Australia's financial system and to contribute in countering money laundering and the financing of terrorism.

Austrade means the Australian Trade Commission. Austrade is the Australian Government agency responsible for trade and investment development.

CCA or Competition and Consumer Act means the *Competition and Consumer Act 2010* (Cth). The object of the CCA is to enhance the welfare of Australians through the promotion of competition and fair trading and provisions for consumer protection.

CGT or Capital Gains Tax is the Australian tax payable on disposal of assets.

Corporations Act means the *Corporations Act 2001* (Cth) which is the principal sets out the laws dealing with companies in Australia.

GST or Goods and Services Tax is a broad based consumption tax which is imposed in Australia at the standard rate of 10% on the value of the goods or services supplied.

FIRB means Foreign Investment Review Board. FIRB's role is to examine proposals by foreign interests to undertake investment in Australia and recommend to the Australian Government whether those proposals are suitable for approval under the Government's policy.

FBT or Fringe Benefits Tax is a tax which applies to taxpayers who provide non-cash benefits and reimbursements to their employees.

PAYG or Pay-As-You-Go refers to the system whereby taxpayers are required to remit instalments of income tax to the ATO on behalf of their employees.

PDS or Product Disclosure Statement, which is required to accompany the offer of a financial product in accordance with the *Corporations Act 2001* (Cth). A PDS sets out the features of the product, fees and commissions that apply, benefits and risks of investing, information about complaints handling and cooling off, and other material information.

RBA means Reserve Bank of Australia. The RBA performs Australia's central banking functions. Its primary responsibility is monetary policy.

Superannuation is the provision of retirement and other permitted benefits such as disability benefits, either by lump sum or pension, to persons who are entitled to receive the benefits. In Australia employers are statutorily obliged to contribute an amount equal to 9% of an employee's earnings to superannuation each quarter.

Tourism Australia is a statutory authority of the Australian Government which is responsible for the promotion of Australia as a tourism destination and research and forecasts for the sector.

PiperAlderman

Useful links

Australian Trade & Investment Commission (Austrade)

www.austrade.gov.au

Australia.gov.au

www.australia.gov.au

Australian Bureau of Statistics

www.abs.gov.au

Australian Competition & Consumer Commission

www.accc.gov.au

Australian Government Business

www.business.gov.au

Australian Prudential Regulation Authority

www.apra.gov.au

Australian Securities and Investment Commission

www.asic.gov.au

Tourism Australia

www.australia.com

Department of Agriculture

www.agriculture.gov.au

Department of Education

www.education.gov.au

Department of the Environment and Energy

www.environment.gov.au

Department of Home Affairs

www.homeaffairs.gov.au

Department of Industry, Innovation and Science

www.industry.gov.au

Department of Foreign Affairs and Trade

www.dfat.gov.au

Australian Renewable Energy Agency

www.arena.gov.au

Export Finance Australia

www.exportfinance.gov.au

Foreign Investment Review Board

www.firb.gov.au

IP Australia

www.ipaustralia.gov.au

Reserve Bank of Australia

www.rba.gov.au

New South Wales Government

NSW Government

www.nsw.gov.au

NSW Department of Industry

www.industry.nsw.gov.au

Victorian Government

Victorian Government

www.vic.gov.au

Business Victoria

www.business.vic.gov.au

Queensland Government

Queensland Government

www.qld.gov.au

Business Queensland

www.business.qld.gov.au

South Australian Government

South Australian Government

www.sa.gov.au

SA Department for Trade, Tourism and Investment

www.business.sa.gov.au

Western Australian Government

Western Australian Government

www.wa.gov.au

Tasmanian Government

Tasmanian Government

www.tas.gov.au

Tasmanian Department of State Growth

www.stategrowth.tas.gov.au

Australian Capital Territory Government

Australian Capital Territory Government

www.act.gov.au

ACT Department of Innovation, Industry and Investment

www.business.act.gov.au

Northern Territory Government

Northern Territory Government

www.nt.gov.au

Other links to business

auDA (.au Domain Administration)

www.auda.org.au

Australian Securities Exchange

www.asx.com.au

Australian Industry Group

www.aigroup.com.au

Media

ABC News

www.abc.net.au

Australian Financial Review

www.afr.com

The Australian

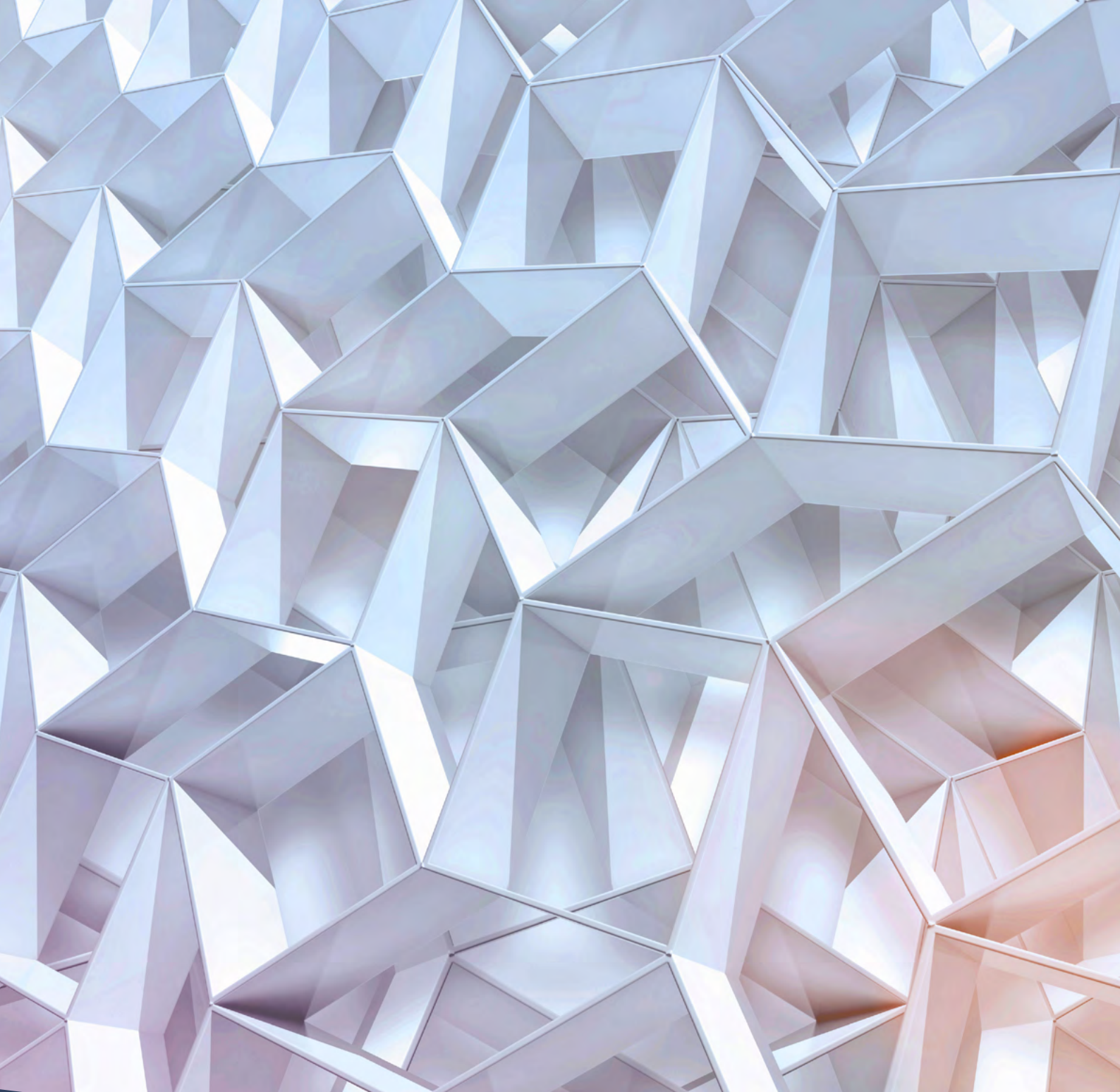
www.theaustralian.news.com.au

Sydney Morning Herald

www.smh.com.au

The Age

www.theage.com.au



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