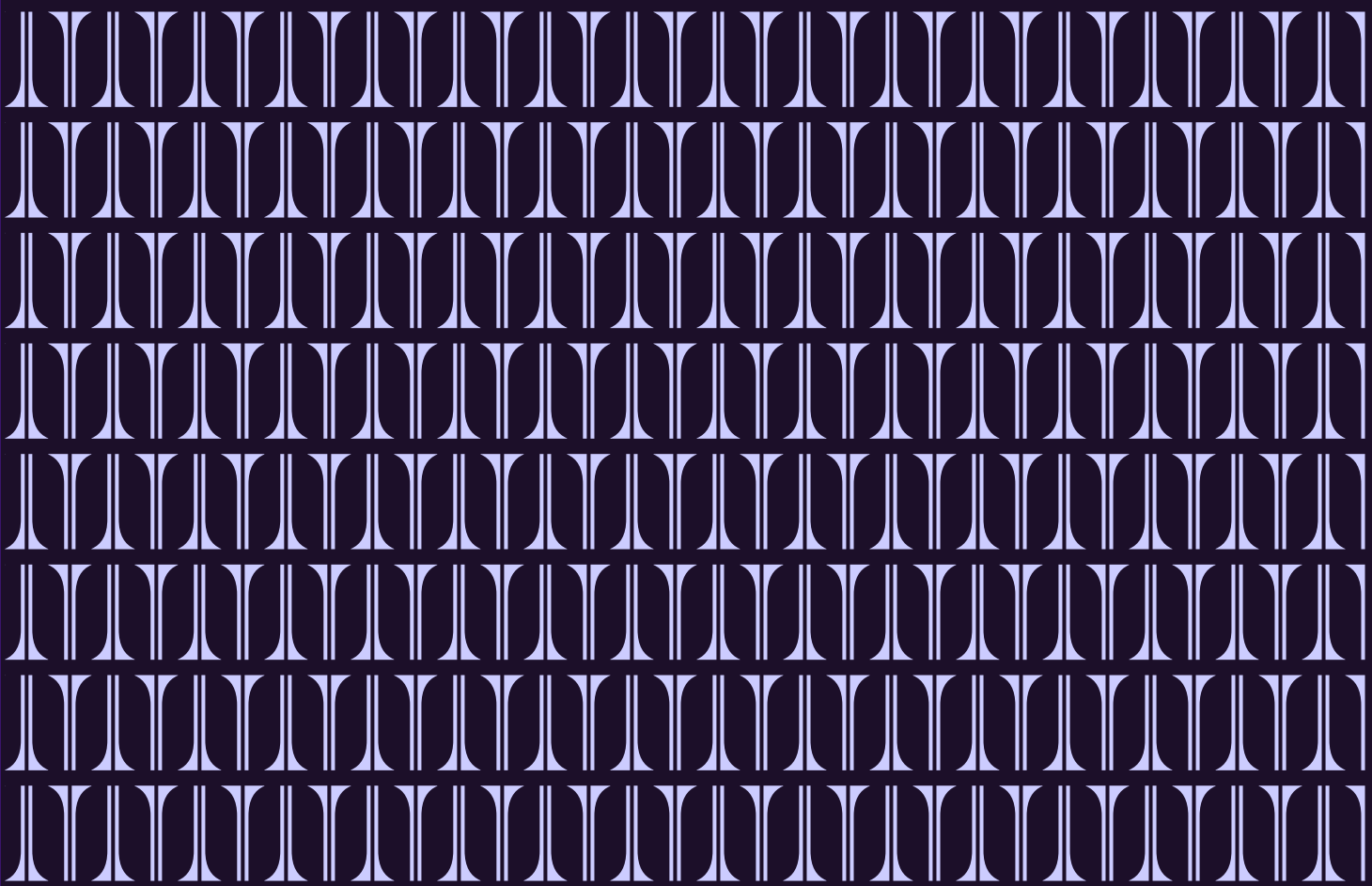


# Doing Business

Mallesons' Guide to Doing Business in Australia

2026



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# Introduction

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Welcome to the 2026 edition of Mallesons' Guide to Doing Business in Australia.

This year marks a new era for our firm as we return to our proud roots as Mallesons and continue our nearly 200-year history of advising clients on the most complex and consequential matters across our region and around the world.

In a period marked by heightened geopolitical volatility, global conflicts and shifting economic conditions, Australia continues to demonstrate resilience and stability. While these dynamics are influencing global capital flows, supply chains, government policy and risk perceptions, at the time of this publication Australia continues to present significant opportunities for domestic and international investors across established sectors such as infrastructure, energy, resources and healthcare. Australia is also emerging as a key market for investment in artificial intelligence, climate transition initiatives and the broader digital economy.

The past year has seen several significant legal and regulatory developments that will shape how organisations invest and operate in Australia. These include the introduction of mandatory climate-related financial disclosures, representing a fundamental shift in how companies assess and report climate risk, as well as the implementation of the ACCC's new merger control regime, which will reshape the transaction landscape. Rapid advances in AI are also creating both opportunities and governance challenges for businesses, while investment momentum in the continued expansion of the energy transition and renewables markets sector remains a major driver of investment and policy focus.

Drawing on Mallesons' depth of experience across Asia and globally, this publication provides a practical overview of the key legal, regulatory, social and tax considerations relevant to doing business in Australia. Our sector specialists share insights into the issues shaping industries including energy and resources, infrastructure and technology, together with commentary on cross-cutting issues such as ESG regulation, cyber security, climate governance and the responsible deployment of AI.

Throughout this Guide you will find references to other Mallesons publications and the websites of relevant industry and regulatory bodies, which may assist you in navigating Australia's business environment.

Thank you to Annabel Griffin and Kate Creighton-Selvay, the sponsoring partners of this Guide, together with each of the contributors recognised throughout the publication.

We hope we can add value to your business in Australia and would be delighted to discuss the opportunities with you.



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The information contained in this publication is current as at 31 March 2026.  
Intending investors should obtain specific and detailed professional advice about any proposed business activity in Australia.

# Changes Since Our Last Guide

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Some of the key legal developments since our last Guide:

- Australia now has a mandatory merger control regime in effect – see the [Competition and Anti-Trust](#) section of this Guide.
- Changes to payment system laws enabling a broader range of payment systems to be caught by the regulations, including digital wallets – see the [Payment Systems](#) section of this Guide.
- Significant changes to anti-money laundering laws, including to expand the regime to capture a broader range of operators, such as accountants, lawyers and real estate agents – see the [Financial Crime](#) section of this Guide.
- The changes to privacy laws to include a statutory tort for serious invasions of privacy, providing an avenue for individuals to directly seek compensation – see the [Privacy](#) section of this Guide.
- The requirement for certain social media service providers to take reasonable steps to prevent children under the age of 16 from having accounts with their platform has come into effect – see the [Online Safety](#) section of this Guide.
- The changes to security of critical infrastructure laws identified in our last Guide have come into effect – see the [Infrastructure](#) section of this Guide.
- The changes to energy laws and policies reflecting the Australian Government's commitment to transition to clean energy and rapid increases in data centre demand – see the [Energy and Renewables](#) and [Climate Change](#) sections of this Guide.
- Changes in policies relating to critical minerals – we have dedicated a new chapter in this Guide to this area – see the [Resources and Critical Minerals](#) section of this Guide.
- Reforms to environmental laws which establish new tests for approvals and a new national Environmental Protection Agency – see the [Environment](#) section of this Guide.
- In our last Guide, we identified that the Australian Government had indicated it intended to introduce AI-specific legislation. This policy position changed in late 2025 in the National AI Plan – see the [Artificial Intelligence](#) section of this Guide.
- After 8 years of negotiations, Australia and the European Union have concluded negotiations on a free trade agreement - see the [Free Trade Agreement](#) section of this Guide



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# 1. Fundamentals of the Australian Legal and Regulatory System



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## Overview of the Australian Legal and Regulatory System

### OVERVIEW

Australia consists of 6 States which in 1901 federated into a single Commonwealth (which is a separate body politic) under the Commonwealth Constitution.

As well as the States, there are 2 Territories on the mainland and 6 'external' Territories on islands near the mainland and in the Antarctic. The Territories are all under the control of the Commonwealth, although the 2 mainland Territories are self-governing.

The Commonwealth, each of the States and the mainland Territories each have a legislature, an Executive (including government departments) and a judiciary. For the external Territories, the Commonwealth Parliament is the legislature, the courts are Commonwealth courts and Commonwealth Departments administer them.

All jurisdictions are democracies, with universal suffrage and secret ballots and Ministers (who are all elected members of the relevant legislature) accountable to the legislatures of their jurisdictions.

### FEDERAL CONSTITUTION

While each State has a written constitution, the Commonwealth Constitution (Constitution) is the basis of federation and established the Federal Government by providing for the Federal Parliament, the Federal Executive Government and the Federal Judiciary. It sets out the powers of the Commonwealth to make laws and the basic jurisdiction of Federal Courts.

The executive power is vested in the UK Monarch and is exercised by the Governor-General who appoints members of the Parliament to be Ministers, each with responsibility for specific departments covering a specified area of administration.

The Constitution can only be altered by referendum. To be successful, the proposal must be approved by a majority of voters nationally and also by a majority of voters 'in a majority of the States'. Where a proposal affects an individual State, the proposal must also get majority approval in that State. Very few proposed Constitution alterations have been successful; only 8 out of 45.

## AUSTRALIA'S 3 BRANCHES OF GOVERNMENT

Branches	Functions
<b>Legislative (law making)</b>	<p>Each Australian legislature makes written laws (statutes). In most cases these statutes authorise Ministers or other administrators to make regulations or other subsidiary laws under these statutes.</p> <p>State Parliaments have fairly comprehensive legislative power (with some exceptions, for example they cannot enact laws imposing excise duties).</p> <p>A statute of the Commonwealth Parliament, on the other hand, must be based on a specific head of legislative power listed in the Commonwealth Constitution. These include corporations, inter-State and international trade and commerce, taxation, communications, banking, insurance and industrial disputes.</p> <p>If a State or Territory law is inconsistent with a valid Commonwealth law, the Commonwealth law prevails.</p> <p>The common law (or unwritten law) also applies throughout Australia. Much contract law, for example, is common law. It is applied by the courts on the basis of precedent, which means that a court decides similar cases in a consistent way and on the basis that a higher court's reasoned decision on a particular point of law is followed by lower courts.</p>
<b>Executive Governments</b>	<p>The Commonwealth, the States and the mainland Territories each have an Executive Government.</p> <p>The Commonwealth is headed by the Governor-General, appointed by the UK Monarch.</p> <p>The States have Governors, also appointed by the UK Monarch. The mainland Territories and several external Territories have Administrators, appointed by the Commonwealth.</p>
<b>Judiciary</b>	<p>The Commonwealth, the States and the mainland Territories each have a system of courts.</p> <p>The Commonwealth Courts are the High Court, the Federal Court, the Family Court and the Federal Circuit and Family Court.</p> <p>States and mainland Territories have Supreme Courts (in some cases also a Court of Appeal), District or County Courts and Magistrates Courts.</p> <p>The High Court is the ultimate appeal court in Australia.</p>

The Federal system and the State systems have been described as 'Washminster' systems; that is, a combination of the United States model (without the Electoral College) but with direct election and Ministers accountable to Parliament.

While there is no 'Bill of Rights' as there is in the United States, the Constitution has limited guarantees to protect freedom of interstate commerce, to protect political discourse, to require 'just terms' for compulsory acquisitions of property and a prohibition on the establishment of religion. Some (but not all) of these are also reflected in State Constitutions.

At the local or municipal level, local councils (also elected) administer State or Territory laws on matters such as local environmental matters, roads, local zoning and building control and deliver a range of services.

## INTER-GOVERNMENTAL RELATIONSHIPS

The Commonwealth has effective control of major tax policy and powers over significant areas of economic activity (for example, banking, insurance, interstate trade and corporations). The Commonwealth and the States have substantial inter-governmental arrangements on a wide range of matters to ensure co-operation and collaboration.

# Dispute Resolution



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## OVERVIEW

Before taking a matter to court it is important to select the correct court in which to commence proceedings.

Each court in Australia has unique jurisdictional features. At the simplest level, State Supreme Courts have jurisdiction to hear matters concerning State legislation and the common law (for example, the law of contract or torts), and the Federal Court has jurisdiction to hear matters concerning Commonwealth legislation. Differences between jurisdictions become more complex when considering limitations on the time to file and the types of matters which a specific court can determine.

Generally speaking, a breach of contract or tort claim must be commenced within 6 years of the relevant breach or conduct, although differing limitations periods may apply depending on the claim.

To commence proceedings in an Australian court, the initiating party (usually referred to as the 'plaintiff' or the 'applicant') must file a document prescribed by the relevant court rules and pay an accompanying fee set by the court. The document filed in court sets out the background and basis for the initiating party's claim and outlines the relief or orders sought from the court. The other party (usually referred to as the 'defendant' or the 'respondent') then files a responsive document outlining its response to the claim made against it.

## CASE MANAGEMENT

Each Australian court has a set of procedural rules (often referred to as 'court rules') which outline the availability and application of the different court processes available to the parties.

Most Australian courts take an active role in managing the progress of cases by, for example, requiring parties to appear before the court at case management hearings, making time-tabling orders for the various steps necessary to prepare the case for trial and ruling on disputes arising between the parties as they prepare their cases for trial.

Australian courts often require parties to utilise alternatives outside the court system in an effort to reduce costs, promote time-effective resolutions and reduce demands on the courts.

The most common alternative dispute resolution method is mediation (with arbitration and conciliation also common in some contexts).

## ROLE OF THE JUDGE

Most civil matters are heard by a single judge. Jury trials are not very common and typically only occur in some personal injury cases and defamation proceedings.

Australia has an adversarial approach to litigation where the parties separately present their evidence and arguments. The judge's role is to independently determine the dispute, based on evidence and argument presented by the parties following a public trial. The judge's reasons and orders are then ordinarily recorded in written documents, which are provided to the parties and made publicly available.

## EVIDENCE AND PRODUCTION OF DOCUMENTS

There are statutory and common law requirements on both individuals and corporations to preserve documents that may potentially be relied upon in litigation. The penalties for intentional or reckless destruction of documents can be significant.

Parties to litigation are compelled to produce documents potentially relevant to the proceeding in discovery, which generally occurs after the parties' respective claims and defences are filed with the court.

The most common exception to the compulsion to produce documents in discovery applies to documents which are subject to legal professional privilege. This involves confidential communications or documents which record legal advice, or which were prepared for the dominant purpose of the provision of legal advice or were made or prepared for the dominant purpose of use in relation to actual or reasonably contemplated legal proceedings. This privilege may be waived expressly or by implication (usually through the relevant party ceasing to treat the privileged document or communication as confidential, for example, by referring to it publicly or disclosing it to a third party).

Evidence is usually given in Australian courts by written statement or affidavit, supplemented by oral evidence. There is no deposition process.

Australian courts are developing procedures to deal with the use of artificial intelligence tools in the conduct of litigation and preparation of evidence, which reflect different degrees of restriction on use. It is important to be aware of these limitations before commencing or defending proceedings.

## INTERIM AND FINAL REMEDIES

Before a matter is determined by a court, judges have discretion to grant interim relief to a party to prevent the court process from being frustrated. The most common form of interim relief is an interlocutory injunction (which is designed to preserve the status quo until the court has had an opportunity to hear and determine the matter on a final basis). Other interim orders include orders freezing accounts or otherwise preventing the defendant from disposing of property the subject of the proceedings.

In terms of final remedies, Australian courts have a broad discretion as to what they can order. Generally speaking, the purpose of the final remedy is to put the innocent party in the position they would have been in had the wrong not occurred and/or to prevent the wrong continuing or being repeated.

The most common remedies include declarations of breach of the law, awards of monetary damages and injunctions. Other less common remedies include an account of profits obtained from the wrong, cancellation of a contract, rectification of a contract and specific performance of a contract. The remedies available for statute-based causes of action generally reflect those remedies available under the common law (although some statutes have bespoke remedies specifically adapted for the wrong).

## COSTS

A portion of legal costs incurred in conducting proceedings are generally awarded to the successful party. In all Australian jurisdictions, the court has a discretion to award costs on 2 bases:

- **Party/party costs**, which are determined by reference to various court scales of properly incurred costs. In practice, this usually means the successful party recovers between 50% to 70% of their legal costs.
- **Solicitor/client costs**, otherwise known as costs on an 'indemnity' basis where, as a result of unreasonable or unsatisfactory conduct by the unsuccessful party, the other party recovers all of their costs reasonably incurred. Costs are usually awarded on an indemnity basis where a party has refused an offer to settle proceedings which would have provided a better result for that party than the eventual outcome of the proceeding.

When a costs order is made on either of the 2 bases, the parties can either agree the sum of costs to be paid between themselves or have a formal costs assessor or court registrar appointed to analyse the successful party's bills to determine what costs are reasonably incurred and determine the total sum of costs to be paid. Courts are increasing their scrutiny of the quantum of costs to ensure costs are reasonable, necessary and proportionate.

## APPEALS

In most Australian jurisdictions, the unsuccessful party has a right of appeal from the decision of the judge at first instance. Limitations on appeal exist in some contexts. For example, appeals to the High Court require special leave to appeal to first be obtained, which is only granted in a small minority of cases. Interlocutory decisions (such as those relating to discovery or interlocutory injunctions) are also difficult to appeal. Appeals are usually heard by 3 judges and are subject to their own processes and procedures.

## FOREIGN JUDGMENTS AND PROCEEDINGS

Judgments of certain foreign courts are recognised and enforceable in Australia. The Schedule to the *Foreign Judgments Regulations 1992* (Cth) records which courts are recognised. Notably, the Schedule does not include any courts of the United States. Where a judgment comes from a jurisdiction which is not listed in the Schedule, a party can still seek enforcement at common law. The party seeking to enforce a foreign judgment must apply to the appropriate Australian court for registration of the judgment within 6 years, after which the foreign judgment has the same effect as judgments made by the court in which it is registered.

## CLASS ACTIONS

Class actions (also known as representative proceedings) are available in the Federal Court and most State Supreme Courts, to groups of 7 or more persons if the claim arises out of similar circumstances giving rise to common issues of law or fact. Australian class action regimes do not include any certification process that must be undertaken by the court upon initiation of proceedings to assess whether these requirements are met. It is up to the defendant to challenge non-compliance with these requirements, raise issues with the adequacy of class representation or argue that the class action is not an effective or efficient means of dealing with claims.

Common types of claims involve securities, financial products, employment, government liability, and consumer and product liability, and the number of claims relating to data breaches and other privacy related activity are increasing.

Third party litigation funding is generally permitted. Lawyers are currently prohibited from charging contingency fees in all jurisdictions for damages claims, although Victoria has a regime that enables a court to make a "Group Costs Order" under which a plaintiff firm can charge legal costs as a percentage of the amount recovered in the proceeding.

Settlement and discontinuance require Court approval.



### **The Review - Class Actions in Australia**

<https://www.mallesons.com/au/en/insights/latest-thinking/publication/the-review-class-actions-in-australia-2023-2024.html>

# 2. Corporate Structuring and Investment



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## Carrying on Business

### ARE YOU CARRYING ON BUSINESS IN AUSTRALIA?

A foreign company which carries on business in Australia must be registered to do so. Whether a foreign company's activities constitute the carrying on of business in Australia depends on a variety of factors.

### ASIC REGISTRATION

A foreign company cannot carry on business in Australia unless it is registered with the Australian Securities and Investments Commission (ASIC) or has applied to be registered, and the application has not yet been dealt with.

We can advise as to whether circumstances or activities may give rise to carrying on business in Australia and assist with registration.

### THE CORPORATIONS ACT

A body corporate carries on business in Australia under the *Corporations Act 2001* (Cth) (Corporations Act) if it:

- has a place of business in Australia (such as a permanent office);
- establishes or uses a share transfer office or share registration office in Australia; or
- administers, manages or otherwise deals with property situated in Australia as an agent, legal personal representative or trustee, whether by employees or agents or otherwise. This is potentially a very broad deeming provision.

Also, a foreign company that makes an offer of debentures in Australia that requires compliance with the Corporations Act's debenture trust requirements (principally retail offers), or acts as guarantor for that offer, is taken to carry on business in Australia.

## EXPANDED CLASSIFICATION

Foreign companies include bodies corporate and some unincorporated bodies. An unincorporated body formed outside Australia is a foreign company if it may sue, or be sued, or may hold property in the name of its secretary or an officer of the body duly appointed for that purpose. Some foreign limited partnerships and other business structures may be classified as bodies corporate.

## GENERAL LAW ALSO APPLIES

Under general law in Australia, whether a person is carrying on business in Australia is a question of fact. A company may be carrying on business in Australia even if the bulk of its activities are conducted elsewhere, and it is not necessary to have a fixed place of business in this jurisdiction. The territorial concept of carrying on business involves acts within the relevant territory that amount to, or are ancillary to, transactions that make up or support the business.

A typical factor that can lead to carrying on business in Australia is physical activity in Australia (for example, business visits).

System, repetition and continuity of activities in a particular jurisdiction in Australia may not be essential to constitute carrying on business in Australia. A one-off event in a jurisdiction has been held to be enough to constitute carrying on business in that jurisdiction, particularly if that event is part of a business carried on elsewhere, there is an intention to engage in further activities in that jurisdiction or it is of significant scale. It has also been held that carrying out an activity 5 or 6 times is enough to constitute carrying on a business.

Other activities which may result in a foreign entity being considered to be carrying on business in Australia include:

- having a representative in Australia who has authority to bind the foreign entity;
- appointing a representative (such as an agent) in Australia whose activities would be regarded as forming part of the activities of the foreign entity rather than merely of the representative, or whose activities go beyond merely 'ministerial' matters;
- exercising a significant degree of control over the activities of any agent or other person in Australia, including a subsidiary;
- developing a significant client base in Australia;
- conducting a series of regular or continuous dealings in Australia;
- paying or contributing to the costs of running an office in Australia or the office of an agent or representative in Australia;
- employing staff in Australia, or paying or contributing to the salaries of staff employed in Australia by an agent or representative;

- entering into contracts that are formed (accepted) in Australia; or
- locating or using business infrastructure in Australia (for example, IT servers).

Importantly, the overall likelihood of carrying on business in Australia increases if any of these activities are undertaken in combination.

Traditionally, the Australian courts have tended to focus on activities that physically occur in Australia in analysing whether a foreign company carries on business in Australia, including the activities of agents in Australia or third parties in Australia that are considered to be carrying on the business of the foreign company. There is, however, an increasing trend in court decisions that suggests a broader approach. This broader approach involves giving significant weight to all the points of connection that a cross-border business may have with Australia.

Examples of such points of connection include incurring significant business expenses in Australia, engaging suppliers or distributors in Australia, earning significant revenue from Australian customers, sending invoices into Australia, entering into contracts governed by Australian law or accepted in Australia, engaging in activities aimed at protecting and preserving goodwill in Australia, operating a website outside Australia that targets the Australian market and installing and removing cookies or executable code on devices that are located in Australia (at least where the business in question is a data processing business).

If this approach of 'connectivity' continues to be adopted by the courts in the future, it may significantly increase the circumstances in which a foreign company conducting business into Australia on a remote cross-border basis is held to be carrying on business in Australia. The extent to which this broader approach will be adopted in the context of the Corporations Act is not, however, clear.

## NOT CARRYING ON BUSINESS IN AUSTRALIA

Under the Corporations Act, a body corporate does not carry on business in Australia merely because it:

- is or becomes a party to a proceeding or effects settlement of a proceeding or of a claim or dispute in Australia;
- holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs in Australia;
- maintains a bank account in Australia;
- effects a sale through an independent contractor in Australia;
- solicits or procures an order that becomes a binding contract only if the order is accepted outside of Australia;
- creates evidence of a debt, or creates a charge on property in Australia;
- secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts in Australia;
- conducts an isolated transaction in Australia that is completed within a period of 31 days and is not repeated from time to time; or
- invests any of its funds or holds any property in Australia.

However, an entity engaging in these activities in combination may give rise to a determination that the entity is carrying on business in Australia.

## Are you carrying on a financial services business?

In Australia, if you carry on a financial services business, you need to:

- hold an Australian financial services licence (AFSL) or a foreign AFSL;
- be appointed as an authorised representative of an AFSL holder; or
- be exempt from the requirement to hold an AFSL (under Chapter 7 of the Corporations Act).

Generally, lenders are not covered by this licensing system (see the [Consumer Credit](#) section of this Guide regarding licensing for providers of credit), but most other types of financial services are covered (including deposit taking, foreign exchange contracts, derivatives, custody, managed investments, stockbroking, insurance and superannuation).

This also includes wholesale over-the-counter treasury and derivative trading, potentially even by entities which would consider themselves end users.

Under Australian legislation:

- a financial services provider may be deemed to be carrying on a financial services business in Australia even though it has no physical presence in Australia; and
- while there are some general licensing exemptions based on a financial services provider only dealing with institutional Australian counterparties (for example, Australian banks, financial services licence holders, insurers and fund managers), such exemptions are subject to specific limitations and will generally only apply to services provided from outside Australia.

## WHEN DO YOU NEED AN AFSL?

A foreign company may be affected by the AFSL regime if it:

- enters into spot, swap, repo, option or forward transactions in currency, commodities, metals, rates and indexes with persons in Australia through either the over-the-counter markets or through automated dealing systems;
- issues securities, shares, stocks, deposits, debentures, bonds, managed investment products or insurance to persons in Australia;
- effects secondary market trades in securities, shares, stocks, debentures, bonds or managed investment products as an agent or trustee of a person in Australia;
- enters into secondary market trades in securities, shares, stocks, debentures, bonds or managed investment products with counterparties who are persons in Australia while acting as an agent or trustee of a third person;
- provides giro post or other electronic non-cash payment facilities to persons in Australia; or
- holds securities, shares, stocks, debentures, bonds, managed investment products, or interests in such products, on trust for persons in Australia.

## DO AFSL EXEMPTIONS APPLY?

AFSL exemptions may be available to foreign financial services providers in certain situations, including for:

- transactions arranged or effected by an AFSL holder;
- certain products or services offered to Australian wholesale clients by financial services providers who are regulated by certain approved foreign regulators, and who comply with other applicable conditions so as to qualify for this relief (noting that, at the date of this Guide, financial services providers who are not currently relying on these 'passport' exemptions may apply for individual relief in the form of the 'passport' exemption, but with such relief (if granted) likely to expire on 31 March 2027);
- certain foreign financial services providers who are not otherwise carrying on business in Australia and who only provide limited financial services to Australian wholesale or professional investor clients from outside Australia (it is likely that the relief for services to wholesale clients will be replaced with a more limited form of relief in future); and
- supplementary services to an Australian client in relation to a product issued and acquired outside Australia.

The exact scope of these exemptions is technical and complex and, at the date of publication, certain exemptions are subject to legislative reform proposals. Much depends on the individual circumstances of the relevant financial services provider.

## AFSL REGIME

AFSLs are issued by ASIC on satisfaction of the relevant licensing application criteria. Licence applications can require extensive information in support of the application.

AFSL holders have a large range of obligations imposed on them. The Australian financial services regime differentiates between retail and wholesale clients. There are significant additional disclosure and conduct requirements where financial services are provided to retail clients. Breaches of the AFSL regime can lead to criminal sanctions and the possibility that counterparties can cancel transactions.

## Are you operating a financial market?

Persons who operate financial markets in Australia, including by having Australian market participants on a financial market otherwise operated outside Australia, must obtain an Australian market licence or be exempt from this requirement.

# Corporate Vehicles



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---

## Which business structure should you use?

The choice of structure used to invest and conduct business in Australia is central to your success in the market and will be influenced by a number of factors, including the nature of the business, tax issues and the needs of investors. Business structures include companies, trusts or managed investment schemes, joint ventures and partnerships. Relatively recently, corporate collective investment vehicles became another business structure available to investors in the Australian market. On the next page, is a table setting out the various structures, and for more information about corporate collective investment vehicles, see the [Corporate Collective Investment Vehicles](#) section of this Guide.

Business Structure	Key Features	Regulation
<p><b>Companies</b></p>	<p><b>Proprietary companies</b></p> <ul style="list-style-type: none"> <li>• At least 1 shareholder but no more than 50 non-employee shareholders</li> <li>• Must have at least 1 director who is ordinarily resident in Australia</li> <li>• Can, but need not, have a secretary</li> <li>• Must have a public officer for tax purposes</li> <li>• Must have a registered office in Australia</li> <li>• Managed by its directors</li> <li>• Shareholders' rights in relation to the company are governed by the company's constitution. A shareholders' agreement governs the relationship between the shareholders</li> <li>• Cannot engage in any activity that would require the lodgement of a prospectus (except for an offer of shares to existing shareholders or employees)</li> </ul> <p><b>Public companies</b></p> <ul style="list-style-type: none"> <li>• Must have at least 1 shareholder</li> <li>• Must have at least 3 directors (2 of whom are ordinarily resident in Australia)</li> <li>• Must have at least 1 secretary who is ordinarily resident in Australia</li> <li>• Must have a public officer for tax purposes</li> <li>• Must have a registered office in Australia</li> <li>• Managed by its directors</li> <li>• Shareholders' rights in relation to the company are governed by the company's constitution. If unlisted, a shareholders' agreement governs the relationship between the shareholders</li> <li>• May, but need not, be listed on the Australian Securities Exchange (ASX)</li> <li>• Subject to securities and other applicable laws, may issue a prospectus for the offer of shares, debentures or other securities</li> </ul>	<ul style="list-style-type: none"> <li>• Regulated by the Australian Securities and Investment Commission (ASIC) under the <i>Corporations Act 2001</i> (Cth) (Corporations Act)</li> <li>• In some cases, disclosure to investors may be required for capital raising purposes</li> </ul>

Business Structure	Key Features	Regulation
<b>Trusts/ Managed Investment Schemes (MIS)</b>	<b>Trusts and MISs</b> <ul style="list-style-type: none"> <li>A trustee owns the assets of the business and carries on the business for the benefit of the beneficiaries of the trust</li> <li>The trustee may be an individual or a corporation</li> <li>The MIS is a common trust structure which allows people to pool funds for a common purpose and make a profit</li> </ul>	<ul style="list-style-type: none"> <li>Need to operate under an Australian financial services licence (AFSL). The AFSL is usually held by the trustee, by the investment manager, or by an external party through representative and/or intermediary arrangements</li> <li>Regulated by the general law of trusts and the Corporations Act. See Mallesons publication, <a href="https://www.mallesons.com/au/en/insights/latest-thinking/publication/a-guide-to-investing-in-australian-real-estate-2025.html">Investing Down Under</a>, for a basic guide to trust law in Australia. This guide is accessible from <a href="https://www.mallesons.com/au/en/insights/latest-thinking/publication/a-guide-to-investing-in-australian-real-estate-2025.html">https://www.mallesons.com/au/en/insights/latest-thinking/publication/a-guide-to-investing-in-australian-real-estate-2025.html</a></li> </ul>
	<ul style="list-style-type: none"> <li>If investors are all wholesale, the trust will not need to be registered as an MIS</li> <li>The MIS is managed by a trustee/responsible entity and/or investment manager</li> </ul>	<ul style="list-style-type: none"> <li>Treasury is currently undertaking a review of the regulatory framework for MISs, including whether the existing thresholds that determine whether an investor is a wholesale client should be revised. If the monetary thresholds are increased, this may subject formerly wholesale funds to greater regulation (see adjacent). Treasury is yet to report its findings</li> </ul>
	<ul style="list-style-type: none"> <li>If there are any retail investors, the trust will generally need to be registered as an MIS. This also allows the MIS to raise capital from a larger pool of potential investors</li> <li>May, but need not, be listed on the ASX</li> </ul>	<ul style="list-style-type: none"> <li>If the trust is registered as an MIS, there is a heavier regulatory and compliance burden (additionally, there are likely to be disclosure and compliance obligations if the investors are retail)</li> <li>If the MIS is registered, the responsible entity must be a public company and hold an AFSL</li> </ul>
<b>Joint ventures</b>	<ul style="list-style-type: none"> <li>A joint venture creates a common enterprise for parties to assist each other with a common goal or project</li> <li>Investors' rights are governed by a joint venture agreement, a unitholders' agreement (where the joint venture vehicle is a trust) or a shareholders' agreement (where the joint venture vehicle is a company)</li> <li>Can be used in conjunction with all of the above structures</li> <li>Enables co-operation with other market participants, for example, ability to access other market participants' resources</li> </ul>	<ul style="list-style-type: none"> <li>Regulation can depend on the type of joint venture vehicle (eg a trust or company)</li> </ul>
<b>Partnerships</b>	<ul style="list-style-type: none"> <li>Not a separate legal entity – the partners are jointly and individually liable for the debts of the business</li> <li>Subject to certain exceptions, there cannot be more than 20 partners</li> <li>Shared control and management of the business by the partners</li> <li>A partnership deed would govern and regulate the relationship between partners</li> </ul>	<ul style="list-style-type: none"> <li>Partnership Acts of the States and Territories</li> <li>Partnership deed</li> <li>Common law</li> </ul>

# Corporate Collective Investment Vehicles



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In 2022 changes to Australia's corporations and tax laws took effect to allow for a new type of investment fund, the corporate collective investment vehicle (CCIV).

## A COMPANY WITH A CORPORATE DIRECTOR

A CCIV is a company with variable capital registered under the Corporations Act. It must have a single corporate director which is a public company that holds an AFSL. This differs from many foreign corporate fund models which require the appointment of natural person directors (such as the Hong Kong SAR and Singapore models). The Australian CCIV is based on the UK's OEIC (open ended investment company) model which allows for the appointment of a single authorised corporate director to operate the fund. This structure is similar to existing Australian retail MISs which are operated by a licensed company known as the 'responsible entity'. A CCIV is similar to an MIS in the way applications, redemptions, reporting and other operational matters are regulated.

## SUB FUNDS: PROTECTED CELLS

A CCIV can have an umbrella structure and is required to have at least one sub-fund but may have many. Each sub-fund has a class of shares which are referable to it and which represents a separate pool of assets with separate investors, but the sub-fund is not a separate legal entity. However, a sub-fund is a 'protected cell' in the sense that each sub-fund is a separate taxpayer, and the assets and liabilities of a sub-fund must not be attributed to or affect the other sub-funds. It is also treated for various practical purposes, including liquidity, as if it was a separate fund.

## LISTING AND QUOTATION

The legislation allows for a CCIV with a single sub-fund to have that sub-fund listed on ASX. Sub-funds could also have shares quoted on the AQUA market (an ASX platform tailored for managed funds and structured products).

## LICENSING AND REGISTRATION

The corporate director of a CCIV must have an AFSL with a specific authorisation. To register a CCIV, the applicant is required to lodge a constitution with ASIC and, for a retail CCIV, a compliance plan. Registration of subsequent sub-funds is expected to be a simple process. ASIC guidance on collective investments has been expanded to cover CCIVs.

## TAX TREATMENT

If a CCIV sub-fund makes only passive investments and otherwise qualifies, it can have flow through tax treatment as if it were an attribution managed investment trust or AMIT. The qualification requirements include that the sub-fund must be widely held and not closely held (with a ramp up period). A CCIV sub-fund that does not meet that widely held test will be taxed as a trust, with members 'presently entitled' to income if it is distributed within 3 months of financial year end.

Both Victoria and New South Wales have passed legislation to confirm that a sub-fund is to be treated as if it were a trust for stamp duty purposes.

## TRANSITION

There have been submissions to Government requesting streamlined processes and tax and stamp duty relief, for an existing MIS fund to convert into a CCIV, simply changing its corporate form. This has not been ruled out, but how and when it may be accommodated remains uncertain.

## ASIA REGION FUNDS PASSPORT

The CCIV was originally intended to be launched at the same time as the Asia Region Funds Passport (ARFP) regime which was the subject of a Memorandum of Co-operation signed in April 2016 among Australia, Japan, South Korea and New Zealand (with Thailand joining subsequently). The ARFP enables cross-border offerings of certain investment funds, but a number of requirements must be satisfied. Legislation to implement the ARFP was passed by Parliament in June 2018, well ahead of the introduction of the CCIV.

# W&I Insurance



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Warranty & Indemnity (W&I) insurance is a cornerstone of Australian and cross-border transactions in the M&A, real estate and energy space. Familiarity with the Australian W&I insurance market and processes will therefore greatly assist in ensuring appropriate risk allocation between buyers and sellers.

## WHAT IS W&I INSURANCE?

W&I insurance is a risk management tool used by corporates, private capital firms, property groups and other investors in the sale and purchase of shares in a company, units in a trust, businesses and other assets including land. It covers the buyer of the asset against financial loss resulting from a breach of a seller warranty under the sale agreement. In effect, in the event of a seller's breach of warranty, the buyer would seek to recover its loss directly from the W&I insurer under the policy as opposed to from the seller under the sale agreement.

W&I insurance typically also covers any market-standard general and tax indemnities given by the sellers.

W&I insurance is usually obtained by the buyer to protect itself. However, it is also possible, although not common, for the seller to purchase a 'sell side' policy. This type of policy operates like a liability insurance policy and covers the seller for claims made against it by the buyer for breaches of warranties and under the general and tax indemnities.

## WHY SHOULD THE PARTIES TO A TRANSACTION CONSIDER W&I INSURANCE?

W&I insurance has advantages for both the buyer and the seller in a transaction. For the seller, it can help provide a clean exit and protect the entity and even its directors and officers who could otherwise face a claim for warranty breaches. This can be a significant benefit for investors and holding companies wanting to have a clean exit from their investments and subsidiary operations. For the buyer, a W&I policy enhances the competitiveness of the bid because the buyer can transfer the risk of some potential warranty breaches to an insurer and therefore agree to a more balanced recourse regime with the seller. It can also help reduce credit risk in respect of claims for breaches of warranties.

For both parties, W&I insurance assists in navigating roadblocks when negotiating the sale document. It can also help maintain ongoing relationships as the buyer will not need to claim directly against a seller who may be a long-term or potential business partner.

It is due to these benefits that the availability of W&I insurance has also become an important consideration for boards and investment committees approving transactions.

## WHO SHOULD CONSIDER OBTAINING W&I INSURANCE?

W&I insurance is prevalent across the corporate landscape in Australia and globally. Sellers in competitive sale processes will often require the successful bidder to obtain W&I insurance as it limits the sellers' exposure post-completion. Even in circumstances where the sellers do not require W&I insurance, corporates and investors have considered W&I insurance to facilitate the negotiation of the sale or to lessen the impact of unknown breaches.

The utility of W&I insurance is also growing in sectors and across transaction types which historically have seen a lower level of engagement with this product. One example is public-to-private transactions where access to insurance for an otherwise limited-recourse transaction has shown to be alluring. Another example is the fintech and cryptocurrency sectors. W&I insurers have shown an increased appetite to provide cover for these sectors, which were previously considered to be too novel and high-risk.

Ultimately, the decision to obtain W&I insurance will depend on the nature and the risks of the transaction, the due diligence, any findings of the due diligence, the extent of cover offered by the insurer and the associated costs of obtaining and claiming on a policy.

### **THE IMPORTANCE OF DUE DILIGENCE AND GOOD ADVISORS**

A W&I policy, as with any kind of insurance policy, is subject to terms, conditions and exclusions. Other than the nature and inherent risks of a particular transaction, cover provided under a W&I policy will primarily depend on the extent and quality of due diligence as well as the findings of the due diligence process. Accordingly, to secure adequate coverage, it is important that the buyer and its advisors fully engage with the due diligence process, including any Q&A with the seller, and be prepared to justify their position to the insurer during underwriting.

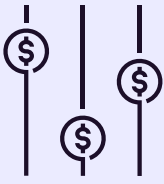
W&I insurance will not cover known issues. An expert legal team, assisted by other specialist advisors such as tax advisors, business advisors and subject-matter experts, will be able to use the due diligence to negotiate with insurers and limit the scope of any exclusions, instead of conceding broader formulations which insurers may put forward in the first instance. The legal advisors can similarly negotiate any standard exclusions to ensure these are narrowed as much as possible. There is also a growing market for other types of insurance policies which cover known issues, particularly in the tax space.

The buyer's legal team will otherwise negotiate the W&I policy wording, particularly in respect of conditions, procedures and limitations to enhance coverage and strengthen rights afforded to the insureds. Insurance brokers also play a key role for the insured by leveraging their knowledge of the industry to champion more buyer-friendly market positions and push back against unusual or unjustified exclusions or limitations.

A good insurance broker can also help navigate negotiations with W&I insurers which are more recent participants in the Australian market, supported by their global experience with those insurers. In a cross-border transaction, jurisdiction-specific diligence and advice could also be invaluable.

### **SOME IMPORTANT MATTERS YOU SHOULD KNOW ABOUT**

When underwriting a transaction, W&I insurers will pay attention to certain matters regardless of the nature of the transaction and assets. Buyers should consider these matters at the outset of the transaction (not just before commencing or during underwriting) so that they can structure their due diligence and negotiations accordingly. Some of these matters are set out on the right.



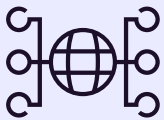
## Tax

W&I insurers are cautious when underwriting tax risks. Tax in Australia is subject to complex and evolving regulation and proactive enforcement activity which could result in lengthy and costly investigations and enforcement action. For this reason, most W&I insurers will begin underwriting by flagging secondary tax liabilities, transfer pricing and non-availability of tax losses as potential exclusions. This list can then be expanded (or shrunk) as underwriting into tax matters progresses. Tax due diligence is the key to obtaining coverage for tax matters. The W&I insurer will likely only provide cover to the extent it is satisfied that the insured has satisfied itself that there are no known and unmanaged tax risks, any possible tax risk is low-likelihood or low-impact and any residual tax risk is within the insurer's risk appetite.



## Anti-Money Laundering (AML), Anti-Bribery and Corruption (ABC) and Counter-Terrorism Financing (CTF)

AML, ABC and CTF compliance continues to be difficult to insure. Buyers seeking to acquire targets operating overseas (in particular in East Asia, South East Asia, South America and the United Arab Emirates) should ensure that the target's overseas operations and AML/ABC/CTF compliance programs are adequately covered during the due diligence process to secure coverage.



## Cyber Risks

Insurers are wary of underwriting cyber risks due to the frequency and severity of ransomware attacks, significant penalties for non-compliance with data protection laws, the continuous evolution of data risks and inherent vulnerabilities of IT businesses and global supply chains reliant on IT infrastructure. These concerns are exacerbated by, for example, the 2024 CrowdStrike and the 2025 AWS outages. Combined with the difficulty in securing standalone cyber insurance solutions for targets at a commercial premium, buyers should undertake adequate due diligence to obtain (usually limited) W&I cover in this respect.



## Pollution

Although not a new exclusion, significant interest in W&I insurance from buyers of real estate and real estate-adjacent assets, including battery energy storage systems, data centres, logistics, commercial offices, retirement villages and healthcare real estate, has put this exclusion on the radar of W&I insurers. To ameliorate this exclusion, some W&I insurers offer to underwrite excess or 'top-up' pollution liability cover (which, like the cyber W&I cover discussed above, is usually limited). The W&I insurer must be satisfied of the adequacy of the target's existing pollution cover, backed by 'clean' due diligence. In our experience, some W&I insurers can get comfortable with small and contained incidents not reflecting systemic issues or inherent deficiencies. However, significant, systemic or recurring issues will work against the buyer.



## Employment and Pension Matters

Compliance with employment and social security laws, including compliance with modern awards, correct worker classification and appropriate funding of defined benefit pensions, is another area of focus for insurers. Given the evolving regulatory regimes, exposure to penalties and the comprehensive remediation activity which has been required in this area, insurers require extensive due diligence and payroll sampling before they consider offering more favourable coverage terms. Engaging with these exercises early on is important if the buyer requires coverage for such matters, in particular in respect of sampling, which can be costly and time-consuming.



## Cross-Jurisdictional Risks

With the exception of the United States, the United Kingdom, New Zealand and a small number of other jurisdictions with comparable compliance regimes to Australia, it is more difficult to ensure compliance with all regulatory requirements in foreign jurisdictions in which the target group operates. As a result, the insurer may seek to read down the seller warranties. Buyers should nonetheless ensure that they diligence the operations of the target group in its foreign jurisdiction (including procurement, sales and legal compliance) to optimise insurance coverage if possible.

## HOW DO YOU CONTACT A W&I INSURER?

The W&I insurance market in Australia is intermediated, meaning that contact with insurers is via insurance brokers. After the buyer appoints an insurance broker, the broker approaches insurers, typically providing them with draft transaction documents, key information about the deal and the coverage sought. The broker then prepares a list of potential insurers and recommendations to assist the buyer in selecting an insurer in consultation with its advisors.

Occasionally, especially in competitive sales, the seller may start this process in the preliminary stages of the transaction (for example, in parallel to vendor due diligence or when the successful bidder or proposed buyer has not yet been identified) to expedite the sale and then 'flips' the policy to the buyer, which will then work with the broker and the insurer which the seller has chosen to finalise the process.

## MAKING CLAIMS UNDER W&I INSURANCE POLICIES

A W&I policy will have a number of conditions with respect to making a claim, including strict time limits on reporting, procedures and claim notice content requirements. An important precondition to claims can also be claim value: both individual claim value and aggregate values of all claims. It is important that all levels of management involved in the process of identifying and notifying breaches are familiar with the requirements of the W&I policy so that they can assist with the timely and effective notification of claims.

# Foreign Investment Regulation



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## Do you Need Foreign Investment Review Board Approval?

Are you a foreign person under the FIRB regime? If so, your Australian investment may need prior approval.

Foreign investment in Australia is regulated by the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (FATA), the *Foreign Acquisitions and Takeovers Regulation 2015* (Regulations) and the Australian Government's Foreign Investment Policy (collectively, the FIRB regime). The Australian Government minister responsible for making decisions under the FIRB regime is the Australian Federal Treasurer (Treasurer). The Treasurer is advised by the Foreign Investment Review Board (FIRB) which is an advisory body. Applications to the Treasurer under the FATA are made through the FIRB and processed by the Federal Department of Treasury.

Where a proposed acquisition falls within the scope of the FIRB regime, a foreign person needs to consider whether they must, or should, provide prior notification of the acquisition and seek a no objection notification from the Treasurer through FIRB (FIRB approval).

A foreign person is:

- an individual who is not ordinarily resident in Australia (ordinarily resident, for a person other than an Australian citizen, means that the person has resided in Australia for 200 days or more in the immediately preceding 12 months);
- a corporation in which an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds a substantial interest of 20% or more;
- a corporation in which 2 or more foreign persons hold an aggregate substantial interest of 40% or more;

- the trustee of a trust in which an individual not ordinarily resident in Australia, a foreign corporation or a foreign government, holds a substantial interest of 20% or more of the assets or income of the trust;
- the trustee of a trust in which 2 or more foreign persons hold an aggregate substantial interest of 40% or more of the assets or income of the trust; or
- a person prescribed by the Regulations to be a foreign government investor.

### WHO IS A FOREIGN GOVERNMENT INVESTOR?

Some foreign persons are foreign government investors, which affects FIRB approval thresholds. A foreign government investor is:

- a foreign government or separate government entity; or
- a corporation, trustee of a trust or general partner of a limited partnership in which:
  - one or more foreign governments or separate government entities from the same country hold an aggregate interest of at least 20%; or
  - foreign governments or separate government entities of more than one foreign country, together with any one or more associates, hold an aggregate interest of at least 40%.

A fund with passive foreign government entities in its ownership of 40% but no single holding of 20% (including by foreign government investors from a single country) is not a foreign government investor.

A foreign government means an entity that is:

- a body politic of a foreign country;
- a body politic of part of a foreign country; or
- a part of a body politic of a foreign country or a part of a body politic of part of a foreign country.

A 'separate government entity' means an individual, corporation or corporation sole that is an agency or instrumentality of a foreign country or a part of a foreign country, but not part of the body politic of a foreign country or of a part of a foreign country.

The analysis needs to be undertaken in relation to each of the entity's shareholders and continue up for each level of the ownership chain on an entity-by-entity basis. For funds, the analysis is undertaken in respect of the upstream ownership chains of both the legal owners (the trustees/general partners) and the beneficial owners (the beneficiaries/limited partners).

Government entities can include sovereign wealth funds, state-owned enterprises, statutory authorities, state pension funds, public universities, government guided investment funds, funds managed by state-owned entities and private equity funds with limited partners that are government entities.

### WHEN IS FIRB APPROVAL COMPULSORY?

Certain proposed acquisitions require prior FIRB approval in order to avoid civil and criminal sanctions under the FATA. This is where a foreign person proposes to acquire:

- a substantial interest (20% or more) in an Australian corporation where the consideration value of the interest or the total assets of the corporation are valued at A\$347 million or more. A higher threshold may apply for non-government investors from some countries under free trade agreements;

A substantial interest could include actual voting or veto power, interests in shares or units or a right to acquire such an interest (for example, through a convertible note or option);

- a direct interest (10% or more) in an Australian agribusiness where the cumulative interests held in the Australian agribusiness by the foreign person are valued at A\$75 million or more;
- a direct interest (10% or more) in an Australian media business;
- a direct interest (10% or more) in an Australian land entity over the applicable monetary threshold values depending on its land holdings;
- a direct interest (10% or more) in a national security business;
- any interest in national security land;

- any interest in Australian land, in the absence of an exemption, over the following threshold values:
  - vacant commercial land, national security land or residential land – A\$0;
  - sensitive commercial land (including land used for public infrastructure, storage of biological agents, telecommunications, storage of bulk data, financial institutions or to be leased to a government body) – A\$75 million;
  - non sensitive commercial land – A\$347 million;
  - agricultural land (being land used or which could reasonably be used for the purpose of primary production) - cumulative interests held by the foreign person valued at A\$15 million; and
  - mining or production tenement – A\$0.

For the purposes of the FATA, a 'direct interest' can also be 0% where control or influence is acquired, such as the right to appoint a director or 5% where there is an agreement relating to the businesses of the buyer and the target.

From 1 April 2025 to 31 March 2027, Australian Government policy generally bans foreign persons from purchasing established dwellings. This is subject to limited exceptions, including for commercial scale housing (for example build-to-rent), and where the acquisition is incidental to a larger transaction, as determined on a case-by-case basis.

Acquisitions by foreign government investors are subject to lower thresholds (see below).

Certain passive increases in securities holdings (where holdings increase due to actions of third parties, for example, buybacks or redemption) are also required to be notified to the Treasurer within 30 days. Notification is required where the increase results in a foreign person holding an interest that exceeds a relevant ownership threshold where the relevant monetary thresholds are also met.

When determining whether prior FIRB approval must be obtained, bear in mind that:

- an interest in land includes any interest in a land entity (a company or trust where more than 50% of the assets of the target are Australian land);
- foreign investments where potential voting power or potential shareholdings will be acquired (including the entry into of options or acquisition of convertible notes) require prior FIRB approval if the relevant interest and value thresholds under the FATA are met; and
- holdings of any associates of a foreign person will be included when determining whether a substantial interest or direct interest is to be acquired. Foreign government investors from the same country are automatically associates.

Monetary threshold A\$ amounts are indexed annually on 1 January, except for the more than A\$15 million (cumulative) threshold for agricultural land and the more than A\$50 million threshold for agricultural land for Thailand investors, which are not indexed, and a higher threshold of A\$1,498 million (indexed) may apply for non-government investors from some countries under free trade agreements.

Foreign persons must also notify FIRB of any proposals to start a national security business in Australia.

### WHEN IS FIRB APPROVAL COMPULSORY FOR FOREIGN GOVERNMENT INVESTORS?

The FATA provides that prior FIRB approval by foreign government investors must be sought for acquisitions of:

- a direct interest (10% or more) in an Australian entity or business;
- an interest in a tenement, including exploration tenements;
- a direct interest (10% or more) in mining, production or exploration entities; and
- any interest in Australian land (subject to narrow exceptions).

Foreign government investors must also notify FIRB of any proposals to establish new businesses in Australia.

### ARE EXEMPTIONS AVAILABLE UNDER FATA?

If an acquisition falls within an exemption under the FATA, then FIRB approval will not be required. There are a number of exemptions under the FATA. Common exemptions include:

- acquisitions from government entities (this exemption is not available in relation to critical infrastructure (such as roads, railways, a telecommunications network or nuclear facility), national security businesses, national security land or for foreign government investors);
- acquisitions that occur in the ordinary course of carrying on a business of lending money and the interest is held solely by way of security for the purposes of the money lending agreement; and
- acquisitions of interests in securities of an entity through a pro-rata rights issue.

### IS A 'VOLUNTARY' FIRB NOTICE ADVISABLE?

Some proposed acquisitions are not compulsorily notifiable but may activate the Treasurer's powers to make adverse orders. If the Treasurer considers a proposal to be contrary to Australia's national interest, the Treasurer can make orders including prohibition or divestment. To remove this risk, a foreign person can obtain prior FIRB approval.

Proposed acquisitions for which a 'voluntary' notice may be given and FIRB approval obtained include:

- the acquisition of a substantial interest in a foreign target with downstream Australian assets or revenue valued at A\$347 million or more;
- the acquisition of assets comprising an Australian business valued at A\$347 million or more;
- the acquisition is in a national security sector but does not require a mandatory notification (a reviewable national security action);
- where a foreign person has the ability to determine the policy of an Australian corporation in relation to any matter; and
- certain board representation arrangements or alterations of the constitution or other constituent documents of an Australian corporation carrying on an Australian business.

The Treasurer can 'call in' for review reviewable national security actions which are not otherwise notified if the Treasurer considers that the action may pose national security concerns. The review can occur when the action is still proposed or up to 10 years after the action has been taken.

### NATIONAL INTEREST CONSIDERATIONS

In examining proposed investments, the Australian Government will typically have regard to 'national interest considerations' as follows:

- whether an investment may impact on Australia's national security;
- whether an investment may hinder competition or lead to undue concentration or control in the industry or sectors concerned;
- whether an investment may impact on Australian Government revenue or other policies (ie tax);
- whether an investment may impact on the operations and directions of an Australian business, as well as its contribution to the Australian economy and broader community;
- the character of the investor:
  - whether an investor's operations are independent from any relevant foreign government including any level of control or influence the foreign government may have and the reasons for their investment and interest in the investor; and
  - whether an investor is subject to and adheres to the law and observes common standards of business behaviour.

A fundamental concern for foreign government related investment is that any investment by a foreign government investor is made on a commercial basis, with understood and clear predictable outcomes. It cannot be an investment made for a strategic government objective.

The test against which all FIRB applications (excluding national security only applications) are assessed is whether the proposal is contrary to Australia's national interest. There is no definition of 'national interest' and applications are assessed on a case-by-case basis. There is no obligation to demonstrate that positive benefits to Australia will flow from the proposal. Rather, the Treasurer may attach conditions to a FIRB approval where compliance with the conditions is necessary in order to prevent the proposal from being contrary to Australia's national interest.

FIRB will circulate the proposal among relevant Federal and State Government departments and other bodies, such as the Australian Taxation Office and the Australian Competition and Consumer Commission, to ascertain their views as to whether the proposal is contrary to the national interest.

### WHAT IS A NATIONAL SECURITY ACTION?

Any acquisition of an interest in national security land or a direct interest (10% or more) in a national security business is considered a 'notifiable national security action' and will be subject to a A\$0 threshold. In addition, the proportionate ownership threshold for interests in a national security business reduces to 0% where control or influence are acquired.

National security land is defined as Defence premises or land where a National Intelligence Community agency holds an interest that is publicly known, or ascertainable through reasonable inquiries.

A business is considered a national security business if it is carried on, wholly or partly, in Australia whether or not in anticipation of profit or gain and it is publicly known, or could be known through reasonable enquiries, that the business is of one of the following kinds:

- it is a responsible entity for, or a direct interest holder in, a critical infrastructure asset under the *Security of Critical Infrastructure Act 2018* (Cth) (SOCI Act);
- it is a telecommunications carrier or nominated carriage service provider;

- it develops, manufactures or supplies critical goods, technology or services for a military or intelligence use;
- it stores or has access to classified information; or
- it collects, stores or maintains security sensitive personal information for the Australian Defence Force, the Department of Defence or an intelligence agency.

Recent changes to the SOCI Act have considerably expanded the types of critical infrastructure assets and sectors. This means that more businesses will be deemed 'responsible entities' and 'direct interest holders' for critical infrastructure assets under the SOCI Act, which in turn renders these businesses national security businesses under the FIRB regime.

The sectors now covered by the SOCI Act are communications, data storage or processing, financial services and markets, water and sewerage, energy, healthcare and medical, higher education and research, food and grocery, transport, space technology and the defence industry. See the [Critical Infrastructure](#) section of this Guide for more information on the SOCI Act.

### TIMING AND APPLICATION PROCESS

In 2025 the Foreign Investment Portal (FIRB Portal) was introduced to standardise the information being provided with each application. Once a proposed acquisition is notified to FIRB via the FIRB Portal and the relevant fee received by FIRB, the Treasurer has an initial 30 days to decide whether or not to object to the acquisition and a further 10 days to notify the applicant of the decision. Where the Treasurer considers that further time is required to assess a proposal, the applicant may request a voluntary extension of time or, alternatively, the Treasurer may unilaterally extend the time by up to 90 days or issue an Interim Order, which is made public, and extend the time by up to 90 days. Extensions are common. For sensitive applications, extensions may exceed 90 days.

The FIRB Portal also includes mandatory questions relating to Australia's merger control regime, linking the 2 regulatory approval processes. These include questions relating to whether a merger notification has been made to the Australian Competition & Consumer Commission and details of the parties' Australian revenues.

### APPLICATION FEES

Fees are payable to the Australian government when making FIRB applications. The fee will vary depending on the nature of the interest being acquired and the amount of consideration. The fees generally range from A\$4,500 for small transactions to up to A\$1,205,200 for some large transactions. For example, the fee for commercial land and business acquisitions valued at more than A\$50 million but not more than A\$100 million is A\$30,300, and the fee increases by A\$30,300 increments with every A\$50 million increase in consideration.

Where a voluntary notification of a reviewable national security action is being made, the fees range from A\$1,125 for small transactions to up to A\$301,300, increasing based on the consideration for the transaction. The application fees are indexed annually.

Residential and agricultural land attract higher application fees, but there is some relief for commercial scale housing projects.

### EXEMPTION CERTIFICATES

An exemption certificate provides a standing pre-approval enabling the relevant foreign person to undertake acquisitions. There are various types of exemption certificates, including those that cover acquisitions of Australian business assets and entities, interests in Australian land and, in limited circumstances, interests in national security land or national security businesses.

Exemption certificates allow acquisitions to be made within a defined scope of coverage, including a set financial limit, and are valid for a specified period (1 year to up to 3 years).

Instead of notification before each separate acquisition, a foreign person holding a valid exemption certificate would notify acquisitions to FIRB after completion.

### REGISTER OF FOREIGN OWNERSHIP OF AUSTRALIAN ASSETS

The Register of Foreign Ownership of Australian Assets (Register) provides the Australian Government with visibility of the level of foreign ownership in Australian assets and is managed by the Australian Taxation Office. The registration obligation is a separate and additional obligation to the FIRB notification regime. Unlike the pre-transaction notification requirements, the Register's registration requirements apply within 30 days after the relevant transaction or event. Registration may be required even if pre-transaction notification is not required and no FIRB approval is obtained.

In general, the Register requires registration of:

- any acquisition of land (including leases and interests in land entities), regardless of the value; and
- acquisitions of entities and businesses that receive a no objection notification or are covered under an exemption certificate.

Certain changes in, and disposal of, assets will also need to be registered. A new foreign person that holds certain assets also has to consider their registration obligation, as well as those that cease to be a foreign person. When an entity becomes a foreign person, a stocktake of all assets and interests may be required to register relevant assets that it holds to ensure that registration requirements are satisfied within 30 days of the entity becoming a foreign person. This can be onerous, and businesses should take care to ensure all relevant registrations have been made to avoid penalties for non-compliance.

# Competition and Anti-Trust



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Before commencing business in the Australian market, it is important to be familiar with Australia's competition laws which restrict certain activities by businesses in Australia. Australia now has a mandatory and suspensory notification regime.

Australia's competition and consumer laws are contained in the *Competition and Consumer Act 2010* (Cth) (Competition Act). The Competition Act has a degree of extra-territorial application and may apply to conduct engaged in outside of Australia by corporations incorporated in Australia, registered as a foreign company in Australia or carrying on business in Australia.

The competition authority in Australia, the Australian Competition and Consumer Commission (ACCC), takes compliance very seriously. The ACCC has a range of investigatory powers, including powers to compel the production of information and documents and to examine individuals under oath and without privilege against self-incrimination.

In 2025, the ACCC continued its focus on the protection of consumer rights and promoting competition in essential services, like telecommunications, electricity, gas and financial services. Competition and consumer issues in the supermarket and aviation sectors received particular attention. We expect consumer-facing issues to remain a focus in 2026, as well as the ACCC's enduring priorities including investigating and prosecuting cartels, scams, anti-competitive conduct and product safety issues which have the potential to cause serious harm to consumers.

The ACCC has established ties with foreign competition law and intelligence agencies, governed by treaties, free trade agreements and bilateral and multilateral co-operation agreements. These agreements often allow for information sharing and coordination of enforcement activities between agencies. The ACCC is an active participant in several international forums and groups, including the International Competition Network, a global forum of national competition law agencies.

## MERGER AND INVESTMENT CONTROL

Following the introduction of an administrative merger control regime on 1 January 2026, ACCC clearance is mandatory for the acquisition of shares and assets which have a connection to Australia, that meet monetary thresholds and are not exempt. There is a control test, which from 1 April 2026 has been supplemented by a voting power test.

At present, transactions requiring notification cannot complete without clearance or a notification waiver – and are otherwise automatically void.

The ACCC can block a transaction if it is satisfied that the transaction would have the effect, or be likely to have the effect, of substantially lessening competition in a market in Australia. A limited form of merits review to the Australian Competition Tribunal is available.

The merger control regime includes statutory timeframes for the ACCC's review periods, prescribed filing requirements, and a notification waiver mechanism which is available for limited 'no overlaps' circumstances. Filing fees are applicable (the amount of which depends on the stage of review required).

## NOTIFICATION THRESHOLDS

Notification is required for a share or unit acquisition resulting in a controlling interest (including joint control) or an asset acquisition, if any of the 5 notification thresholds set out on the following page are met.



# 1 Acquisitions resulting in large or larger corporate groups

- Shares or assets to be acquired are connected with Australia
- The combined Australian revenue of the following parties is at least **\$200 million**
  - the acquirer group (including connected entities)
  - for share acquisitions - the target (including connected entities) being acquired
  - for acquisitions of assets that form all or substantially all of the assets of a business - the Australian revenue attributable to the business, **AND**
- EITHER
- the target Australian revenue below is at least **\$50 million**
  - for share acquisitions - the Australian revenue of the target (including any connected entities being acquired)
  - for acquisitions of assets that form all or substantially all of the assets of a business - the Australian revenue attributable to the business
- OR
- the overall transaction/market value is at least **\$250 million**



# 2 Acquisitions by very large corporate groups

- Shares or assets to be acquired are connected with Australia
- Australian revenue of acquirer group (including connected entities) is at least **\$500 million, AND**
- the Australian revenue below is at least **\$10 million**
  - for shares acquisitions – the Australian revenue of the target (including any connected entities being acquired)
  - for acquisitions of assets that form all or substantially all of the assets of a business - the Australian revenue attributable to the business



# 3 3 year 'look back'

## Large corporate groups (as set out in threshold 1)

- In determining whether the **\$50 million** 'target threshold' above is satisfied, also **include** the cumulative Australian revenue (as at the relevant contract date) attributable to any shares or assets acquired by the acquirer in the past 3 years where those shares or assets relate to the carrying on of a business that predominantly involves the supply or acquisition of the same or substitutable goods or services (regardless of where located in Australia)

BUT:

- **Exclude** share acquisitions (or acquisitions of assets that form all or substantially all of the assets of a business) where the Australian revenue attributable to the target is less than \$2 million
- **Exclude** acquisitions of assets that do not form all or substantially all the assets of a business, if the market value of the asset is less than \$2 million

OR

## Very large corporate groups (as set out in threshold 2)

- In determining whether the **\$10 million** 'target threshold' above is satisfied, also **include** the cumulative Australian revenue (as at the relevant contract date) attributable to any shares or assets acquired by the acquirer in the past 3 years where those shares or assets relate to the carrying on of a business that predominantly involves the supply or acquisition of the same or substitutable goods or services (regardless of where located in Australia)

BUT:

- **Exclude** share acquisitions (or acquisitions of assets that form all or substantially all of the assets of a business) where the Australian revenue attributable to the target is less than \$2 million
- **Exclude** acquisitions of assets that do not form all or substantially all the assets of a business, if the market value of the asset is less than \$2 million



# 4 New standalone asset acquisition thresholds

- Assets connected with Australia do not form all, or substantially all, of the assets of a business to be acquired, **AND**
- Australian revenue of acquirer group (including connected entities) is at least **\$200 million, AND**
- Overall transaction/market value is at least **\$200 million** on the contract date

- Assets connected with Australia do not form all, or substantially all, of the assets of a business to be acquired, **AND**
- Australian revenue of acquirer group (including connected entities) is at least **\$500 million, AND**
- Overall transaction/market value is at least **\$50 million** on the contract date



# 5 Targeted thresholds

- Acquisition of a supermarket by a major supermarket (Coles and Woolworths and their connected entities)
- Acquisition of shares or assets by a major supermarket which results in the acquisition of an interest in land that meets certain size requirements (and is not an extension or renewal of a lease for land upon or where the acquisition of an equitable interest in that land has previously been notified to the ACCC)

Threshold (5) above is only applicable for transactions put into effect from 1 April 2026 onwards.

In contrast to the previous voluntary regime, more transactions – including global transactions – are subject to ACCC clearance.

Some limited exceptions apply to transactions relating to land, financing, and financial markets, as well as acquisitions of assets in the ordinary course of business.

Transactions that do not trigger the notification thresholds remain subject to the prohibition in the Competition Act of transactions that would likely have the effect of substantially lessening competition in an Australian market.

## CARTELS

The Competition Act prohibits cartels outright (price fixing, market sharing, output restrictions and bid rigging), irrespective of their effect on competition. The prohibitions can be civil or criminal.

The ACCC remains focused on investigating criminal cartel conduct and will continue to include individual officers and employees as co-defendants.

The ACCC has also committed to continuing its focus on detecting and prosecuting civil cartel conduct.

Attempts to induce others into engaging in cartel conduct are also prohibited. In 2023, Bluescope was ordered to pay a A\$57.5 million penalty, the highest ever imposed for cartel conduct in Australia in an attempt case. An appeal lodged by Bluescope was dismissed by the Court in August 2025, and the penalties remained in place. In 2024, a A\$1.5 million penalty was imposed on a company in another 'attempt' case, with the company's sole director personally fined A\$120,000.

The consequences of engaging in a cartel, or even attempting to do so, include fines of up to 30% of the Australian group's annual turnover, follow on actions for damages, (including through class actions) and up to 10 years' imprisonment and banning orders for individuals involved in the cartel.

The ACCC has an immunity policy for cartel conduct. It also has a co-operation policy for granting leniency for cartel conduct.

There are some complete defences and exceptions to the prohibitions on cartels, including for limited types of joint ventures and collective acquisitions.

Defendants bear the evidentiary burden of proving that the complete defences or exceptions apply in their case.

## CONCERTED PRACTICES

A 'concerted practice' is intended to capture conduct that falls short of a contract, arrangement or understanding that is required to establish cartel conduct.

It can be any form of co-operation between 2 or more persons or conduct that would be likely to establish co-operation which reduces uncertainty or 'the risks of competition'. In effect, persons engaging in a concerted practice are not responding to market conditions in an independent way.

A concerted practice will amount to a civil contravention of the Competition Act if it has the purpose, or the effect or likely effect, of substantially lessening competition.

There is no need to show reciprocity or commitment between those involved in a concerted practice (although reciprocity and commitment may assist a finding of a concerted practice) and a concerted practice may be established in the absence of any direct contact between the persons.

However, concerted practices are not intended to capture instances of mere parallel conduct.

The ACCC has suggested that it is a fairly low bar to establish a concerted practice and the types of conduct that may be caught are quite broad.

Although the ACCC is yet to bring formal action against a party under the concerted practices prohibition, this will continue to be an area of focus.

## OTHER FORMS OF ANTI-COMPETITIVE CONDUCT

The Competition Act prohibits other types of anti-competitive conduct, including:

- vertical arrangements that have the purpose or likely effect of substantially lessening competition, vertical price fixing and certain types of tying conduct;
- unilateral conduct that has the purpose or likely effect of substantially lessening competition, where a company has a substantial degree of power in a market; and
- other arrangements that have the purpose or likely effect of substantially lessening competition in a market.

## STANDARD FORM CONTRACTS

The Competition Act prohibits proposing, applying or relying on an 'unfair term' of a standard form contract. Substantial penalties can apply.

As well as applying to standard form contracts with consumers, the prohibition applies to standard form contracts entered into with businesses of fewer than 100 employees or turnover of less than A\$10M.

A standard form contract is one that has been prepared by one party to the contract and where the other party has little or no opportunity to negotiate the terms, traditionally offered on a 'take it or leave it' basis. A term can be unfair where it would cause a significant imbalance in the parties' rights and obligations, is not reasonably necessary to protect the legitimate interests of the advantaged party and would cause detriment to the counterparty if relied upon.

This prohibition may impact an investor's approach to entering into contracts in Australia, including where the investor has standard form contracts that they prefer to use in other countries.

## OTHER CONSUMER LAW REGULATION

The Competition Act also contains:

- a prohibition on unconscionable conduct, which applies to conduct that is very unfair or particularly harsh or oppressive. To be considered 'unconscionable conduct', the conduct in question must be more than simply unfair, it must be against conscience as judged against the norms of Australian society; and
- certain consumer guarantees, which automatically apply to products and services to the benefit of consumers and irrespective of any limitations in the contract of sale.



**Mallesons In Competition blog**

<https://pulse.mallesons.com/in-competition/>

# Listed Security Markets and Public Transactions



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## How are Australia's Listed Security markets and public transactions regulated?

Australia's well-developed, innovative and highly regarded markets play an economically essential role in bringing together saving and investment, allocating capital to its most efficient uses, and managing cash flow and balance sheet risks for investors, business and government.

Recently, primary issuance remains subdued with de-listings outpacing new listings. However, public and private market dynamics are shifting due to structural and cyclical factors.

Trading activity in many Australian listed security market sectors is higher than the size of the economy might indicate. In addition, Australia has one of the largest pools of managed assets in the world, including total superannuation assets of A\$4.3 trillion as at 30 June 2025. As at January 2025, the finance sector comprises 7.7% of Australia's key economic output (an increase of 0.2% in the last 12 months) as identified by the Reserve Bank of Australia, behind only the mining (9.9%) and health and education (13.9%) sectors, and ahead of the construction (7.6%) and manufacturing (5.7%) sectors. The Australian dollar is one of the 10 most actively traded currencies globally and while the Australian debt market is relatively small on a global scale, Australian dollar denominated debt is included in several key global indices used by institutional investors.

## ASIC AND THE CORPORATIONS ACT

Companies, registered MISs and the securities industry are governed by the *Corporations Act 2001* (Cth) (Corporations Act), overseen by the Australian Securities and Investments Commission (ASIC). The Corporations Act includes provisions which govern:

- the administration of companies, including financial reporting requirements;
- listed entity mergers and acquisitions;
- disclosure of interests by shareholders in listed entities;
- licensing of dealers, advisers, trustees, custodians, market makers, market operators and other providers of financial products or services in relation to financial products such as securities, managed investment products, deposits, certain types of insurance, derivatives, foreign exchange contracts and government debentures, stocks or bonds;
- conduct and disclosure requirements for participants in the financial services industry;
- trading in financial products by holders of inside information and other forms of prohibited conduct relating to financial products and services; and
- fundraising by companies and other entities.

Many provisions of the Corporations Act are technical and complex. Professional advice should be sought whenever it is intended to undertake activities which may come within its operation.

## AUSTRALIAN SECURITIES EXCHANGE (ASX) AND THE ASX LISTING RULES

The ASX is operated by ASX Limited (which is a listed company). ASIC supervises trading activities by market participants, as defined in the Market Integrity Rules. Listed entities must comply with the ASX Listing Rules (as well as the Corporations Act). The ASX Listing Rules include provisions requiring listed entities:

- to make regular reports and disclosures;
- to make prior disclosure and seek shareholder approval if they wish to undertake certain transactions; and
- to ensure that matters of administration (for example, issue of holding statements for securities) and transactions (for example, on market share buy backs) conform to certain requirements and standards.

### ASX'S MARKET STATISTICS AS AT FINANCIAL YEAR ENDED 30 JUNE 2025

- Market capitalisation: A\$3.0 trillion
- Number of listed entities: 2083
- New listings: 69
- Capital raised in FY24: A\$89.97 billion

Source: ASX Limited Annual Report 2025

## CBOE (FORMERLY CHI-X)

Cboe Australia Pty Ltd (Cboe) also has a market licence to operate a securities exchange in Australia and offers trading in ASX quoted equities and other products, including warrants and funds. In 2015, Chi-X, which was acquired by Cboe Global Markets in June 2021, launched an investment products platform that enabled it to compete with the ASX in the quotation of investment products that are exclusively traded on its market. The investment products platform complemented its continued growth as an established execution platform for Australian listed cash equities.

Entities continue to list on, and deal solely with, the ASX, and securities are officially quoted on the ASX only. Cboe determines which securities in the S&P/ASX 200 and ASX-listed exchange traded funds (ETFs) may be traded on its market. Cboe currently has around 20% of Australia's total dollar turnover in equity market products.

Cboe BIDS Australia is a broker neutral block trading platform. Cboe BIDS Australia enables Cboe Australia market participants and their clients to submit messages indicating trading interest and provides an opportunity to firm-up that trading interest, after it is matched, by submitting a firm order. Matched firm orders result in an on-exchange trade execution on Cboe BIDS Australia.

## TAKEOVERS AND SCHEMES OF ARRANGEMENT

There is a takeovers prohibition in Chapter 6 of the Corporations Act which applies in relation to the acquisition of interests in all Australian listed companies, listed MISs and unlisted companies with more than 50 members. Under this prohibition, a person must not obtain a 'relevant interest' in issued voting shares of a company or voting interests in an MIS that results in a person having 'voting power' of more than 20%, except through one of the permitted exceptions (for example, a takeover bid, a scheme of arrangement, with target securityholder approval or making a permitted 'creeping' acquisition).

## TAKEOVER BIDS

A takeover bid may take the form of an off-market bid or a market bid. Off-market bids are made by written offers to a target's securityholders. Market bids are undertaken by on-market acquisitions on the ASX by the bidder at a stated price.

Off-market bids are more common due to their flexibility. They may be conditional, either full or partial bids and the consideration offered may be cash, securities or a combination. There are few market bids as they must be unconditional, in cash and a full bid for all securities in a class.

During a takeover bid, various documents must be lodged with ASIC and the ASX, including the bidder's statement and target's statement which provide disclosure to the target's securityholders and the market. The Federal Treasurer may need to be notified of certain proposals under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (see the [Foreign Investment Regulation](#) section of this Guide). From 1 January 2026, if a takeover bid meets specific monetary or sector-based thresholds, the bid cannot be completed without an approval or waiver from the Australian Competition and Consumer Commission (see the [Competition and Anti-Trust](#) section of this Guide). The Takeovers Panel is the primary adjudication body for takeovers in Australia.

## SCHEMES OF ARRANGEMENT

A scheme of arrangement is an alternative to a takeover bid and requires the support of the target and its securityholders to implement the scheme. It is a court approved process and provides flexibility to combine multiple schemes in a transaction for multiple purposes (for example, an acquisition with a demerger). A successful scheme needs the approval of 75% by value and 50% by number of each class of securityholders present and voting at a scheme meeting (excluding any votes cast by the bidder or any of its associates) plus the court to exercise its general discretion to approve the scheme.

The flexible structure of a scheme of arrangement is a key advantage over the relatively prescriptive regime for takeover bids and allows a bidder not only to pay any combination of cash or scrip as consideration for an acquisition (for example, having a maximum cash pool available) but also enables an acquisition simultaneously to incorporate additional complexities, such as the transfer or demerger of specified assets or liabilities or the reduction of a target's capital.



**Our Guide to Takeovers and Schemes**

<https://mallesons.digital/takeovers-guide>

# 3. Financial Markets and Regulation



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## Financial Market Infrastructure

As of 2020, financial market infrastructures (FMIs) in Australia supported transactions in securities with a total annual value of A\$18 trillion and derivatives with a total annual notional value of A\$185 trillion.

In Australia the key regulators of FMIs are the Reserve Bank of Australia (RBA) and ASIC.

There are 4 classes of FMI currently subject to licensing requirements under the *Corporations Act 2001* (Cth) (Corporations Act). These are:

- Financial market operators;
- Clearing and settlement (CS) facilities;
- Financial benchmark administrators; and
- Derivative trade repositories.

### FINANCIAL MARKETS

A person that operates a financial market in this jurisdiction must hold an Australian market licence that authorises the person to operate the market in this jurisdiction unless the financial market is exempt from the requirement to hold a licence.

ASIC supervises licensed financial markets, issues market integrity rules, and monitors Australian market licensees' and participants' compliance with those rules. ASIC also monitors the compliance of Australian market licensees with the conditions of their licence and obligations set out in the Corporations Act.

Market integrity rules made by ASIC can deal with the activities and conduct of licensed markets and of persons in relation to licensed markets and financial products traded on licensed markets.

### CLEARING AND SETTLEMENT FACILITIES

A person that operates a CS facility must hold an Australian CS facility licence that authorises the person to operate the facility in this jurisdiction unless the CS facility is exempt from the requirement to hold a licence.

ASIC and the RBA co-regulate CS facilities. The respective power of each regulator corresponds to their overall objectives and mandate. ASIC has licensing and enforcement powers to align with their objective to maintain, facilitate and improve the performance of the financial system. The RBA has powers aligning with the objective to maintain overall stability of the Australian financial system.

From 24 September 2024, previous Ministerial powers relating to the licensing and supervision of CS facilities and financial markets have been transferred to ASIC and the RBA, although many of these have previously already been delegated, and powers have been redistributed between each of ASIC and the RBA to align more closely with their respective mandates.

From 24 September 2024, a new crisis management and resolution regime applies to CS facility licensees in Australia. The regime provides resolution powers to the RBA to manage distressed CS facilities and support the continuity of CS facility services that are critical to the stability of the Australian financial system.

A CS facility licensee is in crisis if certain conditions are met in relation to the licensee. These conditions relate to acts or events that are likely to pose a threat to:

- the stability of the financial system in Australia; or
- the continuity of clearing and settlement facility services that are critical to the functioning of the financial system in Australia.

Some of the conditions relate to related bodies corporate of the CS facility licensee.

The actions the RBA may take include:

- placing the licensee, or a related body corporate that is incorporated in Australia, under statutory management;
- compulsorily transferring all or part of the shares of, or business of, the licensee, or a related body corporate that is incorporated in Australia, to another body corporate; and
- directing the licensee, or a related body corporate that is incorporated in Australia, to do or refrain from doing an act or thing.

If a body corporate is under statutory management or subject to a transfer or direction, a moratorium applies to the body corporate.

The RBA, on request, may also exercise some of its crisis resolution functions and powers to assist foreign regulators to manage or respond to an overseas CS facility licensee in crisis. However, this does not include placing an overseas CS facility licensee under statutory management or include some of the RBA's other prescribed powers.

## DERIVATIVES TRADE REPOSITORIES

Under the Corporations Act, ASIC is responsible for licensing derivative trade repositories that provide services in Australia. Derivative trade repository licensees are regulated under the Corporations Act. ASIC can make derivative trade repository rules that deal with the way licensees may provide their services, handling of data, governance of licensees, reporting and other matters.

## FINANCIAL BENCHMARKS

Benchmark administrator licensees are regulated under the Corporations Act. Administrators of significant financial benchmarks must be licensed by ASIC or exempt from the requirement to hold a licence. ASIC may impose, vary or revoke conditions on a licence.

ASIC can make 2 kinds of rules with respect to financial benchmarks. Firstly, the financial benchmark rules prescribe detailed requirements relating to the operation of financial benchmarks specified in a licence. Secondly, the compelled financial benchmark rules confer powers for ASIC to compel certain activity relating to significant financial benchmarks. These sets of rules deal with the responsibilities of licensees, the design of the benchmarks, use of data, governance of licensees and other matters.

## WIDELY HELD MARKET BODIES

Certain Australian market licensees, CS facility licensees, derivatives trade repository licensees, benchmark administrator licensees, and the holding companies of such licensees can be subject to ownership limits. For example, the Corporations Act imposes a 20% restriction on a person's voting power within certain bodies. These are known as "widely held market bodies". Exceeding the 20% voting power limit for a widely held market body requires the approval of the Minister, and for a 'controlled Australian financial body' requires the approval of ASIC. Specific arrangements in this regard exist for ASX Limited.

## THE RBA'S REGULATORY ROLE

The *Reserve Bank Act 1959* (Cth) (Reserve Bank Act) sets out the RBA's regulatory role including the responsibility of the Payments System Board for determining the RBA's payments system policy in a way that will best contribute to controlling risk in the financial system, promoting the efficiency of the payments system, and promoting competition in the market for payment services, consistent with overall stability of the financial system.

The *Payment Systems (Regulation) Act 1998* (Cth) (PSRA) is one of the Acts which sets out powers of the RBA in relation to the payments system. This Act gives the RBA the broad powers, including to designate payment systems and, in relation to a designated payment system, to impose an access regime on the participants in the payment system, make standards which must be complied with by participants in the payment system, arbitrate disputes relating to the payment system and give directions to participants in the payment system.

The RBA may obtain information from payments system participants, to designate a payment system, and to set access regimes and standards for designated payment systems. To date, these powers have been used in the retail space, most notably in the regulation of card schemes' interchange fees and in the establishment of access regimes for card schemes and the ATM system.

Certain amendments to the PSRA came into force in September 2025. The amendments include adjustments to the regime for designating payment systems (including to give the Treasurer a designation power, by reference to national interest), a broadening of the definition of 'payment system' to include, amongst other things, payment systems that use non-monetary digital assets for payments or provide services that facilitate a payment being made, and 'participant', the ability of the RBA to accept enforceable undertakings relating to matters in relation to which the RBA has a function or power under the PSRA, and the inclusion of a civil penalty framework, amongst other things. Further regulations were passed in December 2025 to support these changes. See the [Payments Systems](#) section of this Guide for more information.

# Derivatives Market



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In Australia derivatives are traded both on financial markets and over-the-counter (OTC). A person that operates a financial market in this jurisdiction must hold an Australian market licence as an Australian market licensee unless the financial market is exempt (see the [Financial Market Infrastructure](#) section of this Guide). Trades are commonly conducted through brokers who are members of the relevant financial market. Alternatively, derivatives can be traded outside a market, OTC. Additionally, some OTC derivatives are required to be cleared through a clearing house.

## CLOSE-OUT AND NETTING

Close-out netting is critical to the management of credit risk which arises in derivatives. In Australia, the close-out netting process effected under derivatives contracts can be protected in certain circumstances by laws such as the *Payment Systems and (Netting Act) 1998* (Cth) (Netting Act). In addition to close-out netting, the Netting Act deals with multilateral netting, market netting, and approved Real Time Gross Settlement (RTGS) systems.

## DERIVATIVE MARKET REGULATION

Like all financial contracts, there are a range of possible regulatory regimes which can be applicable to derivative transactions.

## LICENSING

Derivatives and foreign exchange transactions are financial products that are subject to the licensing requirements of the Corporations Act (see the [Carrying on Business in Australia](#) section of this Guide for more details).

## GLOBAL REGULATION OF DERIVATIVES

As part of the G20 nations, Australia has implemented a number of laws reflecting G20 commitments for the global reform of financial markets and the laws which govern them, following the global financial crisis. These include laws and regulations relating to:

- derivatives trade reporting;
- central clearing of OTC derivatives; and
- margining and risk mitigation requirements in relation to OTC derivatives.

## OTHER REGULATORY REQUIREMENTS

Other regulatory requirements applicable to derivatives include, but are not limited to, AML/CTF obligations (see the [Financial Crime](#) section of this Guide), insider trading and market misconduct requirements (see the [Governance Overview](#) section of this Guide), disclosure and regulatory reporting, merger and competition law issues, and prohibitions or restrictions on the issue and distribution of certain types of OTC derivative to retail clients.

Additionally, the RBA can direct persons not to deal in foreign currency in certain circumstances.

Certain entities also may have additional regulatory obligations or prohibitions in connection with their use of derivatives. These entities may include superannuation funds, life companies, retail clients, and Authorised Deposit-taking Institutions.

# Payments Systems



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## How does Australia regulate electronic payment systems?

The payments systems in Australia enable consumers and businesses to exchange value using cash, cheques and electronic funds transfers.

The Reserve Bank of Australia (RBA), Australian Payments Network (AusPayNet) and New Payments Platform Australia Limited (NPPA) oversee and administer the different payments systems in Australia. To settle transactions directly with other financial institutions, a party needs to have an Exchange Settlement Account (ESA) at the RBA and be a member of the relevant payments systems administered by AusPayNet, NPPA or other scheme administrator. A party can also be sponsored by an institution that has an ESA and the necessary AusPayNet, NPPA or scheme memberships.

AusPayNet administers the following payments systems:

- Bulk Electronic Clearing Systems (BECS), for direct entry payments (which is set to be decommissioned over the coming years);
- Issuers and Acquirers Community (IAC), for card payments (which are also administered by commercial schemes, for example, eftpos for domestic debit cards, or international credit card schemes such as MasterCard and Visa);
- Australian Paper Clearing System (APCS), for cheques (which will cease being issued by financial institutions by 30 June 2028 and cease being accepted by financial institutions on 30 September 2029) and other paper based instructions; and
- High Value Clearing System (HVCS), for high value payments between institutions.

## SETTLEMENT OF PAYMENTS

HVCS payments are settled individually using the 'Reserve Bank Information and Transfer System' (RITS) on a real time basis. Transactions processed through the other payment systems listed above are settled on a net basis through ESAs.

Some are settled on a same day basis, while others are settled the following day at 9:00am.

## THE NPP

Australia's New Payments Platform (NPP) was launched in February 2018. It allows real time payments for low value transactions initiated between participants supported by the Fast Settlements Service, operated by the RBA. There are a number of ways to connect to the NPP, including by becoming a participant or being sponsored by a participant. The NPP, which has already seen significant uptake from Australian businesses and consumers, is expected to grow even further with the migration of legacy payment systems to the NPP and new services.

Payments made via the NPP are able to include more data than those sent using the AusPayNet systems.

The NPP also facilitates PayID, which allows users to link information such as a phone number or email address to their bank account. This enables payments to be made to the user by entering their PayID rather than their BSB and account number.

A new service called PayTo is also set to gradually replace BECS. Facilitated through the NPP, PayTo is a new way to pre-authorise payments (including recurring payments) from a bank account and is intended to function similarly to a direct debit arrangement. However, PayTo will be controlled by the payer and payments will be settled in real time.

## REGULATION OF PAYMENTS

Under the *Payment Systems (Regulation) Act 1998* (Cth) (PSRA), the RBA has the power to designate certain payment systems and make access regimes and standards applicable to administrators and participants in those systems. Amendments to the PSRA commenced in December 2025 which enable a broader range of payment systems to be designated by either the RBA or the Federal Treasurer, including, for example, digital wallet providers and buy-now-pay-later schemes (although the only systems currently designated remain Visa, Mastercard and a domestic debit card scheme known as Eftpos). In addition to the PSRA, regulation of payments systems includes licensing, market integrity and consumer protection requirements administered by ASIC and the ACCC. The regulation of Australia's payments industry is currently undergoing significant reform. Details of this are set out further below and in the [FinTech](#) section of this Guide.

## ANTI-MONEY LAUNDERING AND LICENSING

Providing a payment service (such as accepting retail payment instructions, exchanging currencies or making funds available) may be caught by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (AML/CTF Act) if there is a sufficient geographical link to Australia. Payment service providers that are subject to the legislation are required to register with AUSTRAC (Australia's financial intelligence agency), comply with transaction reporting requirements and apply 'know your customer' procedures (KYC), among other obligations. Reforms to the AML/CTF Act, which commenced on 31 March 2026, will result in changes to the way payment services are regulated (capturing some entities that receive and pass on messages for transfers of value) and will require certain payment service providers to comply with additional rules relating to the content of payment messages. Entities involved in transfers of value (not limited to transfers of money) should consider the application of the amended legislation to their business - see the [Financial Crime](#) section of this Guide. An AFSL may also be required if a payments service is intended or likely to induce a consumer to buy a 'financial product' (including non-cash payment facilities, foreign exchange contracts or making a market in foreign exchange products and other derivatives). There are significant upfront and ongoing compliance costs, but exemptions may be available in certain circumstances.

The Australian Government has been consulting on significant changes to the AFSL regime applicable to payments services which will result in a broader range of payment service providers being required to hold an AFSL, including, for example, acquirers and payment facilitators, payment initiators and stablecoin issuers. Further detail is set out in the section below.

## NEW REFORMS

The Australian Government has been consulting on draft legislation for a new AFSL framework for payment service providers. The key entities which will be impacted are payment service providers (for example, payment gateways, acquirers and digital wallet providers) and other companies in the payment ecosystem which may not traditionally consider themselves to be providing payment or financial services that would be caught by the AFSL regime (for example, online marketplaces).

Only 1 tranche of draft legislation has been released for consultation. This indicates that 2 new financial products and 3 new financial services will be introduced into the AFSL regime. This will mean that, unless an exemption applies, an AFSL will be required to engage in certain activities related to stored value facilities (including stablecoins which will constitute a 'tokenised stored value facility'), payment instruments (for example, debit cards), payment facilitation services (for example, merchant acquiring or providing online marketplace services), payment initiation services (for example, facilitating direct debits or PayTo payments), and payment technology and enablement services (for example, certain identity verification services or message transmission services). The draft legislation also introduces new requirements relating to safeguarding money that is paid, received or credited in connection with the above activities.

A further tranche of the draft legislation is expected later in 2026. There will be a transitional period to allow for AFSL applications to be submitted and processed (which varies depending on whether the entity is an existing or new AFSL holder).

# Fintech



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Australia has one of the most exciting and dynamic fintech industries in the world, with a particularly strong payments and digital asset ecosystem.

The Australian fintech landscape has experienced significant growth with consumer-focussed products and services, B2B solutions, institutional digitalisation and broader integration of payments and blockchain into 'traditional' businesses. At the same time, a remarkable array of offshore payments, digital assets and supporting regulatory technology (regtech) businesses continue to enter the Australian market.

Australian authorities have a strong focus on building a safe environment for digital assets, buy-now-pay-later arrangements (BNPL) and payments with active regulatory engagement and regulatory reform. Cooperative dialogue and industry engagement are critical hallmarks of the sector.

Charting an efficient course that addresses Australia's regulatory requirements is the key to success.

## DIGITAL ASSETS AND BLOCKCHAIN

Australia has a vibrant digital assets<sup>1</sup> and blockchain ecosystem. This includes multiple products and services available to consumers from both domestic and offshore platforms, as well as institutional participation in major pilots relevant to stablecoins, central bank digital currencies (CBDCs) and broader digital innovation.

In recent years, Australia's legal and regulatory regime has experienced significant expansion and clarification to meet the needs of this complex area of law. This work is ongoing, with multiple developments over the past year and additional reforms continuing into 2026.

Importantly, Australia's existing financial services regulatory regime is already very broad, making it especially important to properly and holistically analyse any structure – even if it appears only to involve software-as-a-service, non-custodial solutions or tokens which are not regulated in other markets.

A variety of businesses providing services in relation to digital assets and blockchain may need to consider and comply with various legal obligations, including licensing. Some key areas to consider are:

- **Financial services, markets and clearing and settlement facilities:** The *Corporations Act 2001* (Cth) contains the key financial services regulatory triggers that are most commonly relevant to the digital asset sector. These triggers are broadly drafted and can capture a range of exchange, brokerage, derivatives, custody/wallet, staking and other services, even if offered from outside Australia. These may result in an obligation to obtain an Australian financial services licence (AFSL), Australian market licence (Market Licence) and/or a clearing and settlement facility licence (C&S Facility Licence). One of the common foundational questions is whether a given digital asset or other arrangement is a "financial product". It is therefore important to consider each digital asset, product or offering on its merits against the existing regulatory regime. ASIC has provided guidance on several topics that address digital asset-related matters, including:
  - Information Sheet 225: Crypto-assets.
  - Regulatory Guide 133: Funds management and custodial services.
  - Regulatory Guide 282: Exchange traded products.

<sup>1</sup> In Australia, digital assets may also be referred to as 'crypto-assets', 'virtual assets' or "digital assets" depending on the context.

The Corporations Amendment (Digital Assets Framework) Act 2026 has introduced 2 additional proposed financial services, relating to “digital asset platforms” and “tokenised custody platforms”. The Act will commence on 9 April 2027, with an 18-month implementation timeline. Further ASIC rules and standards will follow in 2026, as indicated in “ASIC’s roadmap for digital assets law reform implementation”. This is a key development to watch in 2026.

- **AML/CTF:** Australia’s anti-money laundering (AML) and counter terrorism financing (CTF) registration requirements for ‘designated services’ currently apply to digital currency exchanges and may apply to other activities too. Recent reforms to Australia’s AML/CTF regime has seen regulation extended to various virtual asset-related services with effect from March 2026:
  - exchanging virtual assets for money (and vice versa) or making arrangements for this type of exchange;
  - exchanging virtual assets for virtual assets, or making arrangements for this type of exchange;
  - providing a virtual asset safekeeping service;
- accepting instructions to transfer virtual assets on behalf of customers or make transferred virtual assets available to customers; and
- providing financial services in connection with the offer or sale of a virtual asset where the business is participating in the offer or sale.
- **Crypto asset tax transparency:** Legislation to implement the Crypto-Asset Reporting Framework and update the Common Reporting Standard is expected to be introduced in 2026. The new requirements, which are designed to prevent crypto tax evasion, are expected to commence from 1 January 2027. Crypto asset service providers should review the OECD rules in detail and start updating systems, processes and governance structures to prepare for implementation.
- **Tax:** The Australian Taxation Office also provides guidance on its website in relation to taxation of crypto assets.
- **Prudential obligations:** The Australian Prudential Regulation Authority (APRA) has provided guidance to its regulated entities in relation to its risk management expectations relevant to crypto assets. Also, alongside international regulators and the Basel Committee, APRA is also considering the prudential treatment for bank exposures to crypto assets.

## CBDCs AND STABLECOINS

Australia has undertaken considerable work in connection with central bank digital currencies (CBDCs) and stablecoins. The Reserve Bank of Australia has been part of a number of Australian and international projects exploring the potential for CBDCs including:

- international cross border payments, as part of Project Dunbar;
- wholesale CBDC, as part of Project Atom, a proof of concept for the issuance of a tokenised form of CBDCs that could be used by wholesale market participants for the funding, settlement and repayment of a tokenised syndicated loan;
- alongside the Digital Finance Cooperative Research Centre and industry participants, 16 pilot use cases, including focusing on improving the background processes of the financial system, making payments and settling transactions; and
- in connection with examining the development of wholesale tokenised asset markets, as part of Project Acacia.

In relation to stablecoins more specifically, Australia already regulates many stablecoin structures through the existing financial services framework. Namely, many stablecoins are “financial products”, as clarified in examples set out in ASIC’s Information Sheet 225. Stablecoin-related activities can also trigger designated services under the AML/CTF Act. Helpfully, ASIC has provided class relief for certain intermediaries involved in the distribution of eligible stablecoins (and wrapped tokens). While still new at the time of writing, this has profoundly shifted the momentum on stablecoin development.

Alongside these developments, Treasury is also consulting on proposals for certain stablecoins to be regulated as a form of stored value facility under Australian payments regulation. See the [Payment Systems](#) section of this Guide for further details regarding payment reforms.

## PAYMENTS

The regulatory framework for payments in Australia is subject to significant reform and may capture many participants in the payments industry who are not currently subject to regulation. See the [Payment Systems](#) section of this Guide for further details regarding these proposals.

## BUY NOW, PAY LATER

Buy now pay later (BNPL) products are regulated as credit products under the *National Consumer Credit Protection Act 2009* (Cth) (NCCP Act) and the *National Consumer Credit Protection Regulations 2010* (Cth). At a high level, BNPL providers are generally required to:

- hold and maintain an Australian credit licence;
- comply with the licensing obligations under Chapter 2 of the NCCP Act, including the general conduct obligations;
- comply with the requirements under the National Credit Code; and
- conduct suitability assessments in accordance with modified responsible lending obligations.

ASIC has also issued Regulatory Guide 281: Low cost credit contracts to support compliance.

## CROWD-SOURCED FUNDING

Introduced by the Australian Government in September 2017, equity crowd-sourced funding (CSF) is a way for start-ups and small to medium sized companies to raise money from the public to finance their business.

CSF is available to eligible Australian registered proprietary and unlisted public companies with less than A\$25 million in assets and annual turnover. Eligible companies are able to make offers of ordinary shares to raise up to A\$5 million in any 12-month period.

Under the CSF regime, intermediaries (such as CSF platforms) are required to hold an AFSL with an authorisation to provide a crowd funding service.

## RESTRICTED ADI LICENSING FRAMEWORK

Since May 2018, the framework for licensing of authorised deposit taking institutions (ADIs) has included creating a pathway for financial institutions to become ADIs through a 'Restricted ADI licence'. This pathway sits beside the well-established ADI and foreign ADI authorisations.

The Restricted ADI (RADI) licensing framework involves a restricted licensing option intended to allow new entrants more time to develop the resources and capabilities to comply with all ADI licence requirements. The regime permits the grant of a 'RADI licence' before an institution is ready to be fully licensed as an ADI with a restricted range of permitted activities. Regulatory obligations such as capital and liquidity requirements, are phased in over a 2-year period following which a RADI is expected to progress to an ADI licence. APRA provides strict guidelines for eligibility and minimum and ongoing requirements for RADIs.

In July 2025, APRA launched a discussion paper in relation to improving the licensing framework for authorised deposit taking institutions to support new market entrants. Among other things, the paper flagged the possible removal of the RADI licensing pathway, in tandem with various initiatives to support clearer and more efficient and transparent ADI authorisation.

## ENHANCED REGULATORY SANDBOXES

The Enhanced Regulatory Sandbox provides a pathway to test certain select financial services and credit activities without an AFSL or credit licence for up to 24 months.

This provides relief for businesses:

- providing personal or general financial advice in respect of eligible financial products;
- dealing by applying for or arranging for another to deal in eligible financial products;
- issuing non-cash payment facilities or insurance (including as an agent);
- providing a crowd-funding service; or
- lending money to consumers.

It cannot be relied on in all circumstances, including to provide financial services in respect of derivatives, or to operate a registered managed investment scheme.

Some of the key eligibility criteria include the following:

- not be licensed for, or have previously tested, the proposed financial service or credit activity;
- minimum requirements on probity, net public benefit and innovation;
- total customer exposure of no more than \$5 million
- individual retail client exposure limited to \$10,000 for certain products;
- compensation arrangements, such as professional indemnity insurance;
- membership of the Australian Financial Complaints Authority, which was introduced in December 2016; and
- meet disclosure and conduct requirements.

The regulatory sandbox does not provide relief from other regulatory requirements (such as privacy and anti- money laundering obligations) and is also subject to limitations which may make it valuable for some players, while making other pathways more attractive to others.

In December 2025, Treasury launched a consultation in relation to the Enhanced Regulatory Sandbox, which closed in early February 2026.

The fintech regulatory environment has dramatically shifted in Australia. We are moving into an exciting era of fresh momentum and clarity to support business development.

### **OTHER AVENUES FOR RELIEF**

There are also a range of other avenues for regulatory relief, including ones with clear prescriptive criteria, as well as more bespoke negotiated channels. For example, it is possible to apply to ASIC for relief from obtaining a Market Licence for certain low volume financial markets. ASIC can also grant bespoke relief in certain scenarios. Pursuing relief requires careful planning and strong regulatory dialogue.

### **CONSUMER DATA RIGHT (CDR)**

The CDR gives Australian consumers the right to safely access certain data held about them by businesses and to direct that this data be transferred safely, efficiently and conveniently to trusted and accredited third parties of their choosing.

By reducing the barriers that currently prevent customers from shifting between providers, the CDR is expected, over time, to facilitate greater consumer choice and mobility, driving innovation and competition across the economy.

Implementation is following a staged progression. The key sectors covered include:

- banking, the first sector of the Australian economy to which the CDR applied;
- certain energy retailers, from late 2022; and
- non-bank lenders, targeted to occur from mid-2026.

Several developments remain in progress, including, for example:

- consultation on white label brand arrangements; and
- enforcement activities in connection with CDR compliance.

# Financial Crime



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## How does Australia's anti-money laundering regime operate?

Australia, like most countries, has an anti-money laundering and counter-terrorism financing (AML/CTF) regime based on the recommendations of the global Financial Action Task Force. What distinguishes Australia's regime is how it applies, which may not always be clear cut.

### DOES THE AML/CTF REGIME APPLY?

The first step in working out whether the AML/CTF regime applies to persons is considering whether they are providing a 'designated service'. There are currently 73 designated services, most of which are financial services like making a loan, issuing or selling a security or derivative, providing a money remittance service and providing a custodial or depository service. Bullion sales and gambling services are also designated services.

The second step is considering whether the designated service is provided 'at or through a permanent establishment in Australia'. A permanent establishment is a physical place where a person (or its agent) carries on activities or business. The AML/CTF regime may also apply to designated services provided offshore, if provided by an Australian resident (for example, an Australian incorporated company) or a subsidiary of an Australian resident).

### REPORTING ENTITIES

If Australia's AML/CTF regime applies to a particular person, that person is required to enrol with AUSTRAC (Australia's AML/CTF regulator) as a 'reporting entity'. A number of obligations apply to reporting entities, including customer due diligence, beneficial owner and politically exposed person identification, transaction monitoring, reporting of certain cash transactions and international funds transfers, suspicious matter reporting, record keeping, training and independent reviews.

### RISK BASED ASSESSMENT

A key element of the regime is that it is risk based. This means a reporting entity must consider for itself the risk that its specific services may involve or facilitate money laundering or terrorism financing.

Based on this assessment (which must be written), the reporting entity must design systems and controls that manage and mitigate these risks. The systems and controls must be documented in an AML/CTF program adopted by the reporting entity. For example, what factors may make prospective clients higher risk must be considered and enhanced measures must be applied to those clients at onboarding and throughout the life of the relationship between the reporting entity and the client.

## CONSEQUENCES OF BREACH

AML/CTF obligations in Australia are typically 'civil penalty provisions'. This means that if an obligation is breached, AUSTRAC may apply to a court to order a penalty to be paid. Currently the maximum penalty is A\$33 million per contravention. The highest penalty to date is A\$1.3 billion, the penalty agreed in resolution of proceedings between Westpac and AUSTRAC in 2020. There are also a number of criminal offences, such as for tipping off a third party about a suspicious matter or providing false or misleading information or documents to the authorities.

AUSTRAC is also able to accept an enforceable undertaking, which documents a binding obligation on the reporting entity to either take a specified action or refrain from taking an action that may contravene the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)* (AML/CTF Act) or the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1) (Rules)*. If the reporting entity does not comply with the undertaking, it can be enforced by the courts. AUSTRAC may issue a remedial direction to inform an entity of a specific action it must take to avoid contravening the AML/CTF Act or Rules. AUSTRAC can suspend or cancel the registration of digital currency exchange providers or remittance providers if it is satisfied that the provider has contravened the AML/CTF Act or Rules or presents a significant risk of doing so.

AUSTRAC may also issue infringement notices (without the need for Court intervention) for contraventions of key obligations dealing with:

- customer identification procedures to be carried out by reporting entities;
- reporting certain suspicious matters;
- reporting a threshold transaction;
- reporting an international funds transfer instruction;
- reporting on compliance with the AML/CTF Act and other instruments;
- providing information on request;
- making and retaining certain records; and
- providing certain digital currency exchange services without being registered.

## Recent AML/CTF developments

### AML/CTF REFORM

Following consultation by the Attorney General's Department in 2023 and 2024, amendments to the AML/CTF Act were passed in November 2024. Certain amendments commenced in 2025 (for example, amendments to the tipping off offence to make it easier to share information if it could not reasonably be expected to prejudice an investigation, and expanded information gathering and examination powers for AUSTRAC). Other significant amendments commenced in March 2026 with others set to commence in July 2026, including to:

- extend the application of the AML/CTF Act to certain high-risk professions such as accountants, real-estate professionals, legal professionals, trust and company service providers, and precious gem dealers (ie, the long-touted "Tranche 2 reforms"). These are captured under 2 new tables of designated services in the amended AML/CTF Act (Tables 5 and 6), which come into effect on 1 July 2026. The designated services are generally drafted broadly (for example, managing a person's money as part of assisting in a transaction);
- update existing designated services covering transfers of value and virtual assets. These amendments will result in a broader range of entities involved in transfers of value (including money, virtual assets or property) being required to enrol with AUSTRAC and changes to the obligations that apply to those entities (for example, obligations to collect, verify and pass on certain information in a value transfer chain). Additional designated services relating to virtual assets will be introduced (for example, certain custodial and exchange services);
- modernise the AML/CTF Act more generally in response to various reviews including the 2016 Statutory Review of the AML/CTF Act and the 2022 review conducted by the Senate Legal and Constitutional Affairs Reference Committee. This includes a restructure of the requirements for AML/CTF programs, updated standards for customer due diligence, express requirements relating to carrying out money laundering and terrorism financing risk assessments, obligations to consider proliferation financing risk, extension of obligations to designated services provided offshore by certain entities, and changes to international value transfer reporting obligations;

Generally, changes for existing reporting entities took effect on 31 March 2026, and changes for entities that only provide 'Tranche 2' designated services will commence on 1 July 2026. There are some changes for which transitional relief will be provided, including with respect to new initial customer due diligence standards (for existing reporting entities) and changes to international value transfer reporting obligations.

The reforms described above are expected to have a significant impact on the compliance arrangements of existing reporting entities and a considerable number of new businesses will become regulated under the AML/CTF Act, including those providing the 'Tranche 2' designated services as well as some that become captured by the broader designated services relating to transfers of value and virtual assets.

## ENFORCEMENT ACTION

AUSTRAC is an active regulator and regularly takes enforcement action against reporting entities.

In 2025:

- AUSTRAC issued 4 notices requiring Western Union Financial Services (Australia) Pty Ltd, Breakwater Island Limited, Delaware North Darwin Casino Pty Ltd and Mercedes-Benz Financial Services Australia to appoint an external auditor;
- AUSTRAC issued 3 infringement notices to Cryptolink Pty Ltd, Revolut Australia Pty Ltd and Cointree Pty Ltd for breaches of AML/CTF laws, including failures to provide reports on threshold transactions, international funds transfer instructions suspicious matters within the required timeframe;
- AUSTRAC accepted an enforceable undertaking by Cryptolink Pty Ltd requiring action to be taken to address concerns regarding threshold transaction reporting and assessments of ML/TF risk;
- AUSTRAC commenced proceedings against Mount Pritchard and District Community Club Ltd (Mounties) on 30 July 2025 for alleged serious and systematic non-compliance with the AML/CTF Act. The allegations included that Mounties had contravened the AML/CTF Act by providing gaming services to customers in circumstances where it had not adopted and maintained an AML/CTF program. AUSTRAC alleges it did not have an adequate risk assessment, appropriate staff risk awareness training or systems and controls in its processes;
- AUSTRAC applied for civil penalty orders against Castra Licensee Pty Ltd and Princeton Securities (NSW) Pty Ltd on 10 December 2025 for the alleged failure of each to lodge their respective compliance report for the 2023 calendar year. Infringement notices were issued in September 2024 to both entities with respect to this failure, however neither business paid, leading to the commencement of court action; and.
- AUSTRAC commenced proceedings against Entain Group Pty Ltd for alleged serious and systemic breaches of the AML/CTF Act on 16 December 2024. These allegations are similar to those alleged by AUSTRAC against Crown and SkyCity and among other things, relate to Entain's alleged failure to conduct appropriate checks on 17 high-risk customers. Proceedings are still ongoing, with the next hearing listed for April 2026.

## OTHER RELEVANT LEGISLATION

The AML/CTF Act is only one component of Australia's legislative landscape that addresses money laundering and terrorism financing. Other legislation includes:

- the *Criminal Code Act 1995* (Cth), which contains money laundering and terrorism financing offences;
- the *Proceeds of Crime Act 2002* (Cth), which contains provisions aimed at preventing people from benefitting from assets derived from criminal activity through a confiscation scheme, which includes mechanisms such as freezing orders where there are reasonable grounds to suspect that funds are the proceeds of an indictable offence or foreign indictable offence;
- State and Territory based legislation, which contain powers such as property seizure and forfeiture in relation to proceeds of crime and unexplained wealth; and
- sanctions legislation (Australia implements both UN Security Council sanctions and autonomous sanctions - see the [Sanctions section](#) of this Guide).

# Scams Prevention Framework



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## OVERVIEW OF THE SCAMS PREVENTION FRAMEWORK

The Scams Prevention Framework (SPF) is a regime that aims to address scams by imposing obligations on businesses to protect consumers from being scammed. It has tough consequences for non-compliance.

The SPF passed into law in 2025. During 2026, several important milestones are expected. This section is based on the expected details at the time of writing. Please check the final operational details and speak to us if you have any questions.

## TO WHOM DOES THE SPF APPLY?

Initially, the SPF applies to 3 key “**regulated sectors**”:

- Telecommunications
- Banking
- Digital platforms

Each of these is defined in the relevant instrument. For example, digital platform providers are expected to involve certain instant messaging, internet search engine and social media services.

The SPF is drafted flexibly. Beyond these designations, the Government has publicly considered designating the superannuation, crypto, insurance and online marketplace sectors.

## WHAT DOES THE SPF INVOLVE?

The SPF regime has 4 main features:

- 6 key general principles
- section specific codes
- regulator oversight
- dispute resolution mechanisms.

Further details are set out below.

## SIX KEY GENERAL PRINCIPLES

The framework establishes 6 general principles which apply to “regulated entities” in the regulated sectors. Key duties include the following:

- **Principle 1-Governance**  
Document and implement policies, procedures, metrics and targets for combatting scams.
- **Principle 2-Prevent**  
Take reasonable steps to prevent scams.
- **Principle 3- Detect**  
Take reasonable steps to detect scams.

- **Principle 4 – Report**  
Provide accurate scam intelligence and other reports to relevant regulators – see also “Regulators” below.
- **Principle 5 – Disrupt**  
Take reasonable steps to disrupt an activity the subject of actionable scam intelligence and to prevent losses from such an activity.
- **Principle 6 – Respond**  
This includes an accessible mechanism for consumers to report activities that are or may be scams, plus dispute resolution mechanisms – more on this below.

## SECTOR SPECIFIC CODES

An “SPF code” will apply to each regulated sector. This sets out the baseline steps that businesses within that regulated sector will need to take to protect Australians from scams.

The Australian Government ran consultations through late 2025 on sector-specific obligations to address unique vulnerabilities in each regulated sector.

## REGULATORS

The ACCC is the key authority relevant to the SPF as the “general SPF regulator”. It may delegate certain functions.

Each regulated sector has an “SPF sector regulator” to support compliance with the relevant SPF code. This may be the ACCC or another regulator. Initially, these are expected to be:

- ACMA (telecommunications)
- ASIC (banking)
- ACCC (digital platforms).

## INTERNAL AND EXTERNAL DISPUTE RESOLUTION

### The SPF involves 2 tiers of dispute resolution:

- Internal dispute resolution (**IDR**) Regulated entities must run accessible and transparent internal scam complaints processes and keep effective records. An SPF code may include specific requirements in relation to complaint-handling, in addition to those set out in the SPF legislation itself.
- External dispute resolution (**EDR**) If a scam complaint is not resolved internally, regulated entities are obligated to co-operate and accept the binding outcomes of an external dispute resolution process. The Australian Financial Complaints Authority (**AFCA**) will be the authorised operator of the AFCA Scheme, a previously financial services-focused external dispute resolution scheme. Under its expanded SPF jurisdiction, AFCA is expected to commence resolving scam complaints in accordance with its Scheme Rules from early 2027.

Critically, the SPF includes a proportionate liability regime, with details expected during the course of 2026. This will be relevant to both IDR and EDR.

## PENALTIES

Breaches of many of the SPF obligations give rise to civil penalties. The legislation prescribes maximum fines for each of the two tiers of penalty:

- **Tier 1 penalty contraventions**, which relate to the Prevent, Detect, Disrupt and Respond SPF principles, attract a maximum penalty of the greater of 159,745 penalty units (currently just over \$50,000,000), 3 times the benefit gained from the conduct and potentially 30% of turnover.
- **Tier 2 penalty contraventions**, which relate to the Governance and Report SPF principles and sector code breaches, attract a maximum penalty amount of the greater of 31,950 penalty units (currently just over \$10,000,000), 3 times the benefit gained from the conduct and potentially 10% of turnover.

# Consumer Credit



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Consumers in Australia are legally protected in a number of ways when they engage in retail, credit or banking transactions.

## CONSUMER CREDIT

Consumer credit in Australia is regulated by the *National Consumer Credit Protection Act (NCCP Act) 2009* and the *National Credit Code (NCC)*. The NCC provides a consumer protection framework for consumer credit transactions and applies when someone charges a natural person or strata corporation for credit which is used for personal, domestic or household purposes, or for the purchase, renovation or improvement of residential property for investment purposes. The credit must be provided in the course of carrying on a business of providing credit in Australia. This generally means that the NCC applies to home loans, credit cards and personal loans offered to natural persons.

## LICENSING REGIME FOR CREDIT ACTIVITIES

A person is required to hold an Australian credit licence (ACL) or rely on an exemption if they engage in a credit activity in relation to credit to which the NCC applies. Key credit activities include acting as credit provider, providing credit assistance (for example, credit broking), and acting as an intermediary between a consumer and a credit provider for the purposes of securing credit.

One of the primary obligations of an Australian credit licensee is to conduct an assessment that the credit contract (or increase to a credit limit) is not 'unsuitable' for the consumer (referred to as the responsible lending obligations).

A contract will be unsuitable if:

- it does not meet the consumer's requirements and objectives; or
- the consumer will be unable to meet the repayments, either at all or only with substantial hardship.

Undertaking the unsuitability assessment involves an assessment of the consumer's financial situation (by making reasonable inquiries about their financial situation and taking reasonable steps to verify their situation) and making reasonable inquiries about the consumer's requirements and objectives.

The NCCP Act and NCC also include provisions regulating advertisements for some forms of consumer credit, disclosures and information statements to be provided to consumers, and the manner in which credit providers must deal with consumers who are experiencing hardship. There are also other general obligations applicable to licensees under the NCCP Act (for example, to act efficiently, honestly and fairly and to ensure that representatives are adequately trained and competent).

The NCCP Act also regulates buy now pay later (BNPL) products and low cost credit contracts (LCCCs) as a form of consumer credit under the NCC. See Buy Now, Pay Later in the [Fintech](#) section of this Guide for more details.

Providers of BNPL and LCCC products (and certain entities involved in their distribution) are required to hold an ACL and become members of the Australian Financial Complaints Authority (the external dispute resolution scheme for financial and credit products). LCCCs are subject to modified requirements under the NCCP Act.

## UNFAIR CONTRACT TERMS

Under the unfair contract terms regime, a consumer contract or small business contract relating to a financial service, or a financial product, is void if it is unfair where the contract is a standard form contract.

A term of a consumer contract or small business contract will be unfair if:

- it would cause a significant imbalance in the parties' rights and obligations arising under the contract;
- it is not reasonably necessary in order to protect the legitimate interests of the party which would be advantaged by the term; and
- it would cause detriment (whether financial or otherwise) to a party if it were to be relied on.

Certain contractual terms (such as the main subject matter of a contract) are exempt from the unfair contract terms regime.

Civil penalties apply for each contravention of the prohibition on proposing, applying, or relying on an unfair contract term in a standard form contract.

The maximum penalty for body corporates is the greater of:

- 50,000 penalty units (currently A\$16.5 million);
- the amount of the benefit derived and detriment avoided because of the contravention multiplied by 3; or
- 10% of the annual turnover of the body corporate for the 12-month period at the end of the month in which the body corporate contravened or began to contravene the unfair contract terms prohibition (but limited to 2,500,000 penalty units, currently A\$825 million).

## DESIGN AND DISTRIBUTION OBLIGATIONS AND PRODUCT INTERVENTION POWERS

Obligations relating to design and distribution of financial products (including consumer credit products) require product issuers to make a 'target market determination' in relation to certain retail financial products which describes the class of retail clients the product is aimed at and requires distributors and issuers to take reasonable steps to ensure that dealings in the product are consistent with that determination.

ASIC has powers to issue stop orders for up to 21 days where it is satisfied that a person has contravened their design and distribution obligations. Since September 2025, ASIC has issued 95 interim stop orders under the design and distribution regime. ASIC has acted against a variety of entities, including those that issue small amount credit contracts and contracts for difference, and registered managed investment schemes.

ASIC also has powers to make a 'product intervention order' that can require persons not to engage in certain conduct in relation to a product. ASIC can make such an order if it is satisfied that a financial or credit product has resulted in, or will or is likely to result in, significant detriment to retail clients or consumers. ASIC has exercised this power to impose conditions on the issue and distribution of contracts for difference and certain short term and continuing credit contracts.

## OTHER OBLIGATIONS

There are also prohibitions in Australian legislation from engaging in unconscionable conduct in connection with financial services, including credit, and engaging in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive.

# The Financial Accountability Regime



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Established under the *Financial Accountability Regime Act 2023* (Cth) (FAR Act), the Financial Accountability Regime (FAR) commenced for authorised deposit-taking institutions (ADIs) on 15 March 2024. The FAR commenced for the superannuation and insurance industries on 15 March 2025.

The FAR replaces the Banking Executive Accountability Regime, establishing a new accountability regime for financial institutions in the banking, insurance and superannuation sectors and their directors and senior executives. The regime is jointly regulated by the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investment Commission (ASIC) (together, the Regulators).

## IDENTIFYING ACCOUNTABLE ENTITIES AND SIGNIFICANT RELATED ENTITIES

The FAR applies directly to accountable entities and indirectly to significant related entities (SREs) of accountable entities.

### Accountable entities

The following financial services participants are accountable entities under the FAR:

- ADIs;
- general insurers, life companies and private health insurers;
- non-operating holding companies (NOHCs) of ADIs, general insurers and life companies; and
- trustees of APRA-regulated superannuation funds (RSE licensees).

The FAR applies to a foreign accountable entity in the banking or insurance industries, but only to the operations of the entity's branch in Australia.

### SREs

#### ADIs, insurers and their NOHCs

An entity is an SRE of an accountable entity (other than an RSE licensee) if:

- it is a subsidiary of the accountable entity; and
- it (or its business or activities) has (or is likely to have) a material and substantial effect on the accountable entity (or on the accountable entity's business or activities).

A body corporate is a subsidiary of an accountable entity if the accountable entity:

- controls the composition of the body corporate's board;
- is in a position to cast, or control the casting of, more than 50% of the maximum number of votes that may be cast at a general meeting of the body corporate;
- holds more than 50% of the issued share capital of the body corporate; or
- the body corporate is a subsidiary of a subsidiary of the accountable entity.

#### RSE licensees

An entity is an SRE of an RSE licensee if:

- it is a connected entity of an RSE licensee; and
- it (or its business or activities) has (or is likely to have) a material and substantial effect on its accountable entity (or on the accountable entity's business or activities).

A connected entity is defined by reference to the *Superannuation Industry (Supervision) Act 1993* (Cth) and captures several entities including:

- subsidiaries of the RSE licensee;
- other related bodies corporate of the RSE licensee (for example, parent companies and related party service providers (sister companies)); and
- entities with certain control relationships with the RSE licensee.

An entity only becomes an SRE under the FAR if it is a constitutionally covered body and is not itself an accountable entity. This applies disregarding whether the accountable entity of which the entity is an SRE is an ADI, an insurer, a NOHC or an RSE licensee.

### Identifying SREs

To determine which entities will be SREs subject to the FAR, financial services participants should:

- consider their group structure and identify all subsidiaries and connected entities of their accountable entities; and
- consider the relationships and arrangements between their accountable entities and any subsidiaries and connected entities identified. This should include a consideration of both financial and non-financial factors such as the nature/extent of any subsidiaries' and connected entities' business or activities, financial, operational and reputational impact on their respective accountable entities (including the accountable entities' business and activities).

## IDENTIFYING ACCOUNTABLE PERSONS

### Accountable persons of an accountable entity

An individual is an accountable person of an accountable entity if any of the following apply:

- they hold a position in the accountable entity or in another body corporate of which the accountable entity is a subsidiary (of a non-RSE licensee) or a connected entity (of an RSE licensee) and because of that position, they have actual or effective senior executive responsibility for management or control of the accountable entity or a significant or substantial part or aspect of the operations of the accountable entity or the accountable entity's relevant group (noting that the relevant group of an accountable entity means that accountable entity and its SREs);
- they hold a position in, or relating to, the accountable entity and because of that position they have a responsibility, relating to the accountable entity, prescribed by the *Financial Accountability Regime (Minister) Rules 2024* (Minister Rules); or

- they hold a position in an accountable entity that is a position prescribed by the Minister Rules. As at the date of this Guide, the only position prescribed by the Minister Rules is the member of the board of an accountable entity.

### Accountable persons of an SRE

An individual is an accountable person of an SRE if:

- they hold a position in the SRE; and
- because of that position they have actual or effective senior executive responsibility for management or control of the accountable entity or a significant or substantial part or aspect of the operations of the accountable entity or the accountable entity's relevant group (noting that the relevant group of an accountable entity means that accountable entity and its SREs).

## ACCOUNTABILITY OBLIGATIONS UNDER THE FAR

### Accountable entities

Under the FAR, an accountable entity must comply with the following accountability obligations:

- to take reasonable steps to conduct its business with honesty and integrity, and with due skill, care and diligence;
- to take reasonable steps to deal with the Regulators in an open, constructive and cooperative way;
- in conducting its business, to take reasonable steps to prevent matters from arising that would (or would be likely to) adversely affect the accountable entity's prudential standing or prudential reputation;
- to take reasonable steps to ensure that each of its accountable persons meets their accountability obligations (see below); and
- to take reasonable steps to ensure that each of its SREs complies with each of the foregoing paragraphs, as if the SRE were an accountable entity.

## Accountable persons

Under the FAR, accountable persons must conduct the responsibilities of their position by:

- acting with honesty and integrity, and with due skill, care and diligence;
- dealing with the Regulators in an open, constructive and cooperative way;
- taking reasonable steps in conducting those responsibilities to prevent matters from arising that would (or would be likely to) adversely affect the prudential standing or prudential reputation of the accountable entity; and
- taking reasonable steps in conducting those responsibilities to prevent matters from arising that would (or would be likely to) result in a material contravention by the accountable entity of a range of financial services legislation, including the FAR Act, the *Banking Act 1959* (Cth), *Insurance Act 1973* (Cth) and the *Superannuation Industry (Supervision) Act 1993* (Cth).

### Concept of “taking reasonable steps”

The FAR Act uses the concept of “taking reasonable steps” as the yardstick for several accountability obligations. Taking reasonable steps is defined (non-exhaustively) in the FAR Act as including, in relation to a matter:

- having appropriate governance, control and risk management in relation to that matter;
- having safeguards against inappropriate delegations of responsibility in relation to that matter;
- having appropriate procedures for identifying and remediating problems that arise or may arise in relation to that matter; and
- taking appropriate action in response to non-compliance, or suspected non-compliance, in relation to that matter.

### Other obligations under the FAR

In addition to accountability obligations, the FAR also imposes on accountable entities certain obligations, including those relating to:

- **Registering accountable persons** - accountable entities must register an individual with the Regulators prior to that individual assuming an accountable person role. As part of this registration process, accountable entities are required to declare that it is satisfied the individual is suitable to be an accountable person.
- **Deferred remuneration** – accountable entities must defer payment of at least 40% of an accountable person’s variable remuneration for a minimum of 4 years and have in place a remuneration policy that requires a reduction in an accountable person’s variable remuneration if the accountable person fails to comply with their accountability obligations.
- **Notifications** – accountable entities are required to notify the

Regulators of certain events (including where an individual ceases to be an accountable person or the accountable entity has reasonable grounds to believe that it has failed to comply with its accountability obligations). Notifications must be made within a certain timeframe, using the relevant form on the Regulators’ online portal.

Accountable entities that meet enhanced notification thresholds prescribed in the Minister Rules are subject to additional obligations, including submitting accountability maps and accountability statements for their accountable persons, and notifying the Regulators of any material changes to these documents.

### Regulatory enforcement

The Regulators have broad powers to respond to contraventions of the FAR, including pursuing civil penalties against an accountable entity, and taking administrative action such as directing an accountable entity to reallocate responsibilities or disqualifying an accountable person.

In 2025, the Regulators made their first disqualifications under the FAR in relation to 2 former directors of Xinja Bank (a former ADI). The Regulators disqualified Xinja Bank’s former CEO Eric Wilson for 8 years and non-executive director Craig Swanger for 10 years from acting as accountable persons, after finding that they had breached their accountability obligations because:

- during its 2020 capital raisings, Xinja Bank had used undisclosed side agreements to misclassify funds as CET1 capital and mislead the regulator; and
- Swanger altered documents which he knew would be provided by Xinja Bank to APRA investors.

# Sanctions



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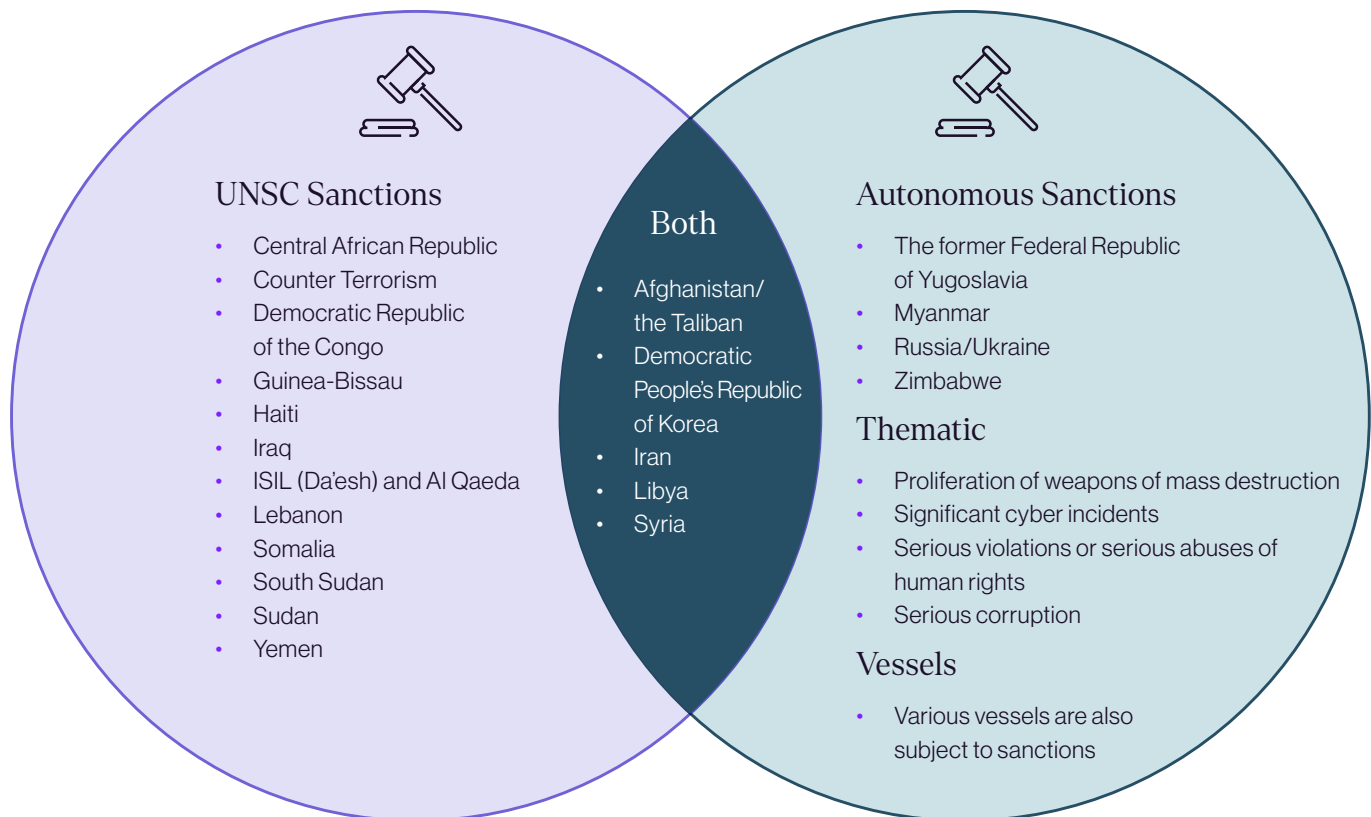
## How does Australia implement sanctions laws?

Australian sanctions laws are comprised of 2 sanctions regimes:

- sanctions made under the *Charter of the United Nations Act 1945* (Cth) to give effect to resolutions passed by the UN Security Council (the 'UNSC Sanctions'); and
- sanctions independently made by the Australian government under the *Autonomous Sanctions Act 2011* (Cth) (the 'Autonomous Sanctions').

The key offences created under the 2 regimes are broadly similar, although the regions to which the sanctions apply differ.

This diagram illustrates the various regions, organisations and themes impacted by Australia's sanctions regimes.



## EXTENDED GEOGRAPHICAL APPLICATION

The sanctions offences created under the regimes have extended geographical application. This means, for Australian incorporated entities and Australian individuals they may commit an offence irrespective of whether they engage in conduct in Australia or overseas. For foreign entities and persons, they will generally only commit an offence if their conduct or a result of conduct constituting the offence has a geographical link to Australia.

## MAIN SANCTIONS OFFENCES

The main offences under the UNSC Sanctions and Autonomous Sanctions regimes are:

- **engaging in a sanctioned supply:** the regimes designate particular goods as 'export sanctioned goods' for specific sanctions affected regions. The Minister for Foreign Affairs can specify under legislative instruments that certain items are 'export sanctioned goods' and these can change frequently. For example, the export of certain luxury goods to Syria and Russia is considered a sanctioned supply;
- **engaging in a sanctioned import:** the regimes also designate particular goods from each sanctions affected region as 'import sanctioned goods'. Like export sanctioned goods, the Minister for Foreign Affairs can specify under legislative instruments that certain items are 'import sanctioned goods'. Some present examples include all goods from specified Ukraine regions, coal and types of petroleum oils from Russia and crude oil, petroleum and petrochemical products from Syria;
- **providing a sanctioned service:** generally speaking, these are services which assist with or are provided in relation to another sanctioned activity (for example, sanctioned supply, import or commercial activity). The types of services can include technical advice, assistance or training, financial assistance, financial services, investment services or another service;
- **engaging in sanctioned commercial activity:** sanctioned commercial activities differ depending on the sanctioned jurisdiction. For example, in relation to Russia, dealings with certain financial instruments and arrangements to make loans or credit to specified Russian entities are prohibited;

- **dealing with a designated person or entity:** this offence prohibits a person from directly or indirectly making an asset available to, or for the benefit of, a designated person or entity. The Department of Foreign Affairs and Trade (DFAT) maintains a consolidated list of designated persons and entities under both sanctions regimes. Recent case law suggests a person can indirectly make an asset available to a designated person through interposed corporate entities that are owned or controlled by the designated person, or in which the designated person has a financial interest by virtue of their shareholder status; and
- **dealing with a controlled asset:** if a person holds a controlled asset (ie an asset owned or controlled by a designated person or entity) they will commit an offence if they use or deal with that asset or allow or facilitate the use of or dealing with that asset. In essence this requires the person to freeze the controlled asset. A person can request help from the Australian Federal Police (AFP) to determine whether an asset they hold is a controlled asset. They must also notify the AFP if they form an opinion that they hold a controlled asset.

These offences have a maximum penalty of:

- 10 years imprisonment, and/or a fine which is the greater of 3 times the value of the transaction or 2,500 penalty units (currently A\$825,000) for individuals; or
- a fine which is the greater of 3 times the value of the transaction or 10,000 penalty units (currently A\$3.3 million) for body corporates.

The approach of the Australian Sanctions Office (ASO) to regulating sanctions in Australia is predominantly educational, with limited history of enforcement activity. In 2025, the ASO released a significant amount of additional guidance notes relating to steps that may be taken to comply with sanctions laws, organised by sector (for example, the artificial intelligence and quantum technology sector, humanitarian sector, and maritime sector) and advisory notes addressing specific sanctions threats relating to particular sectors, countries, commodities, goods and services.



**DFAT information about Australia's sanctions regime**  
<https://www.dfat.gov.au/international-relations/security/sanctions>

## SPECIAL CONSIDERATIONS FOR BODY CORPORATES

For body corporates, sanctions offences are strict liability offences. This means that companies can commit an offence merely by engaging in the prohibited conduct, irrespective of whether it is inadvertent or unintentional. However, a company can rely on a defence of reasonable precautions if it can demonstrate that it took reasonable steps to avoid committing a sanctions offence. This may include actions such as implementing a sanctions policy, conducting sanctions screening of customers, suppliers or other business relationships and providing employee sanctions training.

A company may also be liable for acts of its subsidiaries or other entities under its control. Both sanctions regimes have provisions that deem a body corporate to have committed an offence if it has effective control over the actions of another body corporate or entity, which engages in certain sanctioned activities.

## PERMITS

The Minister of Foreign Affairs may issue a permit to an entity or person to engage in conduct that would otherwise constitute a sanctions offence, if it is in the national interest to do so. Applicants submit permit requests to the ASO, which will then make a recommendation to the Minister as to whether the application should be granted. Applicants are no longer able to request an indicative assessment from the ASO regarding whether their activities require a permit.

## ENFORCEMENT

Offences under the UNSC Sanctions and Autonomous Sanctions regimes are federal criminal offences, meaning that the Commonwealth Department of Public Prosecutions must commence proceedings against sanctions offenders. Courts have only heard prosecutions under Australian sanctions laws on 2 occasions:

- *R v Chan Han Choi (No 10)* [2021] NSWSC 891, where Mr Choi pled guilty to providing a sanctioned service (a brokering service for the supply of arms and related materiel and coal from North Korea) under the UNSC Sanctions regime and the Autonomous Sanctions regime; and
- *R v AA (No 3)* [2019] NSWSC 1892 and *R v BB (No 7)* [2021] NSWSC 1504, where husband and wife co-offenders pled guilty to providing a sanctioned supply to Iran under the UNSC Sanctions regime by procuring representatives of an Australian company, Metalloy Pty Ltd, to supply export- sanctioned goods (being nickel alloys) to an Iranian- owned Dubai-based company.

In October 2025, the Commonwealth Department of Public Prosecutions commenced proceedings against a director of an Australian registered remittance company based in Western Sydney for allegedly sending approximately A\$650,000 to sanctioned Iranian banks.

Recently, civil proceedings have been brought which relate to potential breaches of sanctions laws. These cases may provide insight into how sanctions laws may be interpreted in a criminal context. For example:

- In *Alumina and Bauxite Company Ltd v Queensland Alumina Ltd* [2024] FCA 43, a claim for breach of contract was brought against an entity that did not perform under a contract on the basis that performance would breach sanctions laws. The Court held that performance of the contract would have resulted in a dealing with designated persons and making a sanctioned supply of an export sanctioned good.
- In *Tigers Realm Coal Limited v Commonwealth of Australia* [2024] FCA 340, the Russian subsidiaries of an Australian listed company extracted coal from Russia's east coast. The extracted coal, which had been designated as an 'import sanctioned good' for Russia, was transported by truck to a Russian port where it was loaded onto ships for export to Asia (not Australia). Following an indicative assessment provided by DFAT which suggested the operations were likely to be prohibited by sanctions laws, the applicant sought declaratory relief from the Court. The Court held that transportation of the coal from the mine to the port involved a 'sanctioned import'.

## REFORMS

The Commonwealth through DFAT is currently consulting on reforms to the Australian sanctions regime to ensure that sanctions laws remain clear, fit for purpose and aligned with contemporary foreign policy objectives. In particular, the Commonwealth is considering streamlining the legal framework for autonomous sanctions and review mechanisms, clarifying the scope of sanctions measures, enhancing the transparency of permit powers, introducing a humanitarian exemption for autonomous sanctions, amending enforcement options and changing the regulatory functions of the ASO. Further consultation is planned and reforms are expected to be finalised before October 2027.

As part of reforms to the Australian AML/CTF regime which will take effect in 2026, reporting entities regulated under that regime will now be required to address certain sanctions risks in their AML/CTF policies and processes. This means that certain contraventions of sanctions laws may result in liability under UNSC Sanctions or Autonomous Sanctions and/or the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

# 4. Data, Marketing and IP



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## Privacy

Australian privacy law regulates the collection, storage, use and disclosure of personal information by organisations carrying on business in Australia and the rights of individuals in relation to information held about them.

Key obligations are set out in the Australian Privacy Principles (APPs), which form part of the *Privacy Act 1988* (Cth) (Privacy Act). The APPs and the Privacy Act are intended to give effect to Australia's commitments under the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.

### SCOPE OF APPLICATION

The APPs apply to:

- most Australian Government agencies; and
- all private sector and not for profit organisations established under Australian law, or that are established overseas but carry on business in Australia, with an annual turnover of more than A\$3 million. Small businesses that fall under this threshold may still be caught in some circumstances, such as where the small business is a health service provider or trades in personal information. In addition, small businesses may opt-in to the Privacy Act.

Special rules also apply to:

- the use and disclosure of consumer credit information by credit providers and credit reporting agencies; and
- the collection and use of tax file numbers, and other government related identifiers.

The Privacy Act has extra-territorial effect and will apply to acts or practices outside Australia by entities that are subject to the Privacy Act. This means that a foreign organisation that is caught because it carries on business in Australia must comply with the Privacy Act even in relation to activities conducted outside Australia.

## COMPLIANCE SYSTEMS

The APPs include an obligation to establish a system designed to ensure compliance. Often this will include the appointment of a Privacy Officer (whose duties may be combined with other roles within an organisation) but, unlike in some other jurisdictions, it is not mandatory to appoint an individual to such a position in Australia.

Each organisation that is subject to the APPs must also have an easily accessible public-facing privacy policy that sets out certain prescribed information about its information handling practices, such as the kinds of personal information that the entity collects, the purposes for which the entity uses and discloses that information, and processes by which an individual can seek to access or correct that information. Typically an organisation will make its privacy policy available on its website.

In addition, entities subject to the APPs must take reasonable steps to implement practices, procedures and systems to enable them to comply. Amongst other things, this should include a process for conducting privacy impact assessments (PIAs) for new projects that involve handling of personal information, or when a material change is proposed to existing information handling practices.

## CROSS-BORDER TRANSFERS

The APPs also regulate the disclosure of personal information to a person outside Australia. As a default position, the disclosing entity will be obliged to take reasonable steps to ensure that the overseas recipient of personal information will act consistently with the requirements of the APPs, which is usually satisfied by obtaining a contractual commitment to that effect from the overseas recipient. It is worth noting that in this case, if the overseas recipient is otherwise not bound by the APPs, the disclosing entity will remain directly responsible under the Privacy Act for the recipient's compliance.

There are some other exceptions that apply to enable cross-border transfers, such as where the entity reasonably believes that the recipient is subject to a law that provides equivalent protection to the APPs or where the relevant individual has given informed consent to the disclosure, but there can be challenges in applying these exceptions in practice. As a result, it is common for multi-national corporate groups with an Australian branch or subsidiary to put in place intra-group data sharing agreements.

The Privacy Act was updated in December 2024 to make provision for the Australian Government to prepare a 'whitelist' of jurisdictions where information may be disclosed without taking the additional steps mentioned above. While this is a relatively new development, and it is not clear which jurisdictions may be included on any whitelist once developed, this may in future facilitate data transfers outside Australia to selected jurisdictions.

## EXEMPTIONS

There are a number of broad exemptions under the Privacy Act, including for handling of employee records by employers and for small businesses, journalists and political parties. These exemptions are a key reason why the EU has not recognised Australia as a jurisdiction that provides an adequate level of protection for personal data exported from the EU. As a consequence, most exports of personal data from the EU to Australia rely on the EU's standard contractual clauses to provide a legal basis for the transfer of data. After the 'Schrems II' ruling of the Court of Justice of the European Union, this has required exporters to conduct a data transfer impact assessment of the powers of Australian public authorities to access or require the disclosure of personal data exported from the EU.

## DATA BREACHES

A mandatory notifiable data breach regime also applies to entities that are subject to the APPs. Under the regime, notice obligations may be triggered if there is a data breach involving unauthorised access to or disclosure of personal information that is likely to result in serious harm to any affected individuals.

Where the regime is triggered, a notice must be provided to the Australian Information Commissioner and to the affected individuals (directly, if that is possible, or else by means of a public notice). Notices must identify the notifying entity, provide details of the incident and the kinds of information affected, and set out recommendations for steps that affected individuals should take to protect themselves from harm.

An entity that discloses personal information to a recipient outside Australia may be required to prepare a notice for an eligible data breach that occurs in respect of the overseas recipient.

## ENFORCEMENT

The Privacy Act does not confer a direct right for an individual in relation to a breach of the APPs. Rather, a complaint must be made initially to the entity and escalated to the Australian Information Commissioner (Commissioner) if the individual is not satisfied with the entity's response. The Commissioner has power to investigate and make a determination requiring remedial action to be taken, including payment of compensation for loss or damage suffered by affected individuals (though such orders are not enforceable without further court action).

The Commissioner also has power to institute proceedings in court to require payment of a civil penalty for a breach of privacy under the Act. The maximum civil penalty for a serious breach is the greater of:

- A\$50 million;
- if the contravention results in a benefit to the corporation that the court can determine the value of, 3 times the value of that benefit; or
- if the court cannot determine the value of that benefit, 30% of the adjusted Australian turnover in a 12 month period.

For a non-serious breach, the maximum penalty is A\$3.3 million. The Commissioner also has power to issue infringement notices of up to A\$330k for certain prescribed 'administrative' breaches (such as failing to have a compliant privacy policy).

Where a court orders a civil penalty, it may also make other orders in relation to the relevant contravention, including an order that the entity compensate affected individuals for any loss or damage they have suffered. While only the Commissioner can commence a civil penalty proceeding, where a court makes a civil penalty order, an affected individual can apply directly to the court for a compensation order in relation to the same underlying contravention.

## STATUTORY TORT

The Privacy Act was recently updated to give effect to a new statutory tort for serious invasions of privacy.

The tort applies where there has been serious invasion of an individual's privacy (either by intruding upon the seclusion of an individual or misusing their information) in circumstances where the individual had a reasonable expectation of privacy, the invasion was either intentional or reckless and there was no overriding public interest. If these elements are made out, the tort is actionable even without proof of loss or damage. Relevant factors in assessing whether an invasion of privacy is 'serious' and include the degree of any offence, distress or harm to dignity that it caused and whether the invasion was motivated by malice.

The tort provides a new avenue for individuals to directly seek compensation for breaches of their privacy, without needing to rely upon the Commissioner to take enforcement action. However, the tort is a complex cause of action, and it is likely that test cases will be required to properly understand its operation in practice.

## ONGOING REFORMS

The Privacy Act is subject to ongoing review. A first 'tranche' of changes was passed in late 2024. Apart from the enhanced enforcement powers and the introduction of the statutory tort mentioned above, the first tranche also included enhanced transparency requirements in relation to use of personal information for automated decision making and a requirement for the Commissioner to develop a new 'Children's Online Privacy Code' (Code) by the end of 2026. On 31 March 2026, the OIAC published an exposure draft of the Code for public consultation, with submissions closing on 5 June 2026. The Code is intended to set out how the APPs should be applied or complied with in relation to the privacy of children.

The Exposure draft proposes that the Code will apply to social media and other online services likely to be accessed by children -including relevant electronic services and designated internet services as defined under the *Online Safety Act 2021* (Cth) as well as other services identified in the Code. The Code must be registered by 10 December 2026, with the commencement date yet to be confirmed.

The Government has confirmed that it is still considering further changes as part of a future tranche of reforms, which may include changes to key definitions affecting the scope of the APPs, the introduction of new data subject rights, clarification of requirements around consent and direct marketing, and the introduction of a new overarching obligation to ensure that all processing of personal information is 'fair and reasonable'.



**Office of the Australian Information Commissioner**  
<https://www.oaic.gov.au/privacy/privacy-legislation/the-privacy-act>

# Direct Marketing



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Depending on the method of communication used, direct marketing is regulated from a privacy perspective under the *Privacy Act 1988* (Cth) (Privacy Act), the *Spam Act 2003* (Cth) (Spam Act) and the *Do Not Call Register Act 2006* (Cth) (Do Not Call Register Act).

Further, there is some sector-specific regulation of direct marketing activities, such as the anti-hawking laws that apply to the marketing of financial services and financial products and provisions in the *Therapeutic Goods Act 1989* (Cth) that prohibit the promotion of certain therapeutic goods to consumers. General consumer protection laws also regulate the content of all marketing communications, with the objective of ensuring that consumers are not misled (see the [Consumer Protection](#) section of this Guide).

## SPAM ACT

The Spam Act applies to 'commercial electronic messages', which are essentially promotional messages sent by email, SMS or instant messaging platforms. Recent regulatory enforcement action under adjacent laws relating to online gambling suggests that the regulator considers that push notifications sent through mobile apps may also be caught, though no enforcement action on this issue has been taken by the regulator in the context of the Spam Act, nor has the regulator's stance been tested in court.

Under the Spam Act, a person or organisation can only send a commercial electronic message which has an 'Australian link' if:

- the recipient has consented to receiving messages (consent can be express or can be inferred from the recipient's conduct or a business or other relationship between the sender and the recipient);

- the message contains a statement detailing an electronic means of unsubscribing from receiving further commercial electronic messages from the sender in the future; and
- the message identifies the sender and includes the sender's contact details.

The prohibition on sending commercial electronic messages does not apply to the sending of an electronic message which is purely factual and would not be considered to have a promotional purpose if not for the inclusion of the sender's name and branding. However, service-style messages will still be caught if they include or link to any promotional material, even if those aspects of the message are relatively incidental. This aspect of the Spam Act has been enforced very strictly.

Substantial penalties may apply for breaches of the Spam Act, with higher penalties for repeat offenders. The supply, acquisition or use of email address harvesting technology is also an offence under the Spam Act. The enforcement of the Spam Act is the responsibility of the Australian Communications and Media Authority (ACMA). Persons receiving unsolicited commercial electronic messages do not have standing to commence proceedings for contraventions of the Spam Act.

From 1 July 2026, a new SMS Sender ID Register will take effect in Australia to help prevent scammers from using branded SMS messages to impersonate well-known brands.

From that date, SMS messages sent to an Australian mobile number with an unregistered sender ID will have the ID replaced with the word 'Unverified' and these messages will be grouped together in a single thread on the recipient's phone. The intention is to signal to the recipient that they should treat those messages with caution as they may be from a scammer. This regime will extend to overseas businesses sending messages with a sender ID to an Australian mobile number.

Any business wishing to use a branded sender ID would be well advised to register a sender ID so that their Australian customers can trust that the messages they receive are genuine. To be eligible for registration, the sender ID must be the same as, or a shortened version, acronym or initialisation of, the name or a registered trade mark of the business.

## DO NOT CALL REGISTER

The Do Not Call Register Act establishes the Do Not Call Register on which individuals, emergency services and government bodies can place their Australian phone or fax numbers without charge.

It is an offence to make an unsolicited marketing call, or send an unsolicited marketing fax, to a number on the Do Not Call Register unless consent has been given by the relevant account holder. As with the Spam Act, consent can be express or inferred from conduct or a relationship between the parties.

Some types of calls (for example, product recall calls, fault rectification calls, appointment rescheduling calls, appointment reminder calls, calls relating to payments, calls in response to an order of request etc) are carved out in regulations made under the Do Not Call Register Act. These calls will not be treated as telemarketing calls for the purposes of the Do Not Call Register Act.

Like the Spam Act, the Do Not Call Register Act is administered by ACMA, and substantial penalties may apply for breaches.

ACMA has also made an industry standard on telemarketing under the *Telecommunications Act 1997* (Cth), which sets out rules relating to the times at which telemarketing calls can be made (with different rules for weekdays and weekends), as well as rules around information that must be provided when the call starts (for example, the name of the individual making the call, the company they are working for, and the purpose of the call) and when the call must be terminated (for example, if the recipient asks to end the call).

## PRIVACY ACT

The Privacy Act regulates use of personal information for direct marketing, to the extent that the Spam Act and Do Not Call Register Act or other specialist laws (for example, on direct marketing for online gambling) do not apply.

For example, the Privacy Act will apply to use of personal information for direct marketing by postal mail and to targeted online advertising (though the characterisation of targeted advertising as a type of direct marketing has never been formally tested).

The Privacy Act rules on direct marketing are established under Australian Privacy Principle 7 (APP 7). Some key features are:

- a requirement to provide a simple means to opt out of future direct marketing;
- stricter rules for use of information that has been obtained from a third party source rather than directly from the individual concerned;
- a prohibition on using sensitive information for direct marketing unless the relevant individual has consented; and
- a requirement to disclose on request the source of information used for direct marketing.

Potential penalties for serious breaches of the Privacy Act have recently been substantially increased. In addition, new enforcement options have been introduced for less serious breaches, including by giving the Australian Information Commissioner power to issue infringement notices for certain breaches of APP 7 without needing to bring court proceedings.

Further substantial changes may be made to the Privacy Act, in the short to medium term, including in relation to its regulation of direct marketing activities, as part of ongoing law reforms (see the [Privacy](#) section of this Guide for further detail).



**Australian Communications and Media Authority**  
[www.acma.gov.au](http://www.acma.gov.au)

# IP Protection



**Scott Bouvier**  
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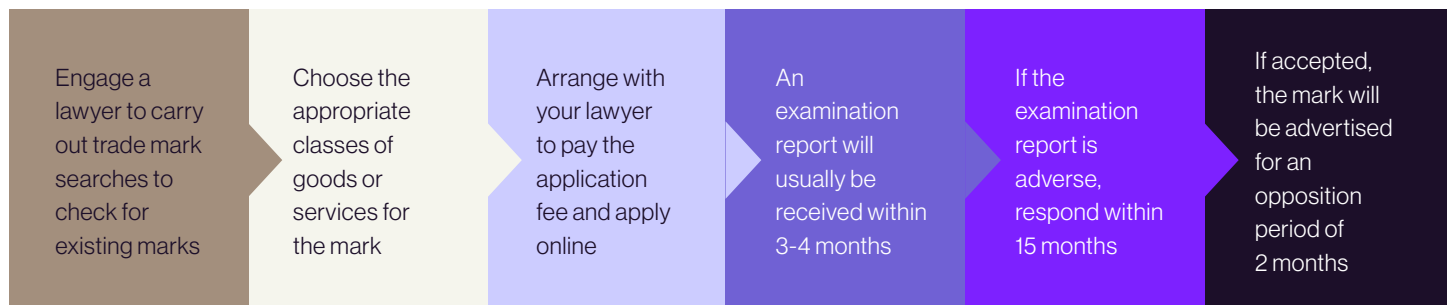


**Cate Nagy**  
Partner  
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## How can you protect your IP and ideas?

Australia has extensive laws that protect the valuable intellectual property assets of a business, including copyright works and other materials, branding, inventions, innovations and designs. Forms of intellectual property protected in Australia include trade marks, copyright, patents and designs. The registration system is administered by IP Australia, a Commonwealth government agency.

### TRADE MARK APPLICATION PROCESS



### TRADE MARKS

Trade marks are protected under the *Trade Marks Act 1995* (Cth) and associated regulations. They can be registered for names, logos, aspects of packaging, shapes, colours, sounds and scents.

Once a trade mark is registered, the owner can stop anyone else using a similar trade mark for similar goods or services.

As the application process can take between 6 to 12 months, traders should consider applying to register trade marks as far in advance of starting to trade in Australia as possible.

Trade marks provide 10 years of protection which is renewable indefinitely for further 10 year terms.

Australia is a signatory to a number of international trade mark conventions. This means that if an application for registration of a trade mark is made in Australia within 6 months of an application by the same person in a convention country, the applicant can claim the convention country filing date as the priority date.

A person infringes a registered trade mark if the person uses as a trade mark a sign that is substantially identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered, or that is closely related to the goods or services covered by the registration.

A person can also infringe a registered trade mark that is well-known in Australia, if the person uses the trade mark on unrelated goods or services, and because the trade mark is well-known, consumers would likely make an incorrect connection between the infringer and the owner of the well-known trade mark.

## PASSING OFF AND MISLEADING OR DECEPTIVE CONDUCT

Trade marks, names and brands may also be protected under the tort of 'passing off' and the Australian Consumer Law which prohibits corporations from engaging in misleading or deceptive conduct in trade or commerce. In both cases, it is necessary to establish a reputation for the trade mark, name or brand. Legal advice should be sought if a product new to the Australian market is coming close to an existing product design or get up, whether registered or unregistered in the Australian market.

Australian courts have found infringement where a company has copied the colours, size, shape and get up of another brand's packaging.

## PATENTS

Patents to protect inventions are granted under the *Patents Act 1990* (Cth) (Patents Act) and associated regulations.

A patent confers an exclusive right to exploit the invention claimed during the term of the patent.

A standard patent typically provides 20 years of protection but may be extended by up to 5 years in the case of certain patents that claim a pharmaceutical substance.

In order for a patent to be valid, it must claim an invention which is patentable subject matter. The invention must also be novel, inventive and useful.

A person will infringe a patent if the person exploits the invention claimed in any claim of a valid patent.

Prior to applying to register a patent, a patent clearance search should be conducted to determine whether the claimed invention infringes other granted patents (or will infringe a patent that is being prosecuted). This search should include patents and applications included in IP Australia's database, AusPat.

The patent application can be made through the online registration system. An application fee is payable.

## INNOVATION PATENTS

The Patents Act also recognises innovation patents, which have a term of 8 years (which cannot be extended). Inventions claimed in innovation patents are required to be 'innovative'. This is a lower threshold than standard patents (which must be inventive).

Following extensive consultation, the Australian Government is phasing out innovation patents. It is now no longer possible to apply for an innovation patent but innovation patents filed on or before 26 August 2021 continue to be in force until their expiry.

## COPYRIGHT

Copyright is protected in Australia under the *Copyright Act 1968* (Cth) (Copyright Act) and associated regulations. Copyright protects the original expression of ideas or information. It does not protect ideas themselves.

In general, copyright in a work subsists until 70 years following the death of the author. In the case of works where the author is unknown, the standard term is 70 years after the making of the work unless the work is made public within 50 years of its making, in which case the term will be 70 years after first being made public.

Copyright protection in original works and other subject-matter is automatic from the time of creation – registration is not required.

Australia is a signatory to the Berne Convention for the Protection of Literary and Artistic Works. This means that works created in countries which are also signatories will be treated as if they were created in Australia for the purposes of Australian copyright protection.

## WHAT IS PROTECTED UNDER COPYRIGHT?

- Literary works (such as articles, emails, copy, lyrics and books)
- Dramatic works
- Artistic works (such as drawings, paintings and photographs)
- Musical works
- Sound
- Films and advertisements
- Radio and television
- Computer programs and databases

Infringement of copyright will occur if a substantial part of a work is reproduced, published or performed in public (among other acts) without the copyright holder's authorisation. Currently, there are only limited defences to infringement and no broad US-style 'fair use defence'.



**Attorney General Department's Short Guide to Copyright**  
<https://www.ag.gov.au/rights-and-protections/copyright/copyright-basics>

## MORAL RIGHTS PROTECTION

In Australia, authors' 'moral rights' are also protected. These non-economic rights ensure integrity of authorship and attribution and protect against false attribution of authorship. They also create a right for authors and performers to not have their works subjected to derogatory treatment.

## DESIGNS

Designs are protected under the *Designs Act 2003* (Cth) and associated regulations. Designs protect the overall visual impression of a product including features of shape, configuration, pattern and ornamentation.

A design can be registered for a period of 5 years and can be renewed for a further 5 years.

In order to register a design in Australia, the design must be new and distinctive when compared to other designs that have been publicly used in Australia, published in a document in or outside Australia before the application date or disclosed in an Australian design application with an earlier priority date.

Infringement will occur if a product embodies a design that is identical or substantially similar in overall impression to a registered design.

Existing designs are searchable online. Drawings that fully display the design must be included in the application, which can be made online. An application fee is payable.

Convention priority can be claimed for designs filed internationally not more than 6 months prior to the application date in Australia.



**IP Australia**

<https://www.ipaustralia.gov.au/design-rights>

## .AU DOMAIN NAMES

An investor intending to use a website with an Australian top level domain (ending in the .au suffix) can register a .au domain name so long as the investor meets the eligibility and allocation criteria for the relevant domain under the .au Domain Administration Rules: Licensing Eligibility criteria can be satisfied, for example, by being an Australian registered company or a foreign company that has an Australian Business Number (ABN). Where the investor is a foreign company that does not have an ABN, the investor will be eligible to hold a .au domain name only if they have applied for or registered an Australian trade mark which is an exact match of the domain name. There must also be a connection between the registering entity and the domain name (for example, that the domain name is identical to the entity's business name). These requirements are also set out in the .au Domain Administration Rules: Licensing. Care should be taken to ensure that the domain name and content on the associated website do not infringe the rights of anyone holding a trade mark registered in Australia or otherwise constitute misleading or deceptive conduct contrary to the Australian Consumer Law.

Disputes over .au domain names may be addressed through administrative proceedings under the .au Dispute Resolution Policy (auDRP). Commencement of an administrative proceeding does not prevent either party from initiating legal proceedings at any time.

# Consumer Protection



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## How are consumers protected in Australia?

Australia has strict consumer laws that safeguard consumers and protect their rights against unfair, misleading or unsafe conduct by businesses.

### Consumer protections

The Australian Consumer Law (ACL) sets out the national approach to consumer protection in Australia. The ACL contains a range of consumer protections, breaches of which may result in serious penalties, including:

- civil penalties of up to:
  - (for corporations) the greater of A\$50 million, 3 times the value of the benefit obtained or, if the court cannot determine the benefit obtained from the act/omission, 30% of the corporation's adjusted turnover during the 'breach turnover period' (effectively, the value of all supplies connected with Australia for the longer of 12 months or the period over which the breach took place); and
  - (for individuals) A\$2.5 million; or
- substantiation notices, infringement notices or public warning notices.

The Australian Competition and Consumer Commission (ACCC) is the relevant regulator at the national level and enforces consumer protection laws vigorously. State and Territory consumer regulators may also enforce consumer protection laws at the relevant level.

### KEY PROTECTIONS

The ACL prohibits conduct in trade or commerce that is misleading or deceptive or likely to mislead or deceive. This can include misleading and false advertising, names and deceptive business practices such as lookalike products.

The ACL also prohibits false or misleading representations in connection with the promotion or supply of goods or services, including, for example, false or misleading testimonials or statements about the price, standard, quality, country of origin, characteristics or environmental credentials of goods or services.

The ACL gives 'consumers' the benefit of certain non-excludable guarantees and warranties in respect of goods and services. 'Consumers' can include businesses. The guarantees apply to any goods or services up to A\$100,000 in value, goods or services that are normally bought for personal, domestic or household use (of any value) and vehicles or trailers used mainly to transport goods on public roads. The guarantees include that the goods are fit for purpose and of acceptable quality, and that services are rendered with due care and skill.

Consumers are entitled to specific remedies if these guarantees are not met, including refund, repair, replacement or cancellation of the relevant contract.

The ACL prohibits 'unfair' contract terms in standard form contracts (where a contract has been prepared by one party and where the other party has little or no opportunity to negotiate the terms) of any value that are made with:

- **consumers:** an individual acquiring a good or service, or a sale or grant of an interest in land, wholly or predominantly for personal, domestic or household use or consumption; or
- **small businesses:** where at least one party is a small business (employing fewer than 100 persons, including casual employees employed on a regular and systematic basis) or has an annual turnover of less than A\$10 million for the last financial year that ended before the contract was made.

If either of these criteria are met, any unfair contract terms are void and unenforceable and significant penalties apply for proposing, applying or relying on an unfair contract term.

## COUNTRY OF ORIGIN LABELLING

Country of origin labelling laws govern representations, for example, about where goods were made, grown or produced.

For helpful guidance regarding country of origin labelling in Australia, see:



### **The ACCC's guide to assist businesses**

<https://www.accc.gov.au/business/advertising-and-promotions/country-of-origin-claims/country-of-origin-food-labelling>



### **For regular updates on consumer protection matters and reforms, see Mallesons In Competition blog**

<https://pulse.mallesons.com/in-competition/>

## PRODUCT LIABILITY

Federal law makes manufacturers and importers strictly liable for injury caused by defective or unsafe goods.

It also empowers the relevant Federal Minister to make mandatory safety standards, issue a compulsory recall notice, issue disclosure notices to third parties, publish a written safety warning notice or introduce a mandatory minimum standard of information required to be given to consumers relating to specified goods or services.

Mandatory safety and information standards apply to a wide range of household and consumer goods, including, for example, products that contain button batteries, care labelling for clothing, toys for young children and bicycle helmets. Penalties apply where a business supplies products that fail to comply with those standards.

Product liability may also arise under tort and contract and the Sale of Goods Acts in each state or territory.

## METHODS OF ENFORCEMENT

Product recalls which can be issued on a voluntary basis by the business selling the product, or on a compulsory basis by order of the Minister, are governed by the *Competition and Consumer Act 2010* (Cth) and industry protocols.

Class actions in relation to product liability claims are available to groups of 7 or more consumers if the claim arises out of similar circumstances giving rise to common issues.

Reporting requirements apply under which suppliers of consumer goods and product-related services who become aware of death, serious injury or illness caused by the use, or foreseeable misuse, of that good or service generally must report it to the Minister within 48 hours of becoming aware.

## INDUSTRY SPECIFIC CODES

Traders entering the Australian market should ensure that they receive advice on any codes relevant to their industry.

The ACCC regulates mandatory industry codes for the gas market, electricity retailers, franchising, dairy, sugar, horticulture, oil, wheat ports and unit pricing. The ACCC has the power to conduct industry code compliance checks to ensure businesses comply with applicable mandatory codes.

There are also voluntary codes developed by industry or the ACCC. An example of an ACCC developed voluntary code is the Food and Grocery Code of Conduct, which was introduced with the objective of improving standards of business behaviours in the food and grocery sector.

Codes may also be prescribed under other legislation. For instance, the Australia New Zealand Food Standards Code applies to businesses involved in the production, processing and/or marketing of food.

## COMPLIANCE AND ENFORCEMENT PRIORITIES

Each year the ACCC reviews its compliance and enforcement priorities, which are shaped by existing or emerging issues and their impact on consumer welfare and the competitive process. See the [Competition and Anti-Trust](#) section of this Guide for more information in relation to the ACCC's 2026 priorities.

# Digital Identity



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## An Economy – Wide Digital Identity Framework

Australia is moving towards the broad adoption of digital identities to reduce the volume and frequency of personal information that needs to be collected about individuals and reduce the risk of resulting data breaches and identity theft.

The *Digital ID Act 2024 (Cth)* (Digital ID Act) sets out a framework for economy-wide expansion of the Australian Government's Digital ID system, including a voluntary accreditation scheme for Digital ID providers.

### WHAT IS A DIGITAL IDENTITY?

A digital identity is a collection of information about an individual that allows them to prove who they are when transacting online. A digital identity enables individuals to verify their identity or an attribute (such as their age or education qualifications), without having to provide copies of identification documentation to each entity which requires that information.

### EXPANSION OF THE AUSTRALIAN GOVERNMENT'S DIGITAL ID SYSTEM

Whether and how to implement economy-wide digital identity frameworks are matters that many countries continue to grapple with.

The Digital ID Act sets out the legislative framework for the broader adoption of the existing Australian Government Digital ID System (AGDIS), with a voluntary accreditation scheme and a phased rollout starting with Government entities and expanding to the private sector by December 2026.

Prior to the Digital ID Act, AGDIS was effectively governed by the (unlegislated) Trusted Digital Identity Framework (TDIF).

The TDIF established the initial accreditation framework for Government entities, including rules and requirements for participation in AGDIS. In particular, AGDIS was based around a single Digital ID (previously myGovID and now myID). A key outcome of the new Digital ID Act is to provide access to the AGDIS by appropriately accredited State and Territory Governments, and, over time, private sector entities.

MyID continues to be delivered by accredited Commonwealth government entities and is now used by over 15 million Australians to verify their identities when accessing over 240 government services.

It is estimated by the Department of Finance that transactions through AGDIS have more than tripled to 80 million since the introduction of the Digital ID Act (compared to the same period in October 2023).

## ACCREDITATION UNDER THE DIGITAL ID ACT

The Digital ID Act sets out the requirements for entities to obtain and maintain accreditation for different types of Digital ID services. The applicable requirements will depend on whether the entity wishes to become one or more of:

- an accredited identity service provider (an entity that creates Digital IDs that can be used to verify information about an individual);
- an accredited attribute service provider (an entity that verifies and manages attributes (such as age) about an individual); or
- an accredited identity exchange provider (an entity that facilitates the flow of data between participants in the Digital ID system).

Entities seeking to offer Digital ID services generally are not automatically bound by the Digital ID Act. However, while accreditation under the Digital ID Act is voluntary, accreditation is likely to become the minimum expected standard for the issuing and use of digital IDs in Australia. Participation in AGDIS is also limited to accredited entities.

Importantly, while accreditation and use of Digital IDs may be encouraged to reduce the volume of personal information collected, an entity cannot require an individual to create a Digital ID to receive or access a service.

## ENHANCED ENFORCEMENT LANDSCAPE

The Digital ID Act strengthens the enforcement mechanisms that apply to accredited digital ID providers, including by the appointment of 2 regulators responsible for oversight over Australia's Digital ID system – the Australian Competition and Consumer Commission (ACCC) and the Office of the Australian Information Commissioner (OAIC).

The ACCC is responsible for:

- accrediting digital identity providers (and their proposed services) against the Digital ID Accreditation Rules which are included in the legislation;
- approving which services can participate in the AGDIS; and
- using investigative and compliance powers under the legislation to ensure accredited digital identity providers and services adhere to the legislation (other than in privacy related actions, which are handled by the OAIC).

The OAIC is the privacy regulator for Digital ID. The Digital ID Act includes privacy protections in addition to those in the Privacy Act and the OAIC is responsible for:

- overseeing privacy safeguards that apply to accredited providers;
- handling privacy complaints and investigating data breaches; and
- assessing if accredited providers are compliant with the privacy safeguards.

The Digital ID regime has also recently been updated to add additional security requirements and increase support for individuals who are impacted by Digital ID fraud and cyber security incidents within the AGDIS.

While the new framework has already commenced, the most significant changes will come when digital identities can be used between accredited entities in the private and government sectors. This is expected to occur by December 2026, but the specific timing for greater private sector participation has not yet been set.

Interested parties should watch this space.

## DIGITAL IDENTITY OUTSIDE THE DIGITAL ID ACT

Entities may develop and offer non-accredited digital identity services. These entities will still need to comply with other applicable laws, including the *Privacy Act 1988* (Cth), the *Online Safety Act 2021* (Cth), the *Spam Act 2003* (Cth) and the *Competition and Consumer Act 2010* (Cth). Importantly these entities will not be able to hold themselves out as being accredited under the Digital ID Act or use the 'Trustmark' associated with accreditation.

# Online Safety



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## ONLINE SAFETY ACT

In Australia, online safety is regulated by the *Online Safety Act 2021* (Cth) (Online Safety Act). The Online Safety Act applies to a range of online service providers, including those providing:

- social media services;
- services that enable end-users to communicate with other end-users (for example, email, instant messaging, SMS, MMS and other chat services), referred to in the Online Safety Act as 'relevant electronic services'; and
- all other services that allow end-users to access material on the internet (for example, webpages), referred to in the Online Safety Act as 'designated internet services'.

The Online Safety Act also imposes obligations on other online industry participants, such as internet service providers, content hosts, search engines, app store providers and manufacturers, suppliers, maintenance providers and installation providers of equipment that is for use by Australian end-users of the regulated online services.

The Online Safety Act regulates online safety by:

- establishing an eSafety Commissioner (eSafety) to monitor and promote compliance with the Online Safety Act and to investigate relevant complaints;
- enabling individuals to make complaints to eSafety about certain types of online material;
- providing for the development of a set of Basic Online Safety Expectations and associated compliance reporting obligations;
- providing for the development of industry codes and standards that set out the obligations of different sections of the online industry in relation to online material; and

- from December 2025 requiring that providers of certain social media services take reasonable steps to prevent children under the age of 16 from having accounts with their platforms.

## REMOVAL OF CERTAIN ONLINE MATERIAL

The Online Safety Act enables individuals to complain to the Commissioner about the following types of online material: cyber-bullying or cyber-abuse material (directed at children or adults, respectively), non-consensual sharing of intimate images, and other harmful online content that either would be refused classification or limited to an 18+ audience under Australia's National Classification Scheme (also referred to as 'class 1' and 'class 2' material), which can include things such as pro-terror content and child sexual exploitation material.

After investigating a complaint, eSafety may require end-users or providers to remove the relevant material or, in some cases, ensure that material is subject to a restricted access system (to protect against access by persons under the age of 18). For certain types of material, eSafety is not limited to responding to complaints and can issue removal notices on its own initiative. In some cases, eSafety may also require internet service providers to block access and internet search engine services to cease providing links to the relevant material.

## BASIC ONLINE SAFETY EXPECTATIONS (BOSE)

The BOSE are a set of expectations, defined in a Ministerial determination, intended to increase the accountability and transparency of online service providers.

Under the BOSE, relevant service providers are amongst other things expected to:

- take reasonable steps to ensure that end-users are able to use the service in a safe manner;
- take reasonable steps to minimise cyber-bullying material, non-consensual intimate images and material that depicts, promotes, incites or instructs abhorrent violent conduct;
- implement measures to prevent children from accessing certain types of harmful material; and
- enable end-users to report and make complaints about certain types of harmful material.

While these expectations are technically non-binding, service providers may be required to report against their compliance, which may be made public by eSafety (see examples [here](#)). Fines can, and have, been issued for failing to comply with these reporting requirements.

## INDUSTRY CODES AND STANDARDS

The Online Safety Act provides for industry bodies that represent defined sections of the online industry to develop codes to deal with certain matters regulated by the Online Safety Act, and for eSafety to register the codes if they meet certain statutory requirements. If a code does not meet those requirements, eSafety can develop an industry standard for that section of the online industry.

A first set of codes and standards dealing with unlawful material (such as child sexual exploitation material, pro-terror material, and certain types of material concerning crime, violence and drugs) came into effect between December 2023 and March 2024. These are now referred to by eSafety as the 'Unlawful Material Codes and Standards'. A second set of codes dealing with material that is not necessarily illegal but is considered inappropriate for children (such as online pornography, self-harm material and simulated gambling material) has recently been registered by eSafety and came into effect between December 2025 and March 2026. These codes are now referred to by eSafety as the 'Age-Restricted Material Codes'.

The codes and standards (like the Online Safety Act generally) apply to services with Australian end users, irrespective of where the provider is incorporated or operates.

## SOCIAL MEDIA MINIMUM AGE OBLIGATION

The Online Safety Act was updated in December 2024 to require that providers of certain social media services take reasonable steps to prevent children under 16 from having accounts with their platforms. This requirement came into effect in December 2025. While the Act does not specify what measures a provider must implement to comply with the minimum age obligation, explanatory materials indicate that, as a minimum, platforms are expected to have some form of age assurance in order to identify whether a prospective or existing account holder is under the age of 16.

Additional privacy restrictions apply to personal information collected for the purposes of age assurance, with explicit consent from the relevant user required in order for a platform to use that information for other purposes.

Detailed guidance has been published by eSafety and by the Australian Information Commissioner respectively, setting out their expectations as to how requirements will be implemented in practice. However, the compliance standard imposed under the Online Safety Act is dynamic, and expectations will likely change over time as age assurance technologies continue to develop and market practices mature.

## eSAFETY'S POWERS

eSafety has information-gathering powers that enable it to obtain, among other things, end-user identity information and contact details from service providers. Failing to comply, or providing false or misleading information, may result in the commission of an offence.

eSafety also has investigative powers under which eSafety can require a person to produce documents or give evidence relevant to the subject matter of an investigation under the Online Safety Act. The Online Safety Act also provides eSafety with a range of enforcement powers, including the power to make public statements about service provider contraventions (effectively 'naming and shaming' such providers), issue service providers with formal warnings, direct service providers to take remedial action and issue infringement notices. eSafety may also bring proceedings for various court-ordered remedies, including civil penalties, injunctions or (where there have been multiple previous contraventions, and the ongoing provision of a service is considered to represent a significant community safety risk) cease service orders.

At the time of writing, the maximum civil penalty that may be sought by eSafety is A\$49.5 million per contravention. This maximum penalty will apply for breaches of the social media minimum age requirements and for breaches of industry codes or standards made under the Online Safety Act. Lower penalties apply for other contraventions.

## UPCOMING DEVELOPMENTS

The Australian Government has indicated its intention to introduce a new legislative 'digital duty of care' for online platforms, aligned with similar duties that apply in the UK and the EU. Under this approach, digital platform operators would be obliged to take reasonable steps to prevent foreseeable harms to users on their services.

To discharge the duty, platform operators would likely need to undertake safety risk assessments and then to put in controls to proactively address identified safety risks, with the overall objective of shifting responsibility for managing online harms from individuals to platform operators. The Government is currently consulting on the scope and design of any future digital duty of care, with further details expected to be released over the course of 2026.

# Artificial Intelligence



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## Artificial Intelligence (AI) in Australia

### AI REGULATION (GENERAL APPROACH)

Australia does not have whole-of-economy AI-specific regulation – rather the use of AI is primarily regulated via existing technology neutral laws<sup>2</sup> and, in limited cases, sector specific laws that expressly apply to AI systems and AI generated content.

In December 2025, the Australian Government released the [National AI Plan](#). As part of one of its key goals to “Keep Australia Safe” the Government confirmed it is:

- continuing to assess the suitability of existing regulatory frameworks in the context of AI and will consider new AI specific laws where there is an identified harm from AI (e.g., in relation to child abuse material and infringements on Indigenous data sovereignty); and
- looking to existing regulators to identify, assess and address potential AI-harms within their policy and regulatory domains (with the support of a new AI Safety Institute that will monitor, respond and co-ordinate safety measures, laws and regulatory frameworks).

More broadly, in December 2025, the Australian Productivity Commission recommended that whole-of-economy AI specific regulation should only be considered as a last resort.<sup>3</sup>

As Australia navigates the evolving landscape of AI regulation, businesses must be proactive in ensuring they develop, deploy and use AI safely and responsibly. We have explored a range of key areas below.

### AI GOVERNANCE (BUSINESSES)

In 2019, the Australian Government released [Australia's AI Ethics Principles](#). These principles are aligned with internationally recognised principles on ethical and responsible AI (including the OECD's AI Principles) and are designed to ensure AI is safe, secure and reliable with a focus on:

- human, societal and environmental wellbeing;
- human-centred values;
- fairness;
- privacy protection and security;
- reliability and safety;
- transparency and explainability;
- contestability; and
- accountability.

<sup>2</sup> This includes, but is not limited to, duties of confidence and contract, negligence, criminal laws and legislation such as the *Privacy Act 1988 (Cth)*, the *Corporations Act 2001 (Cth)*, the *Competition and Consumer Act 2010 (Cth)*, the *Copyright Act 1968 (Cth)* and the various anti-discrimination laws.

<sup>3</sup> See the [Australian Government Productivity Commission, 'Harnessing data and digital technology: Inquiry Report \(No.111: 10 December 2025\)'](#)

Australia's AI Ethics Principles are supported by a range of voluntary guidance released by the Australian Government's National Artificial Intelligence Centre on responsible AI governance and adoption that businesses are expected to adopt when they develop, and deploy, AI. These currently include the:

- [Guidance for AI Adoption](#) that sets out 6 essential practices for responsible AI governance and adoption (including in relation to accountability, risk management, transparency, testing, monitoring and control). There are two versions of the guidance to reflect the differing rate of AI adoption within Australia. The Guidance for AI Adoption is an update on the Voluntary AI Safety Standard (VAISS) released in September 2024; and
- [Guide for using AI-generated content in business](#) which sets out best practice for AI generated content transparency.

### AI GOVERNANCE (GOVERNMENT AGENCIES)

The Federal Government seeks to hold itself to a high ethical standard in the use of AI via the [National Framework for the assurance of artificial intelligence in government](#) and [Policy for the responsible use of AI in government](#). Since December 2025, Commonwealth agencies and other non-corporate Commonwealth entities have been subject to a range of mandatory requirements in relation to: accountable official(s); transparency statements; developing a strategic approach to AI adoption; operationalising the responsible use of AI; AI use case accountability; internal use case registers; staff training on AI; and AI use case impact assessment. The mandatory requirements are complemented by range of other documents including guidance for Commonwealth agencies and staff on public generative AI and AI technical standard for technical specialists and business owners embedding AI in government systems.

The various State and Territory Governments have also adopted a range of specific guidance on AI adoption.<sup>4</sup>

Practically, this means businesses which develop or deploy AI systems for government or use AI in the provision of services to government are likely to be subject to additional requirements and assessments specific to the incorporation of AI in goods and services. For example, the Federal government has introduced template AI clauses for Agencies to include in contracts with suppliers.<sup>5</sup>

### AI AND PRIVACY (GENERAL)

Australia's Privacy Laws are technologically agnostic. This means that the collection (including generation), use and disclosure of personal information by an APP Entity (ie an entity to which the *Privacy Act 1988* (Cth) (Privacy Act) applies) in relation to an AI system or AI model must comply with the Privacy Act. This includes complying with transparency mechanisms (such as collection notices), taking reasonable steps to protect personal information, implementing data minimisation strategies to limit the amount of personal information used for AI purposes and to then destroy information when no longer needed and, for sensitive personal information, having the individual's consent to use the personal information.

As a matter of best practice, APP Entities developing or deploying AI involving personal information are expected to undertake a Privacy Impact Assessment (also known as a PIA) to promote compliance with the Privacy Act.

The Office of the Australian Information Commissioner (OAIC) has released a range of non-binding guidance aimed at assisting APP Entities including 'Guidance on privacy and the use of commercially available AI products' and 'Guidance on privacy and developing and training generative AI models'.

For the financial year 2025/2026, the OAIC has also listed "*the preservation of both privacy and information access rights in government use of artificial intelligence and automated decision making*" as a key regulatory priority.

### AI AND PRIVACY (AUTOMATED DECISION-MAKING)

Automated decision-making (**ADM**) involves the use of technology (often referred to in Commonwealth legislation as 'computer programs') to automate (or substantially automate) a decision-making process. Automated decisions may (but do not necessarily) involve the use of AI.

From December 2026, APP Entities which use personal information for making decisions by an automated process that could reasonably be expected to significantly affect the rights or interests of the individual in question must include details in their publicly available privacy policies about the kinds of information used for that purpose, the kinds of decisions made 'solely' by automated means and the kinds of decisions which are undertaken by automated means. This will capture many types of AI informed decision making.

4 See, for example, [NSW AI Assessment Framework](#); [Queensland's Artificial intelligence governance policy](#); [Guidance for the safe and responsible use of generative AI in the Victorian public sector](#); [AI Assurance Framework published by the Government of the Northern Territory](#); [South Australia's Guidelines for the use of Generative AI and LLM Tools](#); [Guidance for the use of artificial intelligence in Tasmanian Government](#); [WA Government AI Policy and Assurance Framework](#); and ACT: <https://www.act.gov.au/open/act-government-artificial-intelligence-policy>.

5 The AI Model Clauses are available on the Digital Transformation Agency's Digital Sourcing ClauseBank.

## AI AND DIRECTORS' DUTIES

Directors and officers must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise in their position. This is a technologically agnostic requirement and although not tested in court, it is widely accepted that directors' duties extend to the adoption, deployment and use of AI. The Australian Securities & Investments Commission (ASIC) has stated that it expects that, as part of their duties, "*Directors and officers should be aware of the use of AI within their companies, the extent to which they rely on AI-generated information to discharge their duties and the reasonably foreseeable associated risks*".<sup>6</sup> As a practical matter, this means directors need to understand AI, its benefits and its potential risks. Many businesses are rolling out training and implementing AI governance processes to ensure this is the case.

## AI AND COPYRIGHT

Where businesses (either as developers or deployers of AI) input copyright material into AI (as training material or otherwise) or seek to generate copyright material using AI, key questions include:

- **Does the training data infringe copyright?** Where copyright material is inputted into AI without the copyright owners' permission, Australian law may regard this as infringement. Australia's copyright laws do not contain a broad fair use exception similar to that under U.S. law. The Federal Government has explicitly ruled out supporting a broad Text and Data Mining (TDM) exception.
- **Who owns the output of an AI system?** Under Australian law, copyright requires a human 'author' who has applied sufficient 'independent intellectual effort'. There is ambiguity about how this originality threshold applies to generative AI outputs created in response to user prompts.
- **Is copyright infringed by end users when utilising materials produced by AI systems?** Where an AI system produces a substantive part of a protected work, an end user could unknowingly infringe a third party's copyright. The limited Australian exceptions have not been tested in this context. That means users deal with this risk contractually where they are using third party AI systems (for example, by way of third-party copyright infringement indemnities).

While the Federal Government has said "no" to TDM exceptions to copyright, it has committed to consult (via the Copyright and AI Reference Group) on other possible updates to Australia's copyright laws as they relate to AI. These consultations will focus on paid licensing for AI training, clarifying how copyright applies to AI-generated outputs, and creating lower-cost avenues for rights enforcement.

## AI AND ONLINE SAFETY

Australia's online-safety framework (primarily found in the *Online Safety Act 2021* (Cth)) is one of the few examples of existing technology neutral laws that have been updated to include AI specific obligations. For example, the [Online Safety \(Basic Online Safety Expectations\) Determination 2022](#) and the various [Online Safety Codes and Standards](#) made under the Act collectively impose various obligations on providers of services that use or enable the use of generative AI capabilities. These include general expectations that service providers will take reasonable steps to minimize the extent to which generative AI capabilities can be used for unlawful or harmful purposes, as well as various more specific obligations, such as to implement age assurance measures and content access controls for AI services that are capable of generating high-impact material (eg high impact sexually explicit material or high impact violence material).

To address these compliance requirements, it would be prudent for AI providers to undertake a thorough risk assessment, and to ensure that identified risks are appropriately mitigated, before launching AI services in Australia.

## AI AND EMPLOYMENT

Australian employment laws are currently technology agnostic. However, there is currently an increasing focus on the impact of AI to Australia's labour market. For example, in late 2025 the NSW Government proposed specific changes to the *Work Health and Safety Act 2011* (NSW) to specifically regulate digital work systems (which includes AI systems).

As the focus on AI in the labour market increases, it is important for employers to consider:

- early and substantive engagement with workers on the purpose and impact of AI in the workplace and AI's role in decision-making;
- assessing AI systems which are being deployed that will impact workers prior to implementation using an AI Impact Assessment that includes a section for WHS risks, with a particular focus on psychological safety; and
- planning ahead with respect to their people strategies and enterprise bargaining (especially where AI will impact roles and job creation).

<sup>6</sup> See ASIC Report 798: [Beware the gap: Governance arrangements in the AI innovation](#)

# 5. Key Infrastructure



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## Critical Infrastructure

### Security of Critical Infrastructure

In late 2021 and early 2022, the Australian Government implemented major reforms to the *Security of Critical Infrastructure Act 2018* (Cth) (SOCl Act) to uplift security and resilience obligations applicable to participants in 11 critical infrastructure sectors due to a worsening threat environment and a greater understanding of the interconnectedness of Australia's critical infrastructure.

The 11 critical infrastructure sectors are communications, data storage or processing, financial services and markets, water and sewerage, energy, healthcare and medical, higher education and research, food and grocery, transport, space technology and defence.

Further amendments to the SOCl Act, aimed at improving the security and resilience of Australia's critical infrastructure against increasingly complex cyber security risks, came into force during 2025.

There are 4 primary requirements imposed by the SOCl Act: reporting, risk management, enhanced cyber security obligations and government assistance.

#### REPORTING OBLIGATIONS

Entities that are responsible for a critical infrastructure asset (responsible entities), or have an interest of at least 10% in (or an interest that gives them influence or control over) a critical infrastructure asset (direct interest holders), must provide operational information and ownership information respectively to the Register of Critical Infrastructure Assets.

In addition, responsible entities for critical infrastructure assets must notify the Australian Cyber Security Centre of:

- critical cyber security incidents within 12 hours of becoming aware of the incident; and
- other cyber security incidents within 72 hours of becoming aware of the incident.

## RISK MANAGEMENT

Under the *Security of Critical Infrastructure (Critical infrastructure risk management program) Rules (LIN 23/006) 2023* (and for certain critical telecommunications assets, the *Security of Critical Infrastructure (Telecommunications Security and Risk Management Program) Rules 2025*), responsible entities for certain critical infrastructure assets must adopt, maintain, comply with, review and update a critical infrastructure risk management program (CIRMP) to:

- identify each hazard where there is a material risk that the occurrence of the hazard could have a relevant impact on the asset;
- reasonably minimise or eliminate any material risk of such a hazard occurring; and
- reasonably mitigate the relevant impact of such a hazard on the asset.

Within 90 days after the end of each financial year, each responsible entity that had a CIRMP must submit an annual report to the Cyber and Infrastructure Security Centre (CISC) stating, among other things, whether its CIRMP was up to date as at the end of the financial year. The annual report must be approved by the board of the responsible entity.

As part of the amendments that came into force in 2025, the CISC now also has the right to direct a responsible entity to vary its CIRMP if the CISC is satisfied that there are one or more serious deficiencies with the CIRMP.

## ENHANCED CYBER SECURITY OBLIGATIONS

There are additional obligations that apply to a subset of critical infrastructure assets known as 'Systems of National Significance' which are regarded as most important to the nation. These obligations only apply if required by the Secretary of Home Affairs and include:

- adopting, maintaining and complying with an incident response plan;
- participating in cyber security exercises to test the responsible entity's ability to respond appropriately to, and mitigate the impacts of a cyber security incident;
- undertaking vulnerability assessments; and
- providing periodic or event-based reports on the operation of a computer needed to operate the System of National Significance (or allowing the installation of a program to collect and transmit information) to the Australian Signals Directorate (ASD).

## GOVERNMENT ASSISTANCE POWERS

With the amendments that came into force in 2025, the Australian Government now has wide powers to enable it to act and intervene to respond to serious incidents (not just cyber security incidents) affecting critical infrastructure in Australia. These powers allow it to give directions requiring entities to provide information about an incident or to take action to respond to an incident.

The Australian Government has also retained the power to authorise the ASD to intervene or 'step in' to a critical infrastructure asset and take action (known as an 'intervention request'), but only in order to respond to a serious cyber security incident.

There are protections that apply to the exercise of these powers – in particular, their use must first be authorised by the Minister for Home Affairs on the basis that they are satisfied that:

- an incident has had, is having, or is likely to have, a relevant impact on a critical infrastructure asset;
- there is a material risk that the incident is likely to seriously prejudice Australia's social or economic stability, defence or national security; and
- no existing Commonwealth, State or Territory regulatory system could be used to provide a practical and effective response to the incident.

In addition, before authorising an intervention request, the Minister for Home Affairs must obtain the agreement of the Prime Minister and the Minister for Defence.

## RECENT AMENDMENTS TO THE SOCI ACT

The Security of *Critical Infrastructure and Other Legislation Amendment (Enhanced Response and Prevention) Act 2024* (Cth) came into force in 2025 and introduced further amendments to the SOCI regime. Those amendments were in part prompted by recent cyber incidents in Australia and had been foreshadowed in the Australian Government's 2023-2030 Cyber Security Strategy. The key amendments included:

- specifying that internal data storage systems that store or process business critical data are taken to be part of the relevant critical infrastructure asset, to ensure that they are covered by the obligations under the SOCI Act (in the same way as those systems that are outsourced to a third party data storage or processing provider are currently covered);
- the amendment of protected information provisions under the SOCI Act to simplify how government and industry share protected information;
- the addition of a power to direct responsible entities to remedy serious deficiencies in their CIRMPs; and
- the consolidation of telecommunications security requirements into the SOCI Act from the *Telecommunications Act 1997* (Cth). One important change that has resulted from this is that telecommunications carriers and larger carriage service providers are now required to have and implement a CIRMP in respect of certain critical telecommunications assets, and to comply with certain cyber security standards within periods of between 1 and 2 years from the time that the requirements come into effect.

For more information on the 2023-2030 Cyber Security Strategy and the other reforms that were introduced as part of the omnibus cyber security and critical infrastructure legislative package, see the [Cyber](#) section of this Guide.

At the end of 2025, the Australian Government commenced consultation on proposed uplifts to the risk management obligations for 'high-risk' asset classes (being certain critical infrastructure assets in the energy, communications, water and sewerage and transport sectors). The proposed amendments were prompted by the evolving threat landscape, as hostile foreign state actors increasingly target critical infrastructure globally, and the Australian Government's objective of uplifting resilience of critical infrastructure assets in line with emerging threats. An exposure draft of the proposed amendments, along with a separate consultation paper on proposed amendments to the Ministerial Directions Powers in Part 3 of the SOCI Act, was released for consultation in March 2026.

## INTERACTION BETWEEN CRITICAL INFRASTRUCTURE AND FIRB

As a consequence of the broadened definitions of 'critical infrastructure asset' in the SOCI Act, the scope of 'national security business' under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (FATA) has also been significantly expanded. 'National security business' includes a business which is a responsible entity or direct interest holder of a critical infrastructure asset. Under the FATA, the acquisition of an interest of 10% or more (or any influence or control) in a national security business is a 'notifiable national security action', requiring investors to first give notice to the Treasurer and receive a no objection notification before proceeding.

Investors will need to carefully assess the nature of the businesses they are looking to acquire or obtain an interest in, particularly where those businesses are operating in a critical infrastructure sector.

For more information on FIRB requirements, see the [Foreign Investment Regulation](#) section of this Guide.

# Energy and Renewables



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## RENEWABLE ENERGY TARGETS

Australia has set targets to address climate change and drive the transition to renewable energy.

The Australian Government is committed to reducing national greenhouse gas emissions by 43% (below 2005 levels) by 2030, 62-70% (below 2005 levels) by 2035, and to reach net zero emissions by 2050. The Australian Government has also set a goal for renewables to supply 82% of electricity in the National Energy Market (NEM) by 2030.

Six of the Australian States and Territories have also independently set their own 2030 emissions reduction targets (relative to 2005 levels, unless otherwise specified):

- Victoria: 45-50%;
- New South Wales: 50%;
- South Australia: at least 50%;
- Australian Capital Territory: 65-75%;
- Tasmania: 100%; and
- Western Australia: 80% (below 2020 levels).

With these national and regional targets in place, the pace of Australia's transition from fossil fuels to renewable energy is expected to continue to accelerate. This policy environment is likely to support a strong pipeline of opportunities for corporates, developers and investors across both new and existing renewable energy assets.

## KEY GOVERNMENT POLICIES

A range of government policies and initiatives have been implemented and maintained as part of attempts to meet the renewable energy targets.

At a federal level, one of the Australian Government's schemes to encourage investment in renewable energy generation projects is known as the 'Renewable Energy Target' (RET). Under the RET, wholesale buyers of electricity have an obligation to buy and surrender an annually increasing number of renewable energy certificates which are created by or in respect of certain renewable energy generators or other sources. The RET, which concludes in 2030, requires that 33,000 GWh of Australia's electricity generation be provided by renewable sources. This target was met ahead of schedule in 2019. The RET will expire in December 2030.

Another scheme is the 'Emissions Reduction Fund' (ERF), which is a voluntary scheme that aims to incentivise the adoption of practices and technologies that reduce carbon emissions. Under the scheme, participants can earn Australian Carbon Credit Units (ACCUs). One ACCU is earned for each tonne of carbon dioxide equivalent stored or avoided by a project. Once earned, project proponents can earn revenue through sales of ACCUs to the government or in the secondary market for ACCUs.

The ERF operates alongside the Commonwealth Government's Safeguard Mechanism, which applies to facilities emitting more than 100,000 tCO<sub>2</sub>-e a year and sets declining, production-adjusted baselines to drive emissions reductions over time. Baselines generally decline by 4.9% per year until 2030, increasing pressure on covered facilities to decarbonise. Since the 2023 reforms, emissions have fallen in line with legislated outcomes. The Government will review the Safeguard in 2026-27, including baseline decline rates for 2031-2035 and the scheme's sector and facility coverage.

The Federal Government has recently announced new policies, including:

- the 'Cheaper Home Batteries Program', which launched in July 2025 and delivers an upfront discount of approximately 30% on eligible small-scale batteries through the Small-scale Renewable Energy Scheme. From 1 May 2026, the program will scale up with expanded funding which includes tiered settings that taper down support for larger systems while keeping eligibility for storage systems up to 100 kWh; and
- the Solar Sharer Program (officially the 'Solar Sharer Offer') which is expected to commence in July 2026 and will require electricity retailers to provide households with at least 3 hours of free electricity each day during peak solar generation. The policy aims to utilise the vast amount of rooftop solar power, which often causes wholesale electricity prices to drop to zero (or negative) during the day. The program will initially apply in New South Wales, South-East Queensland, and South Australia.

## GUARANTEE OF ORIGIN SCHEME

The Guarantee of Origin Scheme (GO Scheme) commenced in November 2025, under the *Future Made in Australia (Guarantee of Origin) Act 2024* (Cth) and is now operational as a voluntary framework for product emissions accounting and renewable electricity certification, administered by the Clean Energy Regulator.

The GO Scheme issues 2 certificate types:

- Renewable Electricity Guarantee of Origin (REGO) certificates, which operate alongside the Renewable Energy Target (RET) certification scheme and its Large-scale Generation Certificates (LGCs) until the RET ends in December 2030, after which REGOs will be the primary mechanism continuing thereafter, covering electricity from existing and new generators, electricity dispatched from storage, and exports; and
- Product Guarantee of Origin (PGO) certificates, which record lifecycle emissions and attributes for products, beginning with hydrogen from electrolysis and expanding to green metals, low-carbon liquid fuels and biomethane.

The scheme introduces granular time-stamping to align renewable generation with consumption patterns and is expected to open additional revenue opportunities for storage projects and legacy generators (including pre 1997) eligible to create REGOs.

The GO Scheme remains subject to further development, including development of rules for aggregated systems, amendments to expand covered products and pathways (for example, additional hydrogen pathways) and to strengthen the GO Scheme's monitoring and measurement requirements.

## RENEWABLES AND GOVERNMENT CONTRACTING SCHEMES

The Australian Government's revenue underwriting scheme, known as the Capacity Investment Scheme (CIS), aims to accelerate investment in renewable energy generation and clean dispatchable capacity. Since launching in 2023, the CIS has been expanded to target 40 GW of new capacity, and auctions for both generation and dispatchable capacity will continue to be held regularly until 2027.

The expanded target comprises approximately 26 GW of new large-scale renewable generation representing about A\$52 billion in investment, and 14 GW of clean dispatchable capacity representing about A\$15 billion, totalling around A\$67 billion. The CIS has now been streamlined into a single stage to reduce the time for finalising outcomes from a previous 9, to a 6-month timeline.

CIS agreements are now moving to execution, with projects progressing through delivery and grid connection.

## SOUTH AUSTRALIA FIRM ENERGY RELIABILITY MECHANISM

South Australia is implementing the Firm Energy Reliability Mechanism (FERM) to ensure adequate long-duration firm capacity as the energy mix becomes more renewable. FERM targets generators capable of delivering at least 30 MW of dispatchable capacity for 8 hours or more. Capacity will be procured through competitive tenders for new projects and obligation-based arrangements for existing plant. Contracts will provide limited, targeted revenue certainty where needed to keep firm capacity online, while preserving competitive market outcomes and minimising costs to consumers. The scheme began in 2025, with the first tender in Q3 2025.

## NETWORKS AND RENEWABLE ENERGY ZONES

At the State and Territory level, there is sustained policy support for large-scale renewables, with some States electing to implement their own policies and development strategies for the energy transition.

These policies include the development of Renewable Energy Zones (REZs), which concentrate new utility-scale renewable energy projects, storage systems, and high-voltage transmission infrastructure in defined locations and are currently in the process of being planned and developed in New South Wales, Victoria and Queensland.

In New South Wales, the Government is well advanced in implementation of its 'Electricity Infrastructure Roadmap', which is aimed at achieving at least 12 gigawatts of renewable energy generation, and 2 gigawatts of long-duration storage by 2030. The Roadmap is expected to attract A\$77 billion of private investment into renewable energy assets. The New South Wales Government has formally declared 5 REZs; Central-West Orana, New England, the South-West, the Hunter- Central Coast region and the Illawarra. Central-West Orana REZ is currently in delivery with an initial 4.5 GW of transfer capacity expected by the late 2020s. EnergyCo continues staged planning for the other 4 REZs, including an intended 8 GW in New England and a South West build anchored by major interconnector upgrades.

The Victorian Government has identified 6 proposed REZs throughout the state, comprising Central Highlands, Central North, Gippsland, North-West, South-West and Western. The Victorian Government allocated A\$540 million in its 2021 budget to establish a REZ Fund and create VicGrid, to coordinate the planning and development of the REZ's. VicGrid's 2025 Victorian Transmission Plan proposed an additional Gippsland Shoreline REZ and set an Optimal Development Path of 7 transmission programs to enable the zones, with Draft REZ Orders issued in November 2025.

The Queensland Government unveiled the Queensland Energy Roadmap 2025, resetting the strategic approach to the State's energy transition over the next 5 years and beyond. The Roadmap targets 6.8 gigawatts of new wind and solar and 3.8GW of storage by 2030, and includes opportunities for new investment through the Investor Gateway and the A\$400 million Queensland Energy Investment Fund. The Roadmap introduces Renewable Energy Hubs (replacing the previous REZ framework).

Complementing these State programs, the Australian Energy Market Commission (AEMC) has commenced a self-initiated Electricity Network Regulation Review to consider the role of the electricity network regulation in providing consumers with a low cost and reliable electricity supply as the NEM is transitioning to a net-zero future. The review is scoped to streamline connections (including for REZs and large new loads), strengthen investment signals and pricing, and better integrate system strength and operability requirements with the rollout of the new transmission and distribution infrastructure.

## NATIONAL ENERGY MARKET WHOLESALE MARKET REVIEW

An expert independent panel, appointed by the Commonwealth Government, published its Final Report on NEM wholesale market settings in December 2025. The panel recommended a package of reforms to support investment in firmed renewables and storage in the NEM after the completion of the CIS tenders in 2027.

The panel proposes retaining the energy-only spot market while strengthening short, medium and long-term signals through:

- a mandatory framework to improve visibility and dispatchability of price-responsive resources;
- establishing a permanent marketing-making obligation framework for key derivative contracts; and
- establishing the Electricity Services Entry Mechanism (ESEM) to run a competitive procurement for the 3 services (bulk zero emissions energy, shaping and firming).

Implementation is slated to commence in 2026, with formal commencement targeted for early 2027. All states except Queensland have provided in-principle support for the package.

## ENERGY AND DATA CENTERS

Data centres are rapidly being developed in Australia, with new data centres having significant data capacity with corresponding large energy consumption.

AEMO forecasts that there will be 2.2–3.2 GW of operational data centre capacity by 2035, using around 8–11% of national electricity demand. AEMO now treats data centres as a distinct demand class and has reflected this expected growth in its 2026 Integrated System Plan.

The AEMC has proposed reforms to the NEM which integrate large flexible loads and consumer energy resources into dispatch; tighten technical standards; and realign network incentives.

To address the surge in 100-600+ MW data centre connections to the NEM, the AEMC has proposed "Package 2" reforms. If approved, Package 2 will introduce clearer, tailored access standards for large inverter-based loads, including data centres. Large loads would need to detect and manage instability and coordinate with AEMO and networks, so protection and operational settings minimise mass-tripping risk. Minimum short-circuit ratio thresholds would become flexible, set by the network and AEMO and raised where needed, and system strength obligations would be expanded. In emergencies, large loads could ramp down rapidly rather than only disconnect instantly.

## BESS AND TOLLING AGREEMENTS

Activity in grid-scale battery energy storage is accelerating. The primary models adopted in Australian markets are:

- **Physical Tolls** – arrangements where an offtaker controls a storage asset (or portion of capacity) for a fixed Capacity Fee (\$/MW), typically reflecting material investment commitments and the assumption of merchant risk by the offtaker.
- **Virtual Tolls** – where developers control the storage asset, but instead mitigate merchant risk through a financial settlement with offtakers (variants of which include capacity swap/revenue share arrangements)

The bespoke nature of these structures has driven industry efforts to standardise aspects of contracting. For example, the Australian Financial Markets Association has most recently released template virtual tolling confirmations to complement the 2002 ISDA Master Agreement, reflecting the increasing frequency of such transactions in Australian energy financial markets over recent years.

That being said, the introduction of new market entrants (like trading houses/financial institutions/insurers) has resulted in more unique and bespoke structures being adopted as offtaker motivations have changed to support more speculative behaviour/new packaged financial products in energy markets. This has resulted in significant product innovation, and suites of financial risk management services being offered to wholesale market participants.

However, some uncertainty does exist in this contracting market with the impact of the 'Cheaper Home Batteries Program' yet to be fully realised, potentially changing current contracting structures (as a function of peak demand potentially shifting).

## SYSTEM STRENGTH

To address the growing reliance on inverter-based resources and maintain system strength, the AEMC introduced changes to the NER in 2025 requiring the transmission network service provider in each NEM region to plan for and pre-emptively procure sufficient system strength services. These changes commenced on 2 December 2025, and network service providers across the NEM have recently been entering into contracts to procure these services.

For service providers with system strength assets (including synchronous condensers and battery energy storage systems), these arrangements create new, longer-term contracted revenue opportunities linked to the provision of system strength, supporting investment in enabling infrastructure and technologies capable of delivering these services.

## DISTRIBUTED ENERGY RESOURCES AND CONSUMER ENERGY RESOURCES

Distributed Energy Resources (DER) are expanding rapidly, creating new investment opportunities in Australia's clean energy future, as evidenced by the growing number of virtual power plants (VPPs) and community batteries.

Commercial and industrial (C&I) batteries and electric vehicle charging infrastructure are becoming increasingly important components of Australia's distributed energy landscape. These assets are increasingly coordinated through VPPs and other orchestration platforms, enabling greater visibility of price-responsive capacity and more active participation of these assets in energy and ancillary service markets.

Consumer-owned assets, often described as Consumer Energy Resources (CER), are increasingly central to system planning, market design and operational security. The Australian Government endorsed the National CER Roadmap in July 2024, with an updated implementation plan released in August 2025. The plan is organised around 4 workstreams (consumers, technology, markets, and power system operations) and is intended to lower system costs by coordinating CER to mitigate the need for full scale grid upgrade and investment.

CER also features prominently in the NEM Review's wholesale market settings work, which emphasises making price-responsive resources visible and coordinated in dispatch and moving larger CER aggregations toward a more "active/passive" participation model, alongside clearer consumer pathways to benefit from flexibility. In parallel, the AEMC's Pricing Review draft report (December 2025) proposes reforms aimed at ensuring consumers benefit from competition, have meaningful choice in products and services, and share system costs more equitably as CER adoption accelerates, with implementation expected to commence in 2026 over an approximately 10-year pathway.

## GAS

Policy settings increasingly position gas as a reliability backstop during the renewable build-out, particularly for winter peaks and variability on the east coast of Australia. The Commonwealth's 2025 Gas Market Review (released December 2025) highlights rising reliance on gas-fired generation to meet peak electricity demand and recommends a national domestic gas reservation scheme from 2027, reserving 15–25% of export-project output for the local market. Complementary measures under consideration include market-making to deepen liquidity, expanded AEMO powers and reporting, streamlined Code selling practices, and pipeline and storage investment incentives via National Gas Law amendments and targeted exemptions to deliver reserved gas to demand centres.

The Gas Market Code remains in force with ongoing reviews and exemptions. On the west coast, near-term conditions have improved, but structural shortfalls are projected, starting from around 2028 with the supply-demand gap widening towards 2030 and beyond as new industrial demand emerges and anticipated coal-fired power station retirements are implemented, signalling the need for new supply and infrastructure even as export commitments continue. The Commonwealth has also flagged further consultation on scheme performance in 2026–27, with potential adjustments following government decisions.

## OFFSHORE WIND

Australia's offshore wind sector is focused around 6 priority offshore development areas: Gippsland (VIC), Hunter (NSW), Southern Ocean (VIC), Illawarra (NSW), Bass Strait (TAS) and the Indian Ocean off Bunbury (WA).

More than 10 feasibility licences have been issued for proposed offshore wind projects. However, 3 of these licenses have since been surrendered. Each feasibility licence provides the project with up to 7 years of studies within a defined area. Projects then require a commercial licence to construct and operate an offshore wind farm. However, no commercial licence has been granted to date, and the market remains nascent.

Across the industry, developers are revising programmes and scopes in response to supply-chain cost pressures, financing and offtake uncertainty, grid and port readiness constraints, and community and environmental approvals.

In January 2026, the Victorian Government announced that it would run Australia's first offshore wind auction to support the development of offshore wind projects off the Gippsland coast.

## HYDROGEN

In the 2024-25 Federal Budget the Australian Government doubled the Hydrogen Headstart program from A\$2 billion to A\$4 billion to provide production credits for large-scale renewable hydrogen awarded through competitive rounds.

The Australian Government introduced a time-limited Hydrogen Production Tax Incentive. This is an uncapped refundable tax offset of A\$2/kg for eligible renewable hydrogen produced for up to 10 years between 2027-28 and 2039-40, as a further mechanism to support the development of hydrogen projects.

The Australian Government will also provide revenue support through a Hydrogen Production Credit that underwrites the gap between the expected sales price of hydrogen (or its derivatives) and the project's cost of production, including a justifiable return on capital.

# Resources and Critical Minerals



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Australia has a mature mining industry, with the energy and resources sector accounting for 11 per cent of Australia's GDP and two-thirds of total merchandise exports. The sector is subject to specific regulation at both a State and Federal level, including recently revised FIRB, environmental and taxation requirements.

## KEY TAKEAWAYS

- Mineral resources are primarily vested in and regulated by the States and Territories. Projects need to consider additional regulatory overlays, such as Native Title and environmental and planning laws, as well as FIRB and taxation.
- Critical minerals are essential to the energy transition. Australia is positioned as an increasingly important player in critical minerals supply chains, supported by policy and investment at the State and Federal level and through increasing international collaborations, such as the October 2025 United States-Australia critical minerals deal, recent Canada-Australia partnerships (November 2025 and March 2026) and EU trade deal (March 2026).
- Critical minerals classifications, which are contingent on supply risks, differ between jurisdictions – for example, copper and uranium are critical minerals in Canada and the United States, but are not classified "critical" in Australia. However, both copper and uranium are key growth exports for Australia - fueled by the energy transition and rising global demand for clean energy including in support of data centres and AI.

## REGULATION OF MINERAL RESOURCES IN AUSTRALIA

The regulation of mineral resources is the responsibility of the States and Territories (with the Commonwealth Federal Government retaining control over certain minerals in the Territories). The mineral resources are vested in the States and Territories, except for some historical grants of land prior to federation which vested private ownership of minerals (other than gold and silver, which were reserved to the Crown).

Through legislation enacted at the State/Territory level, the States and Territories typically have the power to grant three different types of mining tenements:

- **Exploration Rights:** exploration for mineral resources, including drilling. These rights are granted for approximately 5 years (with renewal options) and include positive exploration obligations, with no commercial mineral extraction permitted. Holders can usually apply for mining rights, subject to the requirements of the specific State legislation (e.g. proof of mineralisation);
- **Mining Leases/Licences:** these leases/licences permit the development and production of minerals in the leased area, and are typically granted for a term of 21 years with a right to renew for a further 21 years. Mining rights are a form of property, but are subject to 'native title' (traditional owner) notification and negotiation processes; and
- **Retention Licences:** only available in Victoria, South Australia and Tasmania, and in Western Australia for offshore minerals only. These licences grant title over mineral discovery where mining is currently impracticable and are granted for approximately 5 years.

Each form of mineral tenement is subject to various tenement obligations, including the payment of rent and royalties. Each State and Territory has its own mining-related legislation, regulatory body and overseeing Minister – who often has some discretion to set the terms and conditions of title.

A further complexity - Australia's laws divide the land's subsurface horizontally and vertically, allowing for multiple forms of ownership to exist across the same piece of land. For example, Native Title does not include rights to minerals on traditional lands and waters (for additional information on Native Title see the [Native Title](#) section of this Guide). However, Native Title holders have a right to negotiation and compensation for impacts to their land and waters which a mining tenement holder must recognise. If the Native Title holder and tenement holder are unable to negotiate an agreement, the National Native Title Tribunal will determine whether the mining project is permissible and if it should be subject to conditions. The interaction between mining tenements and Native Title is complex and the outcomes of claims can vary – in some instances Native Title is extinguished; in others the traditional owners can be entitled to royalties, and/or other forms of compensation.

Mining activities are also subject to:

- environmental protection laws at the State and Territory level (including management of contaminated land, water rights, pollution, waste and threatened species);
- federal environment protection laws, specifically the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), which has a more limited ambit and applies to world heritage areas, national heritage places, listed threatened species, Commonwealth marine areas, water resources and uranium mines (among other matters);
- State and Territory level planning approvals, regulating land use and development;
- State and Territory level Aboriginal cultural heritage protection laws (in addition to Native Title); and
- any requirement for FIRB approvals (for example an acquisition of 10% of securities in a mining, production or exploration entity is a “substantial interest” requiring the approval of the Treasurer.)

Reforms to federal environment protection laws which will impact the assessment and approval of projects at a federal level are scheduled to take effect on 1 July 2026, including the establishment of the National Environment Protection Agency. (for additional information on the federal environmental law reforms see the [Environmental Issues](#) section of this Guide).

Certain longer-term significant projects may be governed by agreements with the State, in the form of a contractual agreement which is ratified by an Act of Parliament. These ‘State agreements’ typically address the application of State cultural heritage, environmental and planning laws to the specific project (although federal laws, such as those relating to Native Title, continue to apply).

Furthermore, federal merger control reforms which commenced 1 January 2026 include mandatory notifications and ACCC approvals for any acquisition that meets specific monetary and control thresholds (for additional information on the merger control reforms see the [Competition and Anti-Trust](#) section of this Guide).

Importantly, foreign investors need to consider Foreign Investment Review Board (**FIRB**) approvals (for additional information on FIRB see the [Foreign Investment Regulation](#) section of this Guide). The general FIRB position is that the approval of the Treasurer is required if a foreign entity is acquiring a “substantial interest” in an Australian entity. A “substantial interest” is usually 20%, but other thresholds can apply under additional specific rules depending on the asset class and nature of the foreign entity – for example an acquisition of 10% of securities in a mining, production or exploration entity is a “substantial interest”.

### WHAT ARE “CRITICAL MINERALS”?

In Australia, critical minerals are, according to the Australian Federal Government, “*metallic or non-metallic elements that [are] essential for modern technologies, economies or national security, and [have] supply chains at risk of disruption*”.

Australia maintains 2 lists as at March 2026: the Critical Minerals List and the Strategic Materials List (published by the Department of Industry, Science and Resources).<sup>7</sup> Strategic Materials are minerals which, while important for the global energy transition, are not considered to be presently vulnerable to supply chain disruption in Australia.

Australia's Critical Minerals List contains the following 31 resource commodities as at March 2026, 2 of which are groupings of minerals encapsulated in the ‘platinum-group elements’ and ‘rare-earth elements’ categories:

<sup>7</sup> [Department of Industry, Science and Resources | Australia's Critical Minerals List and Strategic Materials List](#)

# Critical Minerals List

High-purity Alumina	Chromium	Graphite	Manganese	Rare-earth elements	Tantalum
Antimony	Cobalt	Hafnium	Molybdenum	Rhenium	Tellurium
Arsenic	Fluorine	Indium	Nickel	Scandium	Titanium
Beryllium	Gallium	Lithium	Niobium	Selenium	Tungsten
Bismuth	Germanium	Magnesium	Platinum-group elements	Silicon	Vanadium
					Zirconium

The Commonwealth Resources Minister has the discretion to review the Critical Minerals List at any time, and to make interim amendments if there are significant changes to technology, trade or domestic capacity, or relevant geopolitical developments.

Critical minerals lists vary across the world - individual countries develop their own lists of critical minerals based on the relative importance of particular minerals to their industrial needs and their strategic assessment of supply risks. The categorisation of critical minerals is, of course, an outcome of policy and access (both to raw resources and downstream processing), rather than geological science. Assessments of mineral criticality reflect market and political conditions and supply chain risk at a particular point in time and therefore tend to be subject to ongoing review, adaptation and change.

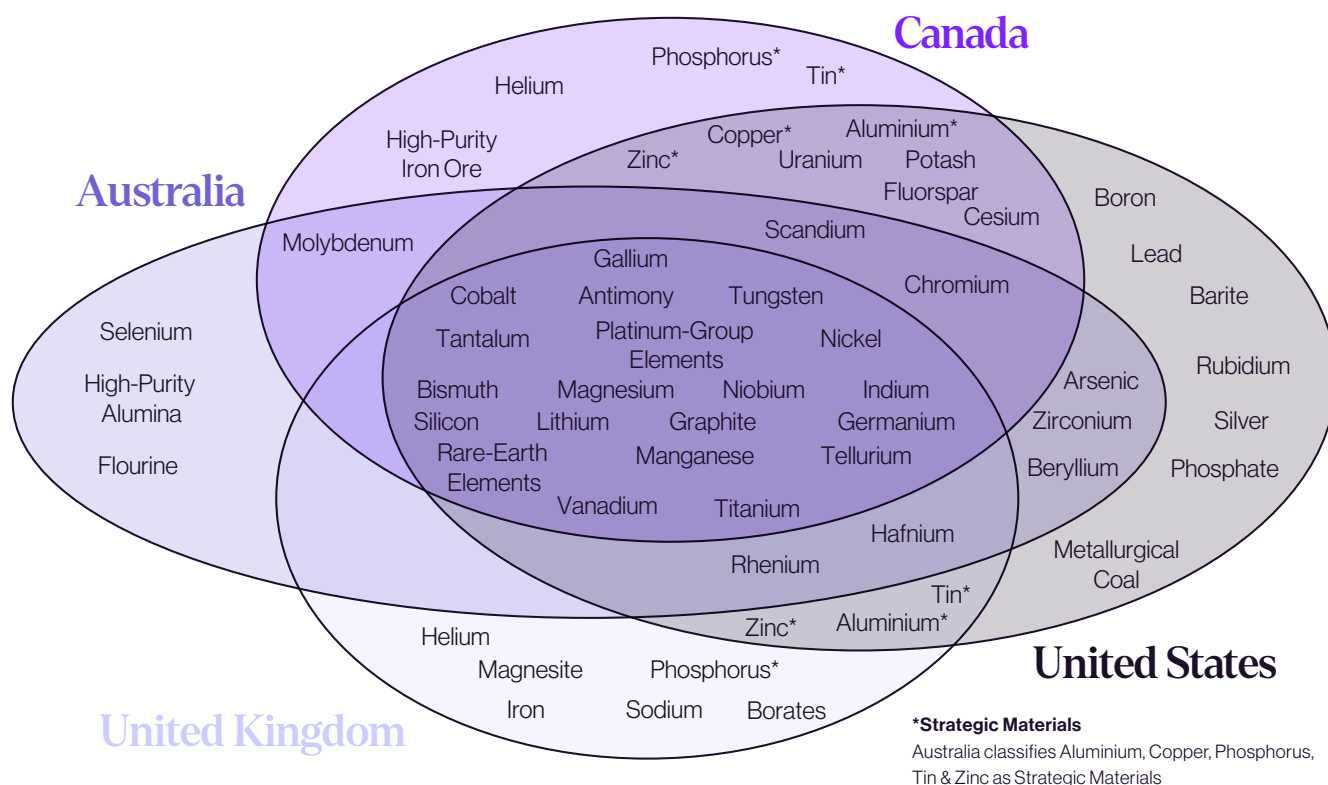


Figure: Comparison of critical minerals in Australia, United States, United Kingdom and Canada.<sup>8</sup>

<sup>8</sup> This diagram has been developed using the following sources: Government of Canada "Canada's Critical Minerals"; US Department of Interior "Final 2025 List of Critical Minerals"; and UK Department for Business & Trade "Critical Minerals technical annex". This diagram does not include the US additional critical materials for energy identified by the US Department of Energy in 2023 which do not overlap with the US critical minerals list: electrical steel (grain-oriented electrical steel, non-grain-oriented electrical steel, and amorphous steel), fluorine, natural graphite and silicon carbide. This diagram does not include the additional UK growth minerals which do not overlap with the UK critical minerals list: beryllium, chromium, copper, uranium and graphite (synthetic).

This comparison of critical minerals lists as at March 2026 provides insights into opportunities in the critical minerals supply chain. For example:

- copper and uranium are critical minerals in Canada and the United States, but are not classified “critical” in Australia. However, both copper and uranium are key growth exports for Australia fueled by global demand for clean energy;
- rare earth elements and platinum-group elements are classified “critical” across the board by Australia, the United States, Canada, the United Kingdom, the European Union, Japan, India and South Korea; and
- iron or high-purity iron ore is “critical” in Canada and the United Kingdom, but is considered a common, high-volume commodity in many other jurisdictions, including Australia which produces over 38% of global iron ore and holds 30% of the global iron economic demonstrated resources (EDR).<sup>9</sup>

In Australia the Strategic Materials List consists of the following commodities: aluminium, copper, phosphorous, tin and zinc. Strategic materials are important when considering Australia’s export market but may not be supported by broader primary critical minerals initiatives. Similar “secondary” lists are published in other jurisdictions – the United Kingdom has a Growth Minerals List (which includes additional minerals beryllium, chromium, copper, uranium and synthetic graphite)<sup>10</sup> and the United States has a list of additional critical materials for energy (aluminum, cobalt, copper, dysprosium, electrical steel, fluorine, gallium, iridium, lithium, magnesium, metallurgical coal for steelmaking (inclusive of anthracite), natural graphite, neodymium, nickel, platinum, praseodymium, silicon, silicon carbide and terbium).<sup>11</sup>

### IS AUSTRALIA A SIGNIFICANT PLAYER IN CRITICAL MINERALS SUPPLY CHAINS?

Australia makes an outsized contribution to global supply chains of critical minerals. In 2024, Australia accounted for:

- approx. 36% of global lithium extraction;
- 16% of global zinc exports;
- 9.2% of global aluminium exports; and
- 6% of global copper exports.<sup>12</sup>

Currently in production, Australia ranks:

- No 1 global producer of lithium and rutile;
- No 2 global producer of bauxite, lead and zircon;
- No 3 global producer of manganese ore, rare earths and zinc; and
- No 4 global producer of cobalt and uranium.<sup>13</sup>

Australia’s natural resources put it in pole position to develop a world-leading critical minerals industry. Australia has the largest EDR in the world of lead, rutile, uranium, vanadium, zinc and zircon, based on 2024 figures. Australia also ranks in the top 5 for 12 other global critical mineral commodities: bauxite, cobalt, copper, graphite, lithium, magnesite, manganese ore, nickel, rare earths, tin and tungsten.

### WHAT IS THE OCTOBER 2025 UNITED STATES-AUSTRALIA CRITICAL MINERALS DEAL?

The United States–Australia Framework for Securing of Supply in the Mining and Processing of Critical Minerals and Rare Earths agreed between the US and Australia in October 2025, includes commitments from both countries to:

- **Investment:** Provide at least USD\$1B in Australia & the United States the short term. Investment options include capex and opex via guarantees, loans, equity, offtakes, insurance, regulatory facilitation.
- **Price Mechanisms:** Protect their domestic critical minerals markets “from non-market policies and unfair trade practices” including adoption of a “standards based system” to trade within a pricing framework, including price floors.
- **Asset Sales:** Develop new or strengthen existing authorities and diplomatic tools that “review and deter critical minerals and rare earths asset sales on national security grounds”.
- **Permitting:** Take measures to accelerate, streamline or deregulate permitting timelines and processes, consistent with applicable law.
- **Project Selection:** Jointly identify projects of interest to address gaps in priority supply chains.

9 [Department of Industry, Science and Resources | Australia’s Identified Mineral Resources \(2025\)](#).

10 [UK Department for Business & Trade “Vision 2035: Critical Minerals Strategy”](#).

11 [US Department of Energy “What are Critical Materials and Critical Minerals”](#).

12 [Office of the Chief Economist | Resources and Energy Quarterly \(December 2025\)](#).

13 [Department of Industry, Science and Resources | Australia’s Identified Mineral Resources \(2025\), World Rankings](#).

## AUSTRALIA AND CANADA: PRODUCER NATIONS IN CO-OPERATION

In November 2025, Australia and Canada signed the non-binding Joint Declaration of Intent on Critical Minerals Collaboration (JDI) as 2 large-scale like-minded producer nations, with the following areas of cooperation:

- **Investment:** Explore options to co-invest in commercially viable projects, including through Canada's defence stockpiling regime and Australia's critical minerals strategic reserve as well as respective export finance instruments.
- **Technology:** Encourage joint R&D, with a focus on the low-carbon and circular economy.
- **Policy and Regulatory Alignment:** Share best practices on standards on ESG, traceability, and permitting processes, taking into account relevant legislation, recognising the shared and continued commitment to responsible mining, reduction of greenhouse gas emissions, engagement with local communities, and respect for the rights of Indigenous peoples.
- **Standards-Based Market:** Ensure that emerging standards-based markets capture the unique challenges that producer nations face in achieving high ESG standards at the mine site and in early-stage processing.
- **Supply Chain Resilience:** Share best practices/tools to address any disruptions to project development.
- **Information Sharing:** Establish a mechanism to share information on stockpiling and respective project development pipelines.

Subsequently, in March 2026, Australia and Canada announced further commitments and partnerships in critical minerals, defence, AI, and [clean energy](#), with Australia also joining the G7 Critical Minerals Production Alliance.

## REMOVING TRADE BARRIERS IN CRITICAL MINERALS SUPPLY CHAINS

In addition to the European Union (EU)'s support of new critical minerals projects through its Critical Raw Materials Act policy framework, it is also supporting existing supply chains through the removal of trade barriers.

In March 2026 Australia and the European Union announced the Australia–European Union Free Trade Agreement which:

- commits to eliminate EU tariffs on Australian critical minerals and hydrogen (except steel);
- included commitments for Australia to raise foreign investment threshold to facilitate EU investment;
- puts in place a framework of greater cooperation with the EU on resources and energy, including joint investments in critical minerals projects; and
- guarantees better access for eligible Australians to travel to and provide energy distribution consultancy and advisory services.<sup>14</sup>

## WHAT ARE THE KEY AUSTRALIAN POLICIES SUPPORTING THE DEVELOPMENT OF ITS CRITICAL MINERALS INDUSTRY?

- **Critical Minerals Strategic Reserve:** The Reserve will be established to 'safeguard' Australia's future prosperity, with an initial investment of \$1.2 billion.<sup>15</sup> The Reserve will operate through a combination of government-backed national offtake agreements (for example, to acquire agreed volumes of critical minerals or an option to purchase at a given price) and selective stockpiling of a subset of critical minerals important to Australia's national security and the security of Australia's key partners. A taskforce was established in 2025 to support the development of the Reserve.
- **Critical Minerals Production Tax Incentive:** The *Future Made in Australia (Production Tax Credit and Other Measures) Act 2025* enacted the \$7 billion Critical Minerals Production Tax Incentive - which will be available for eligible processing activities undertaken from 1 July 2027.
- **FIRB:** FIRB has been granted additional funding to review critical minerals projects.
- **Critical Minerals Facility:** The \$5 billion facility is a government-backed financial program providing loans, guarantees, and support to develop projects for critical minerals.
- **Exploration initiatives:** \$556.1 million commitment to accelerate deposit discovery.

<sup>14</sup> [Department of Foreign Affairs and Trade | Australia-European Union Free Trade Agreement](#)

<sup>15</sup> [Media Release | Delivering Australia's critical minerals supply](#)

## URANIUM – A LOW CARBON OPTION IN THE ENERGY TRANSITION?

While uranium is not a “critical mineral” in Australia, nuclear power currently accounts for about 10% of all electricity generation globally, with operational nuclear power plants in 32 countries worldwide.<sup>16</sup> Australia has the largest uranium reserves in the world (approximately 1/3rd) and is the fourth largest producer of uranium.<sup>17</sup>

Currently, the mining of uranium is only permitted within the Northern Territory, South Australia and Tasmania. Exploration for uranium is permitted in Queensland and New South Wales, however Victoria prohibits both exploration for, and mining of, uranium. Whilst the exploration for, and mining of, uranium in Western Australia is permitted under the WA Mining Act, a state policy ban on mining approvals for uranium was reinstated in 2017 with a ‘no uranium’ condition on all future mining leases.

Until 8 January 2021, the operational uranium mines in Australia were Ranger in the Northern Territory, and Olympic Dam, Beverley/Four Mile and Honeymoon in South Australia. However, mining and processing activities were ceased at the Ranger mine in 2021 (with operations at Ranger now focused on rehabilitation completion by 2026). Mining and processing activities were initially ceased at the Honeymoon mine in 2013; however, the project has since reopened and is reported to be ramping up to full capacity.<sup>18</sup>

No enrichment or fuel fabrication is undertaken in Australia, and Australia exports all the uranium oxide concentrate that it produces. Australia’s uranium is exported strictly for electrical power generation only, in accordance with Federal regulations which safeguard its use.

Significantly more uranium will be required to meet the anticipated rising global uptake of nuclear power generation, notwithstanding Australia itself does not have nuclear power generation. Depending on the energy mix of zero-carbon and low-carbon technologies and their prioritisation through to 2050, there could be a huge export market opportunity for Australia in future years.

<sup>16</sup> [International Energy Agency | Nuclear Power, International Energy Agency](#)

<sup>17</sup> [Geoscience Australia | Australia’s Identified Mineral Resources 2025, Office of the Chief Economist | Resources and Energy Quarterly \(December 2025\).](#)

<sup>18</sup> [ASX Announcement | December 2025 Quarterly Results Presentation](#)

# Telecommunications



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## Regulation of Radiocommunications

### LICENSING OF SPECTRUM

The use of radiofrequency spectrum (and the associated licensing requirements) is regulated by the ACMA under the *Radiocommunications Act 1992* (Cth) (Radio Communications Act).

Under the Radiocommunications Act, there are 3 broad forms of licensing for radiocommunications devices:

- spectrum licences – these allow the operation of an unlimited number of radiocommunications devices in the specific geographic area and frequency band set out in the licence. Spectrum licences are usually allocated via an auction process and are valid for up to 20 years;
- apparatus licences – these generally allow the operation of specific transmitters or receivers covered by the licence in the specific geographic area and frequency band set out in the licence. Apparatus licences involve an application process and are usually issued by the ACMA for a year; and
- class licences – these allow the operation of common radio equipment on shared frequencies (for example WiFi and Bluetooth transmitters). Class licences don't need to be applied for and do not involve the payment of fees.

The Radiocommunications Act also includes, among other things, licensing requirements that apply to a satellite network that transmits to places in Australia, and exceptions for the use of otherwise banned equipment.

## Regulation of Telecommunications, Information and Data

### LICENCE AUTHORISATIONS

The Australian telecommunications licensing regulation distinguishes between:

- carriers – entities that own or operate telecommunications infrastructure (generally, line links or certain radiocommunication facilities);
- carriage service providers (CSPs) – entities that supply carriage services using a carrier's infrastructure; and
- content service providers – entities that provide online services (including those for information and entertainment) and pay TV services.

An entity that owns telecommunications infrastructure must either obtain a carrier licence from the ACMA or ensure that a licensed carrier takes carrier-related responsibility for the telecommunication infrastructure, in the form of a 'nominated carrier declaration', unless an exception applies (for example, some electricity, gas and water supply bodies are exempt).

Carriers are required to comply with certain regulatory obligations, most of which are set out in the *Telecommunications Act 1997* (Cth) (Telecommunications Act), related standards and codes - and depending on the infrastructure the carrier owns the *Competition and Consumer Act 2010* (Cth). Carriers must also comply with any conditions in their carrier licence.

While CSPs and content service providers are not currently required to be licensed, they are required to comply with certain regulatory obligations, most of which are set out in the Telecommunications Act, the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth) (TCPSS Act) and in various determinations and standards issued under those acts. For example, CSPs must undertake two factor authentication before undertaking certain high-risk customer interactions.

As part of the CSP obligations, there is a particularly strong focus on consumer protection. These include broad obligations under the Telecommunications Consumer Protections Code (TCP Code), the Customer Service Guarantee, the Priority Assistance for Life Threatening Medical Conditions Code, and the Telecommunications (Financial Hardship) Industry Standard 2024. The enforcement of new rules to support consumers affected by domestic and family violence) is also a compliance priority of the ACMA in 2025-2026.

Entities can be both a carrier and a CSP under Australian law.

This sector is subject to ongoing regulatory reform. Notably:

- In November 2025, a revised draft of the TCP Code was submitted to the ACMA for consideration, with a decision expected in early 2026.
- In August 2025, the Australian Government re-introduced the *Telecommunications Amendment (Enhancing Consumer Safeguards) Bill 2025* (Cth) (the ECS Bill), which, among other things, will require CSPs to register with the ACMA in order to supply (or offer to supply) listed carriage services to the public. The proposed registration scheme would effectively apply to all CSPs who are required to be members of the Telecommunications Industry Ombudsman scheme, as well as those declared to be registrable by the Minister. Under the ECS Bill, registration must be refreshed each year and the ACMA has powers to impose conditions on a CSP's registration, or to refuse or revoke a registration. The ECS Bill remains before Parliament as at the date of this Guide.
- In October 2025, the *Telecommunications Amendment (Triple Zero Custodian and Emergency Calling Powers) Act 2025* came into force, in response to Optus network outages which impacted emergency call services in both 2023 and 2025. This Act amended the TCPSS Act to establish a Triple Zero Custodian and provided the ACMA with the power to direct carriers, CSPs and emergency call persons to provide certain information and take certain actions to ensure the effective functioning of emergency call services.

- At the end of 2025, the *Telecommunications Legislation Amendment (Universal Outdoor Mobile Obligation) Bill 2025* (Cth) (UOMO Bill) was introduced into Parliament. If passed, the UOMO Bill will require mobile operators to provide equitable access to voice and SMS mobile services outdoors across Australia, including in regional and remote areas. The universal outdoor mobile obligation will initially apply to Australia's three national mobile carriers (Telstra, Optus and TPG), who are identified in the UOMO Bill as Primary Universal Outdoor Mobile Providers, and is currently proposed to commence on and from 1 December 2027.

## ASSISTING LAW ENFORCEMENT

Carriers and CSPs also have obligations under the *Telecommunications Act and the Telecommunications (Interception and Access) Act 1979* (Cth) (TIA) to assist law enforcement agencies. These include obligations to, so far as it is reasonably practicable to do so, prevent their telecommunications networks and facilities from being used in, or in relation to, the commission of offences and to ensure that their networks and facilities have appropriate interception capabilities.

In 2021, the interception framework was expanded to allow Australia to enter into agreements with other countries facilitating a new international production order mechanism. This mechanism streamlines requests from Australian law enforcement for data from overseas communications providers (and vice versa, for law enforcement from those countries), by allowing law enforcement or national security agencies to request the information directly from communications providers in the other country. The *Australia- US CLOUD Act Agreement* is the first agreement with another country under this framework and entered into force in January 2024.

### Telecommunications sector security

The SOCI Act and associated instruments also contain regulatory requirements designed to manage law enforcement and national security risks within the telecommunications sector. These include:

- an obligation on carriers and CSPs that own or operate critical telecommunications assets to, so far as it is reasonably practicable to do so, protect the assets to ensure the confidentiality of communications carried on, and of information contained on, the assets, as well as the availability and integrity of the assets;
- an obligation on carriers that own or operate critical telecommunications assets to inform the Australian Government about network changes that are likely to have a material adverse effect on their capacity to comply with their network security obligations;
- broad powers for the Australian Government to issue directions to, and gather information from, carriers and CSPs that own or operate critical telecommunications assets in relation to security matters;

- an obligation on carriers and CSPs that own or operate critical telecommunications assets to adopt, maintain, comply with, regularly review and keep up-to-date a critical infrastructure risk management program;
- an obligation on carriers and CSPs that own or operate critical telecommunications assets to provide the Australian Department of Home Affairs with operational information in relation to their assets (including information where an entity other than the carrier or CSP holds a direct interest in a relevant asset); and
- an obligation on carriers and CSPs that own or operate critical telecommunications assets to notify the Australian Signals Directorate (ASD) within 72 hours (or 12 hours if it will have a significant impact) of a cybersecurity incident occurring.

More information can be found in the [Critical Infrastructure](#) section of this Guide.

## INDUSTRY ASSISTANCE RELATING TO NATIONAL SECURITY

The Telecommunications Act also establishes an 'Assistance and Access' regime, which allows certain government agencies to require 'designated communications providers' to provide technical assistance or develop technical capabilities to assist the agencies to perform their national security and law enforcement functions. However, designated communications providers cannot be compelled to do anything that would implement or build a systemic weakness or vulnerability into a form of electronic protection (such as encryption). Designated communications providers include carriers, CSPs and a wide range of other entities in the communications industry, including device manufacturers, software providers and providers of electronic services.

## ABHORRENT AND VIOLENT MATERIAL

There are also telecommunications-specific offences in the *Criminal Code Act 1995* (Cth) (Criminal Code). Most notably, it is a criminal offence for an internet service provider, a content service provider or a hosting service provider to fail to notify the Australian Federal Police within a reasonable time after becoming aware that the service it provides can be used to access 'abhorrent violent material' (which is material that depicts serious violent terrorist acts or other crimes, such as murder, torture, rape or kidnapping). It is also an offence for a content or hosting service provider to fail to expeditiously remove or cease hosting the abhorrent violent material. The maximum penalty under the regime for corporations is currently the greater of A\$16.5 million and 10% of annual turnover (including turnover of related bodies corporate).

## DATA RETENTION

The TIA requires carriers and CSPs to retain a prescribed set of telecommunications data (including information about a communication such as its source, destination, date, time and type but not including the contents or the substance of the communication) for at least 2 years. Data relating to web browsing history is not required to be retained.

## TELECOMMUNICATIONS INFORMATION

Carriers and CSPs are subject to regulations around how they can use and disclose information about their customers and the substance of communications under Part 13 of the Telecommunications Act. This sort of information may only be used and disclosed in limited circumstances set out in the Telecommunications Act.

## CONSUMER DATA RIGHT (CDR)

- On 24 January 2022, the telecommunications sector was the subject of a designation under the *Competition and Consumer Act 2010* (Cth), which enabled the CDR regime to be "switched on" for the telecommunications sector through the making of CDR rules and standards. However, the application of the CDR regime to the telecommunications sector has been paused since 2023. For more detail on the consumer data right, refer to the [FinTech](#) section of this Guide.

# Regulation of Audio Visual Media

## LICENSING OF BROADCASTING

The key regulatory framework is the licensing and regulation of broadcasting by the Australian Communications and Media Authority (ACMA) under the *Broadcasting Services Act 1992* (Cth) (BSA).

There are various broadcasting licences, such as licences to provide commercial free to air television services, commercial radio services and international broadcasting services (ie broadcasting services that are targeted to audiences outside Australia but that are delivered from Australia). In addition, radiocommunications licences are required under the Radiocommunications Act (see above for more detail).

Licence conditions vary and they regulate matters such as Australian content quotas, classification and advertising. Under the BSA, a person cannot have control of:

- more than 2 commercial radio broadcasting licences in a licence area – the ‘two to a market radio rule’; and
- more than 1 commercial television broadcasting licence in a licence area – the ‘one to a market television rule’.

In addition, and subject to grandfathering rules, at least 5 independent media voices must be present in metropolitan commercial radio licence areas and at least 4 in regional commercial radio licence areas.

A foreign person with company interests in an Australian media company of 2.5% or more must notify the ACMA at the time of obtaining those interests, on disposition of the interests and at the end of each financial year.

# Space



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In Australia, space activities are regulated under the *Space (Launches and Returns) Act 2018* (SLR Act), rules made under the SLR Act, and intersecting regulatory frameworks including telecommunications, aviation, environment, infrastructure and planning, national security and export controls regimes.

Australia is party to all 5 foundational United Nations space treaties (UN treaties) and is a member of the International Telecommunications Union (ITU). Australia's treaty obligations are implemented, and flowed down to industry participants, through domestic regulatory and licensing regimes.

Australia is also one of the founding signatories to the Artemis Accords. The Artemis Accords contain principles relating to cooperation in the civil exploration and use of the Moon, Mars and other celestial bodies.

This section focuses on Australia's domestic laws. However, it can be extremely valuable to keep an eye on international multilateral and bilateral agreements, as well as Federal and State incentives and initiatives, as these can materially impact the viability of a space sector project, and potentially amplify its impact.

## CORE LEGISLATIVE FRAMEWORK

The SLR Act and associated rules (the *Space (Launches and Returns) (General) Rules 2019* (General Rules), *Space (Launches and Returns) (Insurance) Rules 2019* (Insurance Rules) and *Space (Launches and Returns) (High Power Rocket) Rules 2019* (HPR Rules)) form the core of the legislative framework governing space activities in Australia.

The framework applies to both:

- persons carrying on space activities in Australia; and
- Australian persons (including nationals) carrying on certain space activities overseas,

and requires them to obtain approvals and/or licences relevant to the activity they are engaging in (and where they are doing it).

The approvals available under the SLR Act are:

- launch facility licences,
- launch permits,
- high power rocket permits,
- overseas payload permits,
- return authorisations, and
- authorisation certificates.

To obtain any of the approvals under the SLR Act, applicants must meet the relevant physical, financial and documentary requirements as set out in the legislation and rules. These typically include:

- demonstrating that the prospective holder of the permit or authorisation (applicant) will have a sufficient amount of available assets;
- maintaining insurance policies that cover the applicant as well as, in most cases, the Commonwealth (see more on insurance requirements in the Insurance section on page 97);
- providing evidence that the applicant has obtained all the other regulatory approvals it requires, or arrangements to obtain them (see more in the [intersection with other regulatory frameworks](#) section on the next page).

- preparing and providing various plans and strategies (eg, flight safety plan, cybersecurity strategy). The debris mitigation strategy required for launch and overseas payload permits must be based on an internationally recognised guideline or standard for debris mitigation (such as the IADC Space Debris Mitigation Guidelines); and
- providing copies of key contracts, and information on contracts that the applicant intends to enter into for the purposes of the activity.

Non-compliance with the SLR Act, or with the conditions in a permit or authorisation, can attract significant civil and criminal penalties. The unauthorised launch of a space object may result in imprisonment and/or a fine of A\$1,815,000 for individuals, and fines up to A\$33 million for bodies corporate (at the time of writing).

## INTERSECTION WITH OTHER REGULATORY FRAMEWORKS

Due to their scale and complexity, space activities also interface with a number of other regulatory frameworks in Australia. Which specific laws and regulations apply depends on the type of activity and who is involved (ie if any foreign persons (including companies) will play a role). For example, spectrum licences are important for satellite and ground segment operators, while infrastructure and planning requirements will be key for the construction and operation of launch facilities. Sanctions, export controls and other trade-related laws are also pivotal to the space sector.

## SPECTRUM, ITU COORDINATION AND TELECOMMUNICATIONS

**(Spectrum)** Spectrum is a finite resource which is regulated nationally, through radio and telecommunications law, and internationally, through the ITU.

In Australia, access to spectrum is regulated under the *Radiocommunications Act 1992* (Cth) (RC Act) and by the Australian Communications and Media Authority (ACMA). ACMA allocates different frequency spectrum bands to serve distinct purposes, so different types of radiocommunications devices can operate without or with minimal interference. For the frequency bands used by telecommunications companies to deliver their network, ACMA grants spectrum licences (usually by auction, where demand outstrips supply), and apparatus licences. Spectrum licences (in whole or part) can also be bought, sold and certain rights provided to third parties subject to the rules in the RC Act.

ACMA will coordinate filings for spectrum in the ITU on behalf of licensees who require them (such as for satellite systems). Coordination with the ITU is a lengthy process which typically requires detailed technical input from the licensee and coordination with other stakeholders. It is critical that sufficient lead time is budgeted for, as it can take several months to years to coordinate. More on spectrum licensing can be found in the [Telecommunications](#) section of this Guide.

## (Radiocommunications and telecommunications licences)

Operators of objects or stations that send or receive transmissions from space also require class or apparatus licences that authorise them to operate their equipment. These licences are also granted by ACMA under the RC Act, and are covered in the [Telecommunications](#) section of this Guide. Choosing the correct licence, and frequency, can be as much a legal as technical question.

If a satellite or ground station will be used to supply carriage services to the public, the owner(s) may also be required to hold a telecommunications carrier licence (granted by ACMA under the *Telecommunications Act 1997* (Cth) (Telco Act)). For more on telecommunications regulation, and carrier licences, refer to the [Telecommunications](#) section of this Guide.

Once an operator is allocated one of the licences referred to above, it will be required to comply with both the terms of the licence and the obligations of licensees under the RC Act or Telco Act, as applicable.

## NATIONAL SECURITY, EXPORT AND INFRASTRUCTURE CONTROLS

Many components of satellites, rockets and other space systems and payloads are classified as “dual use” technologies regulated under the *Customs Act 1901* (Cth) and *Defence Trade Controls Act 2012* (Cth) (DTC Act). The Defence and Strategic Goods List (DSGL) sets out goods and technology that cannot be exported, supplied, published or brokered from Australia without a permit. Note that “spacecraft” (as defined in the DSGL) designed or modified for military use, and “spacecraft” components specially designed for military use are included in Part 1 of the DSGL, the Munitions List, and are subject to stricter controls. For more information about defence export controls, refer to the [Defence Export Controls](#) section of this Guide.

A note on dual use items. It is not always immediately obvious that a particular item is restricted by the DTC Act, as “dual use” (by definition) means that it can have perfectly legitimate everyday use cases. For example, even very simple items commonly used for routine commercial applications such as personal protective equipment, machine tools and even blenders can be caught. This makes it imperative to have a strong understanding of the regime, robust policies and procedures and personnel or advisers who can navigate the requirements.

The space technology sector is also a designated critical infrastructure sector under the *Security of Critical Infrastructure Act 2018* (Cth) (SOCI Act). While there are no assets declared as critical infrastructure assets in the sector at the time of writing, it remains possible that some may fall in scope in the future. The SOCI Act brings with it additional reporting, risk management and cyber security government assistance obligations for critical infrastructure assets, which are covered in the [Critical Infrastructure](#) section of this Guide. Critical infrastructure assets are also subject to more stringent foreign investment controls (refer to the [Foreign Investment Regulation](#) section of this Guide).

The Minister may also take into account the security, defence or international relations of Australia in deciding whether to grant a licence, permit or authorisation under the SLR Act.

## AVIATION AND FLIGHT SAFETY

**(Launch Safety Officer)** The Minister will appoint a Launch Safety Officer for launches permitted under a launch permit and for returns to a place in Australia covered by an Australian launch permit or return authorisation. A Launch Safety Officer is given relatively broad powers including certain inspection rights for space objects and launch facilities, and powers to request information and give written directions about the launch of a space object necessary to avoid any danger to persons or property, including a direction to stop the launch or return, or destroy the space object. Contravening a direction given by a Launch Safety Officer is an offence. A Launch Safety Officer is not appointed for launches of high power rockets.

**(High power rockets)** High power rockets are double-regulated under Australian law, both under the HPR Rules, and because they fall within the definition of 'rockets' in the *Civil Aviation Safety Regulations 1998* (Cth) (CASR) (which are overseen by the Civil Aviation Safety Authority (CASA)). At a high level, hazards to persons or property from high power rockets are regulated under the SLR, while CASR imposes airspace, location and permission requirements. More specific requirements include:

- It is an offence to launch a high power rocket from a facility or place in Australia without an Australian high power rocket permit or authorisation certificate granted under the SLR Act. The flight path of high power rockets must be as effective and safe as is reasonably practicable, having regard to the purpose of the launch, the design of the rocket, and the launch safety standards in the Flight Safety Code published by the Australian Space Agency. The operator of the rocket must also provide the Australian Space Agency with hazard and launch management plans, as well as the information about the rocket, its flight path, launch and payload (as applicable) specified in the rules.
- Under the CASR, rockets (other than models) must only be launched from approved areas, or otherwise with permission from CASA or the controller of the relevant airspace, as applicable. The CASR also prescribes prohibited, restricted and controlled areas, such as aerodromes, and sets restrictions on features such as the altitude to and weather conditions in which rockets can be launched without air traffic control clearance. As under the HPR rules, operators must provide information of the rocket and its flight path to CASA as specified in the CASR.

Rocket-powered vehicles, such as some remotely piloted and autonomous vehicles, are regulated separately under the CASR. Operators of unmanned aircraft seeking to use them as part of a launch or remote sensing system, or otherwise, will need to ensure they hold the required certifications (usually a Remote Operator's Certificate or Remote Pilot's Licence) and that they comply with the conditions specified in the CASR.

## ENVIRONMENT AND PLANNING

To be granted a Launch Facility Licence, an applicant will be required to demonstrate, to the Minister's satisfaction, that (among other things):

- they have obtained all necessary environmental approvals, and an adequate environmental plan has been made;
- the design and construction of the launch facility is as effective and safe as is reasonably practicable having regard to the proposed use of the facility; and
- the probability of the construction and operation of the launch facility causing substantial harm to public health or public safety or causing substantial damage to property is as low as is reasonably practicable.

Design and engineering plans, a launch management plan and an environmental plan must all be provided to the Minister as part of an application for a Launch Facility Licence (and if the licence is granted, whenever updated). The requirements for what must be included in each of these plans are set out in Part 2 of the General Rules. If an environmental plan is required by another applicable law of the Commonwealth, state or territory, that environmental plan may be provided instead of the one required under the General Rules. However, this does not affect the applicant's obligation to provide evidence that they hold all relevant environmental approvals under Australian law (which may include approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**), if the construction or operation of the facility will impact matters protected under it).

For more information about environment and planning laws in Australia, refer to the [Environmental Issues](#) section of this Guide.

As shown above, the vast array of law that applies to space activities means that strong regulatory engagement is a key feature of participating in the sector. A summary of some of the key regulatory bodies is in the table on the following page.

Framework	Regulator
Space activities (SLR Act and associated rules)	Australian Space Agency
Spectrum and telecommunications (RC Act and Telco Act)	ACMA
National security and export controls (Customs Act 1901 (Cth), DTC Act, SOCI Act)	Australian Border Force, Defence Export Controls, Critical Infrastructure Security Centre
Aviation (SLR Act and associated rules, CASR)	Australian Space Agency, CASA
Environment and planning (SLR Act and associated rules, EPBC Act, other federal, state and territory law)	Australian Space Agency, DCCEW, state and territory governments

## Other key considerations

### LIABILITY

Under international law, Australia is liable for damage caused by space objects which are launched (i) by Australian persons (whether they launch it themselves, or procure the launch), (ii) from Australian territory, or (iii) from an Australian facility.

While the SLR Act does not purport to exclude the application of international law, it creates a framework for flowing down liability to individuals and corporations.

For the launch and return of most space objects:

- **on Earth or in air** – the responsible party is liable to pay compensation for any damage the space object causes to a third party, unless the damage is caused by the third party's 'gross negligence' or it intended to cause the damage;
- **in space** – the responsible party for the launch or return is liable to pay compensation where it is at fault for damage caused by its space object to a third party, space objects launched or operated by a third party, or property of a third party on board another space object.

The liability framework under the SLR Act only applies to damage caused during the liability period for the relevant launch or return. This is generally 30 days after a launch, or from the beginning of a return manoeuvre to when the object has come to rest on Earth.

The amount of compensation that a responsible party (or related entity) is required to pay is also limited under the SLR Act – so long as they have not breached any conditions of their permit, licence or authorisation, and the damage caused was not the result of their 'gross negligence' or intent to cause damage. In some circumstances, the Commonwealth may pay excess compensation up to A\$3 billion to cover damage to Australian individuals or corporations.

### INSURANCE

The SLR Act requires licence holders to meet set insurance requirements in relation to space activities, and applicants are required to demonstrate that they can meet them.

Generally, the insurance requirements can be met by either:

- taking out insurance policies for the amounts specified in the SLR Act, in respect of both the licence holder and the Commonwealth (as applicable), or
- showing 'direct financial responsibility' for an amount not less than what would otherwise have to be insured for under the SLR Act.

The total insurance for a launch or return in Australia is calculated as the lesser of A\$100 million, or the amount calculated through the "Maximum Probably Loss" methodology in respect of the relevant launch or return. The methodology is published by the Australian Space Agency on their [website](#), alongside a calculator tool for estimating the maximum probable loss that needs to be insured for.

As an alternative to taking out insurance for the relevant amount, a licence holder may show that they have 'direct financial responsibility' for that amount. This can be done by providing evidence that the licence holder either:

- holds, or has available to it, a sufficient amount of assets that could be used to meet a liability it may incur under the SLR Act to pay compensation to third parties associated with the launch/return, or
- could otherwise meet that liability.

## GOVERNMENT CONTRACTING

While the space sector is increasingly privatised, there remains a strong government presence (Commonwealth, state and territory). When engaging with government, including through incentive schemes (like the R&D tax incentive – see page 122) and grant agreements, businesses should be aware of the unique considerations relevant to government contracting and decision-making.

Refer to the [Government Contracting](#) section of this Guide for more detail.

## ...AND MORE

Space sector participation can also involve other important areas of law and regulation, depending on the precise nature of the project, collaboration or initiative.

Some examples include the following:

- Financing-related matters such as financial services regulation, lending-related requirements and security registration.
- Equity-related considerations, including company formation, constituent documentation, capital matters and investments.
- Multi-stakeholder collaborations that may involve an unincorporated association, partnership or other structure.
- Employment laws.
- Data protection and intellectual property laws.
- Contracting principles, including the unfair contracts regime, depending on the parties and contracts involved – see [136](#) for further details.
- Taxation.

# Infrastructure



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There has been continued growth in the infrastructure sector driven primarily by renewable energy and housing projects off the back of significant government investment and continued demand for the delivery of major transport projects across all jurisdictions. Infrastructure projects are typically attractive to larger funds who prioritise long term consistent returns (such as pension funds) over shorter term, less stable returns.

## INFRASTRUCTURE FOCUS AREAS

There are clear areas of focus for new infrastructure investment in Australia at the Federal, State and Territory levels across different sectors, including (but not restricted to) the areas of priority listed below. We are also seeing an appetite for M&A of established infrastructure assets and platforms, together with a trend towards the 'taking private' of listed infrastructure assets.

### TRANSPORT

Road, rail and air transport infrastructure remain a high priority for the Australian, State and Territory Governments. The 2025/2026 Federal budget continues to support the development and upgrading of transport infrastructure, committing A\$17 billion to existing and new road and rail infrastructure projects. Projects from the most recent budget include a A\$7.2 billion safety upgrade of the Bruce Highway in Queensland as well as large upgrade projects for the Kwinana Freeway in WA, the Arthur Highway in Tasmania and the Monaro Highway in the ACT.

Ongoing projects include the Inland Rail Project, a 1600km freight rail line connecting Melbourne and Brisbane and the development of the new Western Sydney Airport for which the Australian Government has committed up to A\$5.3 billion in equity through a government-owned company which is anticipated to become operational in 2026.

## HOUSING

The Australian, State and Territory Governments remain focused on the need for well planned new or replacement social, affordable and public housing infrastructure initiatives that respond to the needs of Australia's growing population. The net present value of the capital cost of meeting the shortfall of social and affordable housing in Australia over the next 20 years has been estimated to be around A\$290 billion.

Recently announced initiatives include:

- the Australian Government's A\$2 billion Social Housing Accelerator which will provide funding to State and Territory programs to address housing affordability and supply and
- the Housing Australia Future Fund and National Housing Accord which will collectively support the delivery of 40,000 new social and affordable homes across Australia over 5 years. As part of the first 2 rounds of funding, 279 contracts have been awarded for 18,650 homes. Housing Australia launched round 3 in late January 2026 to deliver the 21,350 homes needed to meet the 40,000 total target.

The Victorian Government is using an availability Public Private Partnership (PPP) under a ground lease model to deliver new social, affordable and market rental homes. The Queensland Government also recently announced a pilot ground lease project.

## HEALTH, AGED CARE, AND DISABILITY

As Australia's population ages, demand for healthcare continues to increase. Increased healthcare infrastructure and the delivery of government services involving both the public and private sectors will be required to meet this growing demand. It is expected that PPPs and 'take private' transactions will continue to be the vehicles used to invest in this sector.

## ELECTRICITY TRANSITION

The transition from a fossil fuel-intensive to renewables-based electricity sector is requiring significant investment in the electricity transmission network. The cost of the transition and the path we're on to achieve that is unprecedented. Over A\$320 billion will be needed to develop, operate and maintain the generation, storage and future network investments of the National Electricity Market (NEM) to 2050, according to a recent report by AEMO. The astronomical cost of delivering the required infrastructure will require both public and private capital investment. Government support is manifesting in numerous ways including:

- the Australian Government's Capacity Investment Scheme designed to de-risk projects by providing long term revenue certainty to developers and investors;
- the entry into bilateral renewable energy transformation agreements (RETAs) between the Australian and State and Territory Governments setting out the objectives of those governments on renewable energy transformation. RETAs have already been entered into between the Australian Government and the Australian Capital Territory, South Australian and Western Australian Governments; and
- the development of regulated renewable energy zones (REZs) in the NEM designed to ensure renewable-rich areas within Australian States are connected to the grid. The New South Wales Government for example is utilising a PPP-style model to support the development of at least 5 onshore and offshore REZs.

## TECH INFRASTRUCTURE

Over the past few years, technology-linked infrastructure has become increasingly sought after in the Australian market, and there has been significant activity in the secondary market with start-ups and PE sponsors selling to core-plus funds and large alternative asset managers. This has included data centres, electricity metering businesses, mobile phone towers and government registries. Data centres, in particular, have continued to be the focus of significant activity, driven by the evolution of artificial intelligence and cloud computing. A recent report published by Mandala suggests data centre capacity in Australia is set to more than double from 1,350MW in 2024 to 3,100MW by 2030. Amazon, for example, has committed \$20 billion to its Australian data centre operations by 2029 and other large investments have been made by fellow hyperscale customers (such as Microsoft and Google).

How the continued growth of the data centre market and associated infrastructure in Australia impacts local energy capacity will be interesting to watch in 2026 and beyond. Some forecasts have data centres being responsible for up to 11% of Australia's total electricity consumption by 2035. In Victoria alone, AEMO estimates data centres will consume 19% of Melbourne's total electricity by 2050.

## Delivery models and funding sources

### PUBLIC PRIVATE PARTNERSHIP (PPP) MODEL

The PPP model has continued to be a fruitful method of delivering priority infrastructure projects in a timely manner and according to budget. These are typically used for social infrastructure (such as hospitals, schools, and prisons) where the private sector receives an availability style payment. This model is used less frequently where the private sector income stream is based on patronage. There is a clear recognition in Australia of the utility of developing a variety of infrastructure projects using the PPP model involving both the public and private sectors.

We are seeing the influence of PPP frameworks and processes being rolled out in a wider range of sectors, including social and affordable housing and energy infrastructure.

### ASSET AND CAPITAL RECYCLING POLICY

State and Territory Governments have also adopted asset recycling (or capital recycling) of infrastructure assets as a key infrastructure policy. This involves developing and constructing assets and privatising assets once operational. The New South Wales Government has been a leading proponent in asset recycling over recent years. Its long-term leasing of interests in Transgrid, Ausgrid and Endeavour Energy and its sale of the WestConnex Motorway, each generated significant proceeds that allowed billions in capital to be allocated to new projects without raising public debt levels.

This model has also been successfully implemented by other State and Territory Governments, such as Victoria's 50-year lease of the Port of Melbourne. More recently, State Governments have looked to evolve this model through the privatisation of non-traditional infrastructure such as land titles offices and motor vehicle registries.

# Real Estate Law



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## LEGAL FRAMEWORK AND FORMS OF OWNERSHIP

Real estate law is derived from Commonwealth legislation, State and Territory legislation, local government regulation and the common law developed by the courts.

Australian real estate may be held as freehold, leasehold or Crown land. Freehold ownership is the highest and most common form of ownership. Leasehold interests are granted for a finite term and are common in commercial real estate. Crown land is owned by the Commonwealth, State or Territory and is subject to statutory controls.

## TITLE AND REGISTRATION

Australia operates the Torrens system of land registration, which is a transparent and secure system of title. Registration confers indefeasibility of title, subject to limited statutory exceptions such as fraud. Each State and Territory maintains a public land titles register, which is easily searched to identify the owner of the land, and most interests affecting the land.

Australian law also recognises Aboriginal and Torres Strait Islander peoples' traditional rights and interests in land through native title. Native title may coexist with certain interests but is extinguished by others, including freehold. For this reason, it is unusual for native title to exist in metropolitan parts of Australia.

## LEASES

Commercial leases are negotiated between landlords and tenants, and usual market positions are relatively well settled and informed by market conditions, legislation and common law.

Retail leasing legislation in each State and Territory provides some additional protections for certain retail tenants and, in limited cases, commercial tenants.

For tenants, the process usually starts with a heads of agreement prepared by the landlord, or the landlord's leasing agent, and is followed by the landlord's lawyer issuing the proposed form of lease. Incentives are common in the Australian commercial leasing market, and so the "face" rent on the lease is usually higher than the "net" rent once the value of those incentives are taken into account. Incentives commonly take the form of a fitout allowance, an upfront rent-free period or a rent abatement spread evenly over the initial term of the lease.

## THE IMPORTANCE OF BUYER DUE DILIGENCE

Australian real estate transactions are governed by the principle of caveat emptor (buyer beware), meaning that a buyer must carry out and rely on its own due diligence in relation to the physical condition of the land and other matters affecting the value of the proposed investment. From a legal perspective, this typically includes reviews of title to confirm good marketable title, reviews of leases to confirm net income and matters affecting net income, planning compliance, environmental registers and reports, service contracts and litigation involving key counterparties.

Where the acquisition is of the vehicle that owns the land, rather than the land itself, due diligence will extend to the corporate and taxation compliance and liabilities of the relevant entities.

In addition to legal due diligence, buyers commonly engage valuers, technical and environmental consultants, surveyors and, where relevant, accountants, to assess valuation, condition, compliance and financial matters. For further information please see our [Investing Down Under Guide](#).

## SELLER DISCLOSURE OBLIGATIONS

While the onus remains on the buyer to conduct its own due diligence, sellers will generally assist the due diligence process by disclosing relevant documents such as current leases, service agreements and licences.

In addition, most States and Territories impose statutory seller disclosure regimes requiring sellers to disclose prescribed matters that may affect title or the use and enjoyment of the land, including information available from statutory and local authorities. This includes where land is transferred as part of a broader business sale but does not generally apply where the vehicle that owns the land is sold.

A failure to disclose, or the provision of false information, may entitle the buyer to rescind the contract and may expose the seller to civil penalties. Consumer protection legislation further prohibits misleading or deceptive conduct in connection with the sale of land, with silence capable of constituting misrepresentation where it creates a false impression, entitling an affected buyer to compensation and exposing the seller to pecuniary penalties.

## LIABILITIES ASSUMED ON ACQUISITION

On a direct acquisition of Australian real estate, a buyer will generally assume liability for matters relating to the land from completion, including obligations under existing leases. Sale contracts typically allocate responsibility so that the seller retains liability for pre-completion matters, while the buyer assumes and indemnifies the seller for post-completion liabilities.

To address risks that cannot be fully identified or quantified through due diligence, buyers commonly seek contractual warranties and indemnities from the seller and in some cases seek warranty and indemnity insurance (see the [W&I Insurance](#) section of this Guide for more details).

## PLANNING PERMISSION AND OTHER APPROVALS

The development or change of use of land generally requires approval from a local government planning authority, or for major developments this is sometimes a State Minister or planning authority. There are planning schemes in place to give guidance as to developments that are likely to be permitted.

## ENVIRONMENTAL LIABILITY

Environmental legislation operates at both Commonwealth and State levels. Liability for contamination on or emanating from land can attach to current landowners even where contamination predates ownership, making due diligence and contractual risk allocation critical.

## OWNERSHIP STRUCTURES - DIRECT AND INDIRECT INVESTMENT

It is crucial when making or realising any investment that the transaction is appropriately structured to ensure that adverse or other unintended legal, accounting or tax consequences do not arise.

Investments in Australian real estate assets are made either through the direct acquisition of real estate, or indirectly, by acquiring ownership via a structure that holds the target asset. The choice of investment style (for example direct or indirect) and investment vehicle is a key part of structuring a proposed transaction and will be influenced by a number of factors, including legal, contractual, accounting and tax considerations.

## PROPERTY TAXES

GST is a federal tax that sometimes applies to the sale of land and, if so, is usually recouped from the buyer under the contract.

Stamp duty is a tax that applies to the purchase of most types of land in nearly all States and Territories of Australia and is calculated by reference to the purchase price plus any GST.

Land tax is an annual tax imposed by most of the States and Territories on the ownership of most types of land.

Surcharges apply to the rate of stamp duty and land tax in some States, where the buyer or landholder is foreign.

For further information, please see [The Main Features of Australia's Tax System](#) section of this Guide.

## FOREIGN OWNERSHIP OF LAND

Foreign investors must navigate Australia's foreign investment regulation, which governs direct and indirect acquisitions of Australian land. Approval from the Foreign Investment Review Board (FIRB) may be required depending on the nature of the land, whether the purchase price exceeds certain monetary thresholds and the investor's classification.

A substantial (and generally non-refundable) filing fee is payable, depending on the nature and purchase price for the land, and so it is more common for a FIRB application to be made only after signing transaction documents, on the basis that those transaction documents or completion under them are conditional on obtaining FIRB. For further information, please see the [Foreign Investment Regulation](#) section of this Guide for more information.

## MERGER CLEARANCE NOTIFICATION

All parties to the purchase of real estate after 1 January 2026 must consider whether the acquisition requires merger clearance notification to the Australian Competition and Consumer Commission (ACCC).

This is critical for both parties to a transaction because a failure to notify, where notification is required, results in the transaction being void.

Substantial notification fees apply, and the information required to be provided as part of a notification is relatively onerous. It is important to assess upfront whether a notification is required so that it can be factored into the timing for the transaction.

Exemptions from the requirement to notify apply where the acquisition of land is in the ordinary course of business or is for the purpose of developing or leasing that land, or to develop residential property, and to the acquisition of special purpose structures that meet these requirements. However, the regime and the exemptions are new and untested, and require careful consideration in each case given the catastrophic consequences of a transaction being found to be void.

For further information, please see the [Competition and Anti-Trust](#) section of this Guide.

# Healthcare



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## OVERVIEW OF THE AUSTRALIAN HEALTH SYSTEM

The healthcare system in Australia is both public and privately funded. The Commonwealth and State and Territory governments broadly share responsibility for funding, operating, managing and regulating the health system in Australia. This division of responsibilities is coordinated under the National Health Reform Agreement, under which the Commonwealth provides funding to the States and Territories to provide health services.

### THE COMMONWEALTH GOVERNMENT:

- develops national health policy;
- funds medicines and medical services through Medicare;
- provides funding to States and Territories for public hospital services;
- funds population-specific services, including community-controlled Aboriginal and Torres Strait Islander primary healthcare, health services for veterans, and residential aged care;
- funds health and medical research;
- regulates medicines and medical devices through the Therapeutic Goods Administration (TGA); and
- supports access to, and regulates, private health insurance.

### STATE AND TERRITORY GOVERNMENTS:

- fund and manage public hospitals;
- regulate and license private hospitals and other premises at which health services are provided;
- regulate products with health impacts such as alcohol and tobacco;
- deliver community-based and preventive services (for example, cancer screening and immunisation), ambulance services, and address complaints; and
- conduct public health activities.

The Commonwealth and States and Territories also share responsibility for the registration, education and training of health professionals and improving the safety and quality of healthcare programs and services. This distributed model seeks to balance universal access, patient choice, and financial sustainability through shared funding, regulation, and service delivery.

In 2023-24, national health expenditure totalled \$270.5 billion, accounting for 10.1% of Australia's GDP.

### MEDICARE

Medicare is Australia's universal health insurance scheme administered by the Commonwealth government. Medicare funding of health services is available to Australian and New Zealand citizens, permanent residents and international visitors from countries with reciprocal healthcare agreements.

Medicare is funded through:

- general federal taxation revenue
- the Medicare Levy (a 2% levy on most taxable incomes); and
- the Medicare Levy Surcharge (an additional levy on high-income earners who do not have private hospital insurance), which encourages uptake of private health insurance.

The Medical Benefits Schedule (MBS) contains a list of services subsidised (in whole or part) by Medicare, including care provided to public patients in public hospitals which is wholly subsidised, and care provided to private patients (in public or private hospitals) which is partly subsidised for certain Medicare services. Out-of-hospital care such as that provided by general practitioners (GPs) and specialists and pathology services are also eligible for Medicare funding. Care provided by private hospitals, GPs and specialist clinics is funded through a combination of private health insurance, out-of-pocket expenses and some Medicare subsidies.

### PHARMACEUTICAL BENEFITS SCHEME (PBS)

The Australian government subsidises more than 930 different prescription medicines across 5200 brands under the PBS.

Medicines are listed on the PBS following a positive recommendation by the Pharmaceutical Benefits Advisory Committee (PBAC), which assesses the approved indication of each medicine, its clinical effectiveness, safety and cost-effectiveness. Once listed, the Commonwealth contributes to the cost of the medicine (following negotiation with the supplier). Patients also contribute to the cost of the dispensed medicine (their contribution depending on their concession card status).

In 2023-24, Australian government expenditure under the PBS was \$17.7 billion (91.6% of the total cost of dispensed medicines). Patient contribution over the same period was \$1.6 billion (8.4% of total medicine cost).

Both the PBS and the MBS contain a safety net. The safety net ensures that patients who spend more than the set threshold amount in a calendar year on MBS services or PBS listed medicines receive additional subsidies.

### MEDICAL DEVICES

Medical devices are regulated by the TGA and are not subsidised via the PBS. Reimbursement depends on the device's setting and use.

Public hospitals typically acquire devices through centralised or hospital-level procurement, funded from hospital budgets (shared by the Commonwealth and the States and Territories). While the MBS primarily funds professional medical services, the cost of medical devices that are integral to MBS-listed procedures is typically bundled into the overall funded service that is provided by public hospitals.

Patients treated in public hospitals as public patients do not separately pay for medical devices used in their care. The cost of the device is absorbed within the overall hospital funding and is not itemised or billed to the patient.

In private hospitals, devices used as part of care that is provided during an admission are paid for as part of the hospital admission. Private health insurance generally covers the cost of devices used in insured treatment, subject to the policy terms and any applicable patient gap amounts.

Devices used outside hospitals are usually purchased in the community and paid for out-of-pocket, unless covered under other programs or private insurance policies.

### PRIVATE HEALTH INSURANCE

More than half of Australians hold private health insurance. Private health insurance provides access to private hospital care, covers services excluded from the MBS and exempts the application of certain federal levies. Patients can choose from 2 types of cover:

- hospital cover for some (or all) of the cost of hospital treatment as a private patient, and
- general treatment ('ancillary' or 'extras') cover for some health services that are not covered by Medicare, such as dental, physiotherapy and optical services.

## REGULATION OF HEALTH PRACTITIONERS

The Australian Health Practitioner Regulation Agency (AHPRA) is the primary national regulator of 16 registered health professions, including medical practitioners, nurses and dentists. AHPRA administers the National Registration and Accreditation Scheme to ensure that practitioners are suitably trained, qualified and safe to practice and maintains the register of practitioners.

Certain health professions (such as speech therapists, audiologists and nutritionists) are not regulated by AHPRA and are primarily overseen by State and Territory complaints bodies such as the NSW Health Care Complaints Commission and must comply with the National Code of Conduct for Health Care Workers, which sets minimum standards for conduct and practice.

# Regulation of Therapeutic Goods

## OVERVIEW

The TGA administers the *Therapeutic Goods Act 1989* (Cth) (TG Act) and its subordinate legislation, which establish a national framework for the regulation of therapeutic goods in Australia.

The term 'therapeutic goods' refers to goods that are, or are represented to be, for a therapeutic use, including:

- **(medicines)** prescription, over-the-counter and complementary medicines;
- **(biologicals)** vaccines, blood and blood products;
- **(medical devices)** instruments, apparatus, appliances, materials, implants and software; and
- **(other goods)** goods such as disinfectants and tampons.

The TGA is responsible for assessing and authorising the supply of therapeutic goods through inclusion in the Australian Register of Therapeutic Goods (ARTG), monitoring the safety of therapeutic goods and taking enforcement action for non-compliance. State and Territory authorities regulate the availability, supply, possession, handling and use of goods within their jurisdiction.

States and Territories also implement the Commonwealth Poisons Standard (which classifies medicines into schedules based on the level of risk associated with each substance) through State or Territory-based medicines and poisons legislation. Different regulations apply to different schedules of medications. For example, advertising Schedule 2 (Pharmacy Medicines) products to the public is allowed but advertising of Schedule 4 (Prescription Only Medicines) products is prohibited.

## SUPPLY OF THERAPEUTIC GOODS IN AUSTRALIA

Therapeutic goods must be included on the ARTG before they can be lawfully supplied in Australia. The person or company responsible for applying to the TGA for inclusion of the good in the ARTG is known as the 'sponsor'. The Australian sponsor assumes regulatory representation for the product in the Australian market and is responsible for registration on the ARTG and complying with post-approval obligations, including reporting adverse events, complying with recall procedures, maintaining quality assurance systems, advertising and labelling standards, and paying annual fees.

## MANUFACTURER REQUIREMENTS

Manufacturers (including foreign manufacturers) have fewer direct obligations than sponsors under the Australian therapeutic goods framework. Compliance obligations of manufacturers are usually enforced through contractual arrangements with sponsors.

Manufacturers must:

- obtain a TGA manufacturing licence (for Australian manufacturing sites) or hold a recognised foreign Good Manufacturing Practice (GMP) clearance or certification (for foreign manufacturing sites);
- comply with the Pharmaceutical Inspection Co-operation Scheme (PIC/S) GMP principles;
- maintain robust quality management systems and record keeping practices; and
- enable TGA inspections and access to documentation.

Separate to the therapeutic goods regime, manufacturers may also be liable under the Australian Consumer Law (ACL) for safety defects causing injury, loss or damage and must comply with provisions relating to mandatory recall and incident notification procedures.

## ADVERTISING OF THERAPEUTIC GOODS

Advertising of therapeutic goods must comply with the TG Act and the *Therapeutic Goods (Therapeutic Goods Advertising Code) Instrument 2021* (Cth) (Advertising Code).

Advertisements must be accurate, balanced and substantiated, be consistent with accepted ARTG indications or intended purposes, include mandatory statements, and must not include certain prohibited or restricted representations (unless approved or permitted) or imply a government endorsement.

The TG Act prohibits advertising directed to the public that refers to substances or goods containing substances included in Schedule 3 (but not in Appendix H) (Pharmacist Only Medicines), Schedule 4 (Prescription Only Medicines) and Schedule 8 (Controlled Drugs) of the Poisons Standard.

## ADVERTISING OF HEALTH SERVICES

The advertising of health services is regulated separately to the advertising of therapeutic goods.

Advertising of a 'regulated health service' is governed under the Health Practitioner Regulation National Law (National Law) administered by AHPRA. A regulated health service is a service provided by, or usually provided by, a health practitioner (such as a telehealth consult).

Under the National Law, a person must not advertise a regulated health service or a business that provides a regulated health service in a way that:

- is false, misleading or deceptive or is likely to be misleading or deceptive;
- offers a gift, discount or other inducement, unless clear terms and conditions are provided;
- uses testimonials or purported testimonials about the clinical aspects of a health service;
- creates an unreasonable expectation of beneficial treatment; or
- directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services.

Advertising of therapeutic goods and health services are also subject to the ACL, including prohibitions on misleading or deceptive conduct and false or misleading representations.

## Clinical Trials

There has been significant investment in clinical trials and medical research in Australia.

In addition to high quality research and facilities and a favourable regulatory pathway for early-stage clinical trials (which market participants have indicated enable trials to commence significantly faster than in other jurisdictions), the Australian government also administers a research and development tax incentive program which allows companies to claim tax offsets on eligible research and development activities.

To be eligible for the R&D tax incentive, R&D activity must be conducted through an eligible R&D entity and incur notional deductions of at least \$20,000 on eligible R&D activities in any given year.

Data gathered in Australian clinical trials is generally accepted by US and European regulators.

## OVERVIEW

Clinical trials in Australia involving unapproved medicines, biologicals, or devices are governed by the TG Act and Regulations and regulated by the TGA. All trials must have their protocols and consent materials approved by a Human Research Ethics Committee (HREC) registered with the National Health and Medical Research Council (NHMRC).

Clinical trials in Australia are funded by government grants and programs, pharmaceutical, biotechnology, and medical device companies, not-for-profit organisations, and academic institutions, with many trials funded by a mix of investors.

Participants in Australian clinical trials may receive money or in-kind benefits both for taking part in a study and, separately, for any injury that the study causes. Researchers may reimburse expenses, provide compensation for time and inconvenience, and, in limited circumstances, offer additional incentives, provided that each payment is proportionate, transparently disclosed in the consent process, and approved by the relevant HREC.

Clinical trial participants in Australia are protected by ethical oversight and are indemnified through comprehensive indemnity and insurance arrangements secured by the trial sponsor.

## CLINICAL TRIAL PROTOCOLS

Clinical trial protocols in Australia must adhere to the structure outlined in the ICH Guidelines for Good Clinical Practice (**ICH-GCP**) and explicitly address the National Statement on Ethical Conduct in Human Research 2025's (**National Statement's**) provisions on risk-benefit assessment, participant welfare, privacy and consent. The protocols must also comply with state and territory legislation, for example, for handling scheduled medicines/poisons under the Poisons Standard.

The TGA also requires that every investigational medicine and biological be manufactured in conformity with the current PIC/S Guide to GMP.

For medical devices, sponsors must maintain evidence of ISO 13485 quality-system conformity and document compliance with the Essential Principles found in Schedule 1 to the *Therapeutic Good (Medical Devices) Regulations 2002* (Cth), other than those that need clinical data, and document software-life-cycle controls where firmware or stand-alone software forms part of the device.

## APPROVAL REQUIREMENTS

The following approvals are required to initiate a clinical trial in Australia:

- **HREC approval:** All protocols must be reviewed and approved by a HREC registered with the NHMRC.
- **Institutional authorisation:** The institution conducting the trial must authorise the trial, with site-specific governance reviews occurring alongside HREC approval.
- **TGA notification or approval:** Trials must follow either the:
  - **Clinical Trial Notification (CTN) scheme**, which requires HREC approval followed by a notification to the TGA, but does not require approval or
  - **Clinical Trial Approval (CTA) scheme**, which involves submitting a detailed dossier to the TGA for evaluation before trial commencement. This is the typical path for higher-risk products. The TGA is currently reviewing the CTA pathway.

## POST-APPROVAL OVERSIGHT

Sponsors must implement a risk-based monitoring plan and report serious adverse events to the TGA and HREC within specified timeframes. Essential documents must be archived for at least 15 years.

## TRIALS CONDUCTED OUTSIDE AUSTRALIA

Clinical trials conducted outside Australia can be used for TGA market authorisation purposes provided the data submitted are of high quality, relevant, and comply with the ICH-GCP. However, the TGA may require local data or bridging studies under specific circumstances including:

- where genetic, dietary, environmental, or healthcare system differences suggest that the Australian population may respond differently to a trial product;
- for new chemical entities, biologicals, or high-risk medical devices, to address safety or efficacy concerns; or
- if the reference product in overseas studies is not available or differs from the Australian equivalent.

# 6. Cyber



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## Cyber Security

Over 84,700 reports were made to law enforcement authorities through ReportCyber in the 2024-2025 financial year, confirming that cyber incidents are a question of when, not if. It is a constant and costly reminder that effective cyber resilience is fundamental to realising the promised benefits of digitisation.

### INTRODUCTION

The cyber threat environment in Australia is complex and constantly evolving, fuelled by continuing geopolitical tensions, the rapid development of state and non-state actors' cyber capabilities and emerging technologies such as artificial intelligence. At the same time, high-profile, large-scale data breaches in Australia over the last few years have highlighted the enormous reputational and business risks for organisations if they are unprepared for a cyber incident or mishandle the incident. Against this backdrop, it is critical that businesses, boards and senior management understand the cyber security regulatory environment and their obligations, so that they can be prepared when a cyber incident eventually occurs.

### REGULATORY ENVIRONMENT

In November 2024, the Australian Government passed a world-leading standalone Cyber Security Act that implements a number of key policy objectives to enhance Australia's cyber security posture and resilience. However, this is not the only piece of legislation that is relevant to cyber security. There are a range of other cyber security regulations in a number of existing legislative regimes which together with the *Cyber Security Act 2024* (Cth) (Cyber Security Act), form an interlinking patchwork of obligations and requirements that businesses need to navigate. Some of these legislative regimes apply economy-wide, such as the *Cyber Security Act*, *Privacy Act 1988* (Cth) and the *Corporations Act 2001* (Cth) while others apply in specific sectors. These sectoral specific regimes include the *Security of Critical Infrastructure Act 2018* (Cth) (SOCI Act) (see the [Critical Infrastructure](#) section of this Guide) and the prudential standards administered by the Australian Prudential Regulation Authority (APRA).

The cyber security regulations can comprise both proactive obligations (for example, obligations that are aimed at building up organisations' resilience and preparedness for a cyber incident) and reactive obligations (for example, obligations requiring organisations to report, respond to and remediate cyber incidents).

## NOTIFICATION OBLIGATIONS

Once a cyber incident has occurred, a number of separate (and potentially overlapping) reporting obligations may kick in. It is important for businesses to understand which reporting obligations apply to it and what the requirements are, as reporting timeframes can be as short as 12 hours after the business becomes aware of the cyber incident.

Set out in the table below is a high-level summary of the most common reporting obligations that may be triggered by a cyber incident.

Reporting Obligation	Enabling Legislation	Applicable Entities	Summary
Notifiable data breach (NDB) scheme	<i>Privacy Act 1988</i> (Cth)	APP entities, credit reporting bodies, credit providers and file number recipients	An entity must notify the Australian Information Commissioner (OAIC) and affected individuals of an eligible data breach as soon as practicable after becoming aware that there are reasonable grounds to believe that there has been a data breach which is likely to result in serious harm to any of the individuals whose personal information is involved.
NDB scheme for consumer data right (CDR) data	<i>Competition and Consumer Act 2001</i> (Cth)	Accredited data recipients, designated gateways	The NDB scheme reporting obligation under the <i>Privacy Act 1988</i> (Cth) also applies to accredited data recipients and designated gateways under the CDR regime as if CDR data were personal information.
Mandatory cyber security incident reporting obligation	<i>Security of Critical Infrastructure Act 2018</i> (Cth)	Responsible entities for critical infrastructure assets	A responsible entity must report a critical cyber security incident to the Australian Signals Directorate within 12 hours of becoming aware of a cyber security incident. Other relevant cyber security incidents must be reported within 72 hours.
Ransomware reporting obligation	<i>Cyber Security Act 2024</i> (Cth)	Responsible entities for critical infrastructure assets which are required to comply with the cyber security incident reporting obligation, and businesses with an annual turnover for the previous financial year greater than A\$3 million	Responsible entities and businesses that exceed an annual turnover of A\$3 million must report a ransomware payment to the Australian Signals Directorate within 72 hours of making the ransomware payment or becoming aware that the ransomware payment has been made (as applicable).
Reportable situations for Australian financial services (AFS) and credit licensees	<i>Corporations Act 2001</i> (Cth)  <i>National Consumer Credit Protection Act 2009</i> (Cth)	AFS and credit licensees	AFS and credit licensees must notify the Australian Securities and Investments Commission (ASIC) about 'reportable situations' (which may include significant data breaches), generally within 30 calendar days.

Reporting Obligation	Enabling Legislation	Applicable Entities	Summary
Reporting obligations under prudential standards	Prudential Standards CPS 230 and CPS 234	APRA-regulated entities (such as banks, general insurers, life insurers and private health insurers)	<p><b>CPS 230</b></p> <p>APRA-regulated entities must notify APRA as soon as possible, and in any case no later than 72 hours, after becoming aware of an operational risk incident that it determines to be likely to have a material financial impact or a material impact on its ability to maintain its critical operations.</p> <p>An APRA-regulated entity must also notify APRA as soon as possible, and no later than 24 hours, after it has suffered a disruption to a critical operation outside tolerance. The notification must cover the nature of the disruption, the action taken, the likely impact on the entity's business operations and the timeframe for returning to normal operations.</p> <p><b>CPS 234</b></p> <p>APRA-regulated entities must notify APRA as soon as possible, and in any case no later than 72 hours, after becoming aware of an information security incident that:</p> <ul style="list-style-type: none"> <li>materially affected, or had the potential to materially affect, financially or non-financially, the entity or the interests of depositors, policyholders, beneficiaries or other customers; or</li> <li>has been notified to other regulators (either in Australia or other jurisdictions).</li> <li>APRA-regulated entities are also required to report material information security control weaknesses which the entity expects it will not be able to remediate in a timely manner.</li> </ul>

Reporting Obligation	Enabling Legislation	Applicable Entities	Summary
My Health Records data breach reporting obligation	<i>My Health Records Act 2012</i> (Cth)	Organisations that are registered to participate in the My Health Record system	An organisation that is registered to participate in the My Health Record system must notify the Australian Digital Health Agency and the OAIC of: <ul style="list-style-type: none"> <li>any unauthorised collection, use or disclosure of health information included in a healthcare recipient's My Health Record; or</li> <li>any event or circumstance that compromises, may compromise, has compromised or may have compromised, the security or integrity of the My Health Record system.</li> </ul>
Continuous disclosure obligations	<i>Corporations Act 2001</i> (Cth)	Listed companies	See the continuous disclosure section below.

### RANSOMS – TO PAY OR NOT TO PAY?

The Australian Government strongly discourages businesses and individuals from paying ransoms to cyber criminals. There is no guarantee that any stolen information will be returned, or that it will not be sold or leaked online. In addition, it could encourage the same or another cyber criminal to target the entity again, and generally supports the ransomware business model. However, the Australian Government has not implemented an outright prohibition on ransom payments on the basis that Australia is not yet cyber mature enough and does not have the appropriate support in place for businesses that do suffer cyber incidents.

Instead, the Australian Government has introduced in the Cyber Security Act, a no-fault, no-liability ransom reporting regime under which responsible entities for critical infrastructure assets, and businesses that had an annual turnover for the previous financial year greater than A\$3 million, are required to notify the Australian Government within 72 hours of paying a ransom. As such, paying the ransom remains an option for boards and management when deciding how to manage an active ransomware attack.

It is important for businesses to seek legal advice if they are considering paying a ransom, as there are a number of legal requirements that may be relevant depending on the particular circumstances of the cyber incident. These include sanction laws under the *Autonomous Sanctions Act 2011* (Cth) and the Charter of the *United Nations Act 1945* (Cth), and money laundering and terrorism financing offences in the *Criminal Code Act 1995* (Cth).

Interestingly, the Australian Government's first use of its autonomous cyber sanctions framework was for a Russian individual linked to the 2022 cyber attack on Medibank Private, Aleksandr Ermakov. The sanction makes it a criminal offence, punishable by up to 10 years' imprisonment and significant fines, to provide assets to Aleksandr Ermakov, or to use or deal with his assets, including through cryptocurrency wallets or ransomware payments.

### CYBER INCIDENT REVIEW BOARD AND LIMITED USE OBLIGATIONS

One of the initiatives implemented by the Australian Government under the Cyber Security Act is a Cyber Incident Review Board, which will conduct no-fault incident reviews to reflect on lessons learned from cyber incidents and share these lessons with the Australian public. Importantly, it is not a function of the CIRB to apportion blame in relation to a cyber security incident or to provide the means to determine the liability of any entity in relation to a cyber security incident.

The Australian Government is currently in the process of appointing the members who will comprise the CIRB.

The Government also introduced 'limited use' obligations as part of the omnibus cyber security and critical infrastructure legislative package that included the Cyber Security Act, to restrict how cyber incident information shared with the Australian Signals Directorate, the National Cyber Security Coordinator and the CIRB can be used by other Australian Government entities, including regulators. This reform is intended to encourage businesses to share real-time cyber incident information with the Australian Government.

## DIRECTORS' DUTIES

There are no specific duties imposed generally on directors in Australia in relation to cyber security. However, directors already owe general duties of care, skill and diligence. These duties arguably require directors to take reasonable steps to ensure cyber security risks are adequately addressed, managed and mitigated. There is also a trend of increasing governance implications and accountability for boards and management in particular industry sectors – for example, the SOCI Act requires boards of responsible entities for critical infrastructure assets to sign off on an annual report on the entity's risk management program.

As a starting point, we recommend directors familiarise themselves with the Australian Institute of Company Directors' (AICD) [Cyber Security Governance Principles](#), first released in 2022 and updated in 2024. Whilst not mandatory, these principles are likely to set a baseline regarding cyber security governance expectations. The AICD's ['Governing Through a Cyber Crisis: Cyber Incident Response and Recovery for Australian Directors'](#) publication also contains useful guidance for directors on cyber preparation, response and recovery.

## CONTINUOUS DISCLOSURE

The basic continuous disclosure obligation for a listed company is to immediately disclose to the ASX any information concerning it that a reasonable person would expect to have a material effect on the price or value of the company's securities. Announcements should contain sufficient detail for investors or their professional advisors to understand their ramifications and impact on the share price.

What comprises a 'material effect on price or value' in the context of a cyber incident can be very difficult to determine, particularly in the early stages. While recognising this complexity, the ASX indicated in 2022 that it was unwilling to implement prescriptive thresholds as to what comprises a "material effect" in the context of a cyber incident, and that listed companies should remain guided by their existing continuous disclosure obligations.

Absent a prescriptive standard, what constitutes a 'material effect' in the context of cyber incidents will likely evolve as the market grapples with the increasingly regular attacks and what they mean for disclosure obligations. However, the ASX more recently in 2024 included a new data breach worked example to supplement its existing guidance on listed companies' continuous disclosure obligations, which provides useful guidance to entities as to when disclosure (or further disclosure) may or may not ordinarily be required.

There is increasing regulatory scrutiny regarding continuous disclosure obligations in the context of a cyber security incident. ASIC has previously indicated that it will be seeking "record penalties for breaches of market disclosure amid new findings that listed companies are acting illegally by failing to disclose material cyber attacks". The ASX has also encouraged listed companies to prepare in advance and update their plans regarding how they intend to inform the market in the event of a cyber attack or data breach.

## REGULATORY AND CLASS ACTION RISKS

Recent high-profile, large-scale data breaches in Australia have highlighted the increased regulatory and public scrutiny that businesses can expect following a cyber incident.

The OAIC has publicly raised concerns that organisations are taking too long to assess and notify data breaches, particularly given that the NDB regime came into effect more than 5 years ago and organisations should now have established effective compliance processes.

The OAIC has powers under the Privacy Act to investigate businesses that suffer a data breach involving personal information. The OAIC's focus in an investigation is whether there has been a breach of the Australian Privacy Principles (APPs), including in particular APP 11, which requires APP entities to take such steps as are reasonable in the circumstances to protect personal information from misuse, interference and loss, or unauthorised access, modification or disclosure.

At the same time, reforms to the Privacy Act in 2022 significantly increased the penalties that can be imposed for a serious interference with the privacy of an individual, with body corporates liable for a maximum amount that is the greater of:

- A\$50 million;
- 3 times the value of the benefits obtained from the breach; or
- if the court cannot determine the total value of those benefits, 30% of the adjusted turnover in Australia during the 'breach turnover period' (being the longer of 12 months prior to the breach or the period over which the breach occurred).

Other regulators are also likely to initiate regulatory scrutiny in relation to data breaches. For example, following its review of the 2022 cyber attack on Medibank Private, APRA imposed an increase in Medibank Private's capital adequacy requirement of A\$250 million to reflect weaknesses identified in Medibank Private's information security environment. The Chair of ASIC has also publicly stated that ASIC would seek to make an example of board directors and executives who were recklessly ill-prepared for cyber attacks by taking legal action against compromised companies that did not take sufficient steps to protect their customers and infrastructure from hackers.

In 2025, ASIC commenced action against FIIG Securities Limited (FIIG) and Fortnum Private Wealth Limited (both holders of an AFS licence) for allegedly failing to meet their obligations as AFS licensees by failing to have adequate policies, frameworks, systems and controls in place to deal with cyber security risks. In February 2026, the Federal Court of Australia ordered FIIG to pay a A\$2.5 million civil penalty and to undertake a compliance program involving the engagement of an independent expert to ensure its cyber security and cyber resilience systems are reasonably managed.

Finally, businesses that have been subject to a cyber incident also face very real risks of class actions and representative complaints (under the Privacy Act) being initiated by class action law firms. There are a number of significant examples of this in the Australian market in recent years.

## SECURITY STANDARDS FOR IOT DEVICES

Under the Cyber Security Act, the Australian Government has established a framework to allow rules to prescribe mandatory security standards for products that can directly or indirectly connect to the internet (IOT devices) that will be acquired in Australia. The first set of security standards for IOT devices are set out in the Cyber Security (Security Standards for Smart Devices) Rules 2025 and came into force in March 2026. These security standards require no universal default passwords for IOT devices, the publication of information enabling the reporting of security issues and the publication of information about the support period for security updates.

# 7. Tax



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## The Main Features of Australia's Tax System

Australia has a comprehensive tax regime with taxes imposed at both the Federal level and the State/Territory level. The Australian Taxation Office (ATO) is responsible for administering the tax laws imposed at the Federal level and each State and Territory has a different body which administers the tax laws imposed in that particular jurisdiction.

The Australian tax regime is complex. Australian tax laws also change frequently, both in response to changes at a domestic level (such as a change in government) and changes at an international level (such as the ongoing OECD BEPS initiative). Given the ever changing nature of the Australian tax system, you should always consult with your Australian tax adviser before engaging in any transaction which has a connection to this jurisdiction.

We outline in further detail below:

- the core concepts relevant to the imposition of Australian income tax;
- some of the key issues that are relevant for entities investing into Australia; and
- an overview of some of the other transaction taxes imposed in Australia.

### AUSTRALIAN INCOME TAX

Australian income tax is levied annually on the 'taxable income' of an entity, which is equal to an entity's 'assessable income' less 'allowable deductions'. The standard income year in Australia runs from 1 July to 30 June.

The assessable income of an entity is based upon its tax residency. Broadly:

- Australian residents must include in their assessable income both ordinary income (ie revenue gains) and statutory income (including capital gains) from all sources (ie their worldwide income); and
- non-resident entities must include in their assessable income both ordinary income which has an Australian source and other amounts which are specifically required to be included pursuant to the tax law, such as capital gains arising on the disposal of Australian real property interests.

Allowable deductions include general business outgoings to the extent they are incurred in gaining or producing assessable income or in carrying on a business. A number of specific deductions are also provided for in the tax law.

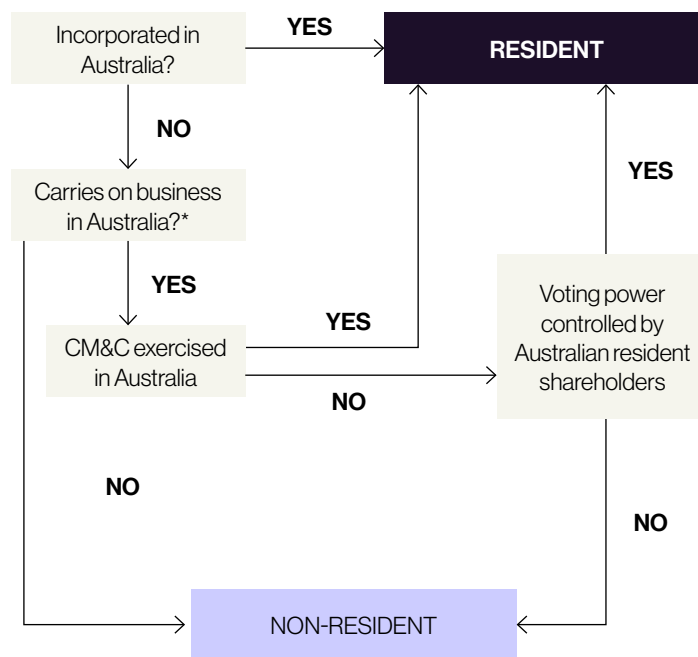
If a taxpayer's allowable deductions exceed their assessable income for a particular income year, this may give rise to a tax loss for that year which may be carried forward and applied against their assessable income in a subsequent income year. However, companies and trusts must satisfy stringent statutory tests before being able to utilise tax losses in this manner.

Australia has comprehensive double tax treaties (DTTs) with other jurisdictions which may also be relevant to the taxation of resident and non-resident entities. The Australian tax law provides that to the extent Australian tax laws are inconsistent with a DTT, the DTT will prevail. This means that if the Australian tax law seeks to impose income tax on a particular gain or amount of income but the relevant DTT allocates the taxing rights to the other jurisdiction, no Australian income tax will generally be imposed.

Certain other types of income received by a non-resident entity from an Australian entity, such as dividends, interest and royalty payments, may also be subject to Australian income tax by way of a final withholding tax.

## RESIDENCY

The tax residency of an entity is fundamental to understanding how the Australian income tax law will apply to that entity. A company will be an Australian resident for income tax purposes if it is incorporated in Australia. A company that is not incorporated in Australia can still be an Australian tax resident as indicated in the diagram to the right.



\* A company may carry on business in Australia where its CM&C is exercised in Australia.

There is no definitive test as to what constitutes Central Management and Control (CM&C) but factors such as where board meetings are held, how day-to-day management occurs and where business and investment decisions are made will be relevant in determining where the CM&C of a company is exercised.

The residency tests for other types of entities are summarised in the table on the following page.

Entity	Residency Test
Trust	Trustee is an Australian resident or CM&C is in Australia. For a unit trust, a trust will also be a resident trust for capital gains tax purposes if any property of the trust is situated in Australia and CM&C is in Australia or the trust carried on business in Australia and Australian residents hold more than 50% of the beneficial interest in the income or property of the trust.
Individual	A resident under common law principles including an individual whose domicile is in Australia or who has been physically in Australia continuously or intermittently for more than one half of an income year.
Partnership	Not taxed as a distinct entity, so each partner will need to consider their own position in this regard.

## Nature and Source Of Income

### REVENUE VS CAPITAL

There is a significant body of case law and ATO guidance in Australia which is relevant in determining whether an amount of income or a particular gain is on 'revenue account' or 'capital account'.

Income or gains which are on revenue account will generally form part of a taxpayer's ordinary income whereas income or gains which are on capital account will form part of their statutory income (as statutory income includes any net capital gains).

The revenue/capital distinction is important for the following reasons:

- different categories of tax losses can only be applied against certain categories of assessable income. Most importantly, capital losses cannot be used to offset a revenue gain in either the current or a future income year;
- the capital gains tax (CGT) provisions contain a number of concessions which do not apply to revenue income or gains. Accordingly, it may be advantageous for a gain to be on capital account because this may result in a lower income tax liability for the taxpayer after applying the relevant concession; and
- non-residents will generally not be subject to income tax in Australia on income or gains which are on capital account unless it arises in connection with the disposal of, or dealing in, an Australian real property interest (which may include an interest in a company or trust which itself holds Australian real property).

In broad terms, income or gains made in the ordinary course of carrying on a business will be on revenue account. Examples would include profits from ordinary trading activities (ie, selling products to customers). Gains or losses may be taken to be on capital account where they result from the mere realisation of an asset that was either held or was acquired with the intention of holding it for a long period of time.

### SOURCE

Australian tax laws do not contain comprehensive source rules, so source is generally determined on the basis of common law principles. Factors such as where trading activities take place, where relevant contracts are signed and where management activities take place that contribute to an increase in the value of an investment may be relevant in determining whether an amount of income or a particular gain has an Australian source.

Again, foreign residents will need to consider the application of any DTT, because even if an amount of ordinary income has an Australian source, Australia's DTTs generally contain a 'business profits article' that will not allow Australia to impose income tax on any such income unless the non-resident taxpayer had a permanent establishment in Australia.

### CGT

Unlike other jurisdictions, there is no separate CGT regime in Australia. Instead, taxpayers must include in their assessable income, for a particular income year, any net capital gains made by the taxpayer in that year. Net capital gains form part of a taxpayer's 'statutory income' and are broadly calculated by taking the total of the capital gains arising in that year and subtracting any capital losses.

If a taxpayer has more capital losses than capital gains, they will have no net capital gain for that income year and may carry forward the net capital loss to future income years.

In general terms, a capital gain or capital loss will arise in connection with a 'CGT event'. There are numerous events that may happen, but they may broadly be broken into 'disposal' events (ie where an asset is disposed of by one taxpayer to another) or 'creation' events (ie where an asset such as a legal right is created).

A taxpayer will make a capital gain in connection with a CGT event if the 'capital proceeds' received in connection with the event exceed the asset's cost base. A capital loss will arise if the capital proceeds are less than the asset's reduced cost base.

Broadly, capital proceeds include the total of the money the taxpayer receives (or is entitled to receive) and the market value of any other property that the taxpayer receives (or is entitled to receive) with respect to the CGT event. Provisions exist which in certain circumstances (for example, if the parties to a transaction are not acting at arm's length) may deem the taxpayer to have received the market value of the asset that is the subject of the CGT event (even though they received less) and the taxpayer must calculate their income tax liability on the basis of the deemed proceeds.

Generally, the cost base or reduced cost base of an asset is what the taxpayer paid to acquire the asset (plus incidental costs of acquiring an asset or that relate to a CGT event, and other amounts which go to the preservation of the asset to the extent those amounts have not already been tax deducted), which again may be altered in certain circumstances.

## DISCOUNT CGT CONCESSION

Certain Australian resident taxpayers may be eligible to reduce certain capital gains by the CGT discount. Eligible taxpayers include individuals, trusts and complying superannuation funds. Companies are not eligible for this concession.

Broadly, the taxpayer must have held the asset that is the subject of the CGT event for at least 12 months before the time of the event. There are several other requirements that must be satisfied.

If applicable, individuals and trusts may reduce their capital gain by 50% and complying superannuation funds may reduce their capital gain by 33.3% (after applying current year capital or carried forward net capital losses). The reduced capital gain is then included in the taxpayer's statutory income for the income year.

This concession is not applicable to all CGT events.

## WHAT ABOUT NON-RESIDENT ENTITIES?

A capital gain or capital loss made by a non-resident entity is generally disregarded, except in relation to certain categories of assets known as 'taxable Australian property' (TAP).

TAP includes:

- taxable Australian real property (ie real property situated in Australia) (including a lease of land if the land is situated in Australia) and mining, quarrying or prospecting rights if the minerals, petroleum or quarry materials are situated in Australia) (TARP);

The Australian Federal Court has recently provided guidance, in a series of cases, about the meaning of 'real property'. Broadly, the Court has held that 'real property' takes its technical, legal meaning rather than a broader ordinary meaning, and the assessment of whether an asset is 'real property' is undertaken by analysing the specific rights held and testing whether those rights have the character of an interest in land. However, it is possible that the Australian Commissioner of Taxation (Commissioner) will appeal these decisions

- indirect Australian real property interests (ie certain membership interests in an entity (generally requiring a 10% or greater associative-inclusive interest in the entity which is tested at particular times) where the value of the TARP assets of that entity exceeds the value of the non-TARP assets of the entity, noting that this test requires tracing through interposed entities) (IARPIs);
- assets used at any time in carrying on a business through a permanent establishment in Australia (for example, assets used by an Australian branch of a foreign company which carries on business in Australia); and
- an option or right to acquire any of the assets mentioned above.

As part of the 2024–25 Budget, the Australian Government announced a suite of changes to the non-resident capital gains tax provisions. In summary, the proposed changes involve:

- expanding the scope of TAP to 'assets with a close economic connection to land and/or natural resources';
- a requirement for foreign resident vendors to notify the ATO before entering into a transaction to sell shares or units exceeding A\$20 million in value where the vendor declares that the membership interests are not IARPIs; and
- changing the current 'single point-in-time' principal asset test (which tests whether an entity holds an indirect Australian real property interest at the time of acquisition) to a 365-day testing period.

Importantly, the proposed expansion of the scope of TAP may cause assets that are not traditionally considered fixtures at common law – and may not otherwise be regarded as 'real property' for the purpose of the non-resident capital gains provisions (at least based on recent case law) – to be treated as TAP and, accordingly, to be taxable on disposal. While the proposed changes may affect the tax treatment on the divestiture of assets currently treated as chattels (such as wind turbines and solar farms), the changes are not expected to have effect from before 1 April 2026 and are therefore not expected to affect divestments before this date.

Details of the proposed changes are yet to be released.

## Current tax rates

### INDIVIDUALS – AUSTRALIAN RESIDENT

The Australian Government began implementing gradual reforms to the personal income tax rates from the 2017/18 income year. Following recently passed reforms, the new tax rates for individual Australian residents that apply from 1 July 2024 are as follows:

Taxable Income	Tax Payable*
<b>0 - A\$18,200</b>	Nil
<b>A\$18,201 - A\$45,000</b>	16 cents for each A\$1 over A\$18,200
<b>A\$45,001 - A\$135,000</b>	A\$4,288 plus 30 cents for each A\$1 over A\$45,000
<b>A\$135,001 - A\$190,000</b>	A\$31,288 plus 37 cents for each A\$1 over A\$135,000
<b>A\$190,001 and over</b>	A\$51,638 plus 45 cents for each A\$1 over A\$190,000

\* A 2% Medicare levy also applies to residents.

### INDIVIDUALS – NON-RESIDENT

Taxable Income	Tax Payable*
<b>A\$0 - A\$135,000</b>	30 cents for each A\$1
<b>A\$135,001 - A\$190,000</b>	A\$40,500 plus 37 cents for each A\$1 over A\$135,000
<b>A\$190,001 and over</b>	A\$60,850 plus 45 cents for each A\$1 over A\$190,000

\* Non-residents are not liable for the 2% Medicare levy.

### COMPANIES – BOTH RESIDENT AND NON-RESIDENT

The current corporate tax rate is **30%**.

For certain smaller companies (and entities treated as companies for Australian income tax purposes) with an aggregated turnover of less than A\$50 million a year, a reduced rate of **25%** applies. Aggregated turnover includes the annual turnover of the company plus the annual turnovers of any business entities that are affiliated or connected with the company.

# Other Features of the Australian Income Tax System

## TAX CONSOLIDATION

Australian tax laws permit wholly-owned corporate groups to form a 'tax consolidated group' which means that all members of the group are treated as a single entity for certain income tax purposes.

Tax consolidation is very common among corporate groups in Australia and has the following effects:

- most intra-group transactions are ignored for income tax purposes (for example, any gain or loss arising on the transfer of assets between members of the group would be ignored);
- tax losses and other attributes such as franking credits of the various group members are pooled together and taken to be those of the head company of the group;
- group restructuring can be streamlined because assets and shares can be moved between group entities without any formal income tax rollover requirements; and
- compliance costs are reduced as the group lodges a single tax return for a unified accounting period and makes consolidated tax payments.

There are 2 types of tax consolidated groups:

- 'Consolidated Groups' comprising of a single Australian head company which wholly owns one or more Australian companies.
- 'Multiple Entry Consolidated Groups' comprising of at least 2 Australian companies which themselves are directly owned by a common foreign company (one of which is chosen to be the head company of the group).

To form a tax consolidated group in either scenario, the relevant entities need to make a written election and notify the ATO of that election.

## DIVIDEND IMPUTATION

Australia has a dividend imputation system. This means that certain distributions made by companies may attach tax credits (called 'franking credits') which are referable to the tax that has been paid at the company level.

The system eliminates double taxation by allowing Australian resident shareholders to claim a credit for Australian tax paid by a company on the profits from which the dividend is paid.

## WITHHOLDING TAXES

Withholding taxes may be imposed on certain dividends, interest and royalty payments that are made by an Australian entity to a non-resident entity.

The rates imposed under domestic law are:

- 30% for unfranked dividends;
- 30% for royalties; and
- 10% for interest payments.

If an applicable DTT applies, the rate applicable to any of the above type of payments may be reduced (including to nil) in accordance with the terms of that DTT.

Furthermore, the withholding tax that may otherwise apply to dividends will be reduced under Australian tax laws to the extent the dividends are 'franked' (ie the dividend has franking credits attached to it which provide a credit for tax paid at the company level) or are paid out of what is known as 'conduit foreign income' (meaning that the dividends are sourced from foreign profits and which pass through an Australian company under specific circumstances).

Dividend, interest and royalty withholding taxes are final withholding taxes, in that the recipient is not otherwise subject to Australian income tax on the amounts received.

Withholding taxes may also apply to distributions from certain trusts, known as managed investment trusts (MITs). These distributions, known as fund payments, are taxed at a concessional rate of 15% (subject to comments below). There are stringent rules for what constitutes an MIT, both in terms of how the trust is organised and held and what types of investments will qualify for this concessional tax rate on distributions. MITs are generally used for widely held investments which involve an investment in Australian real estate. MIT withholding tax is also a final withholding tax.

A 10% withholding rate applies where a Clean Building MIT makes a fund payment to a recipient in an information exchange country. An MIT is a Clean Building MIT if it holds one or more "Clean Buildings" and does not derive assessable income from other types of assets (other than certain incidental assets).

Recent amendments aimed at improving the commercial feasibility of foreign investment into Australia's build-to-rent sector have also reduced withholding tax rates to 15% for certain payments in respect of rental income and capital gains from active build-to-rent investments to foreign resident investors.

Where a non-resident disposes of certain types of TAP, the buyer (regardless of whether they are an Australian resident) will be required to pay an amount, that is generally equal to 15% of the purchase price, to the ATO. The buyer is generally required to withhold the amount from the purchase price and remit it to the ATO. Such a payment is a non-final withholding, meaning non-residents must still lodge an Australian tax return and pay tax in respect of the transaction (for which they receive a credit for the withheld amount).

Withholding taxes also apply to natural resource payments that are made to foreign resident entities where that payment is based wholly or partly on the value or quantity of a natural resource produced or recovered in Australia. The amount to be withheld is as advised by the ATO, as before a payment is made, the payer must notify the ATO of the proposed payment.

In relation to payments made in the context of software distribution arrangements with Australian distributors, the Commissioner has expressed the view in draft guidance that royalty withholding tax may extend to payments that are made for a right to distribute software (including where there is no entitlement to reproduce or modify it) where there is an incidental licensing of underlying intellectual property. This position has attracted criticism in Australia and overseas. The High Court of Australia decision in *Commissioner of Taxation v. PepsiCo, Inc.* has provided some clarification on the royalty characterization of payments made for intellectual property rights, which may require the Commissioner to review some aspects of his draft guidance. The Commissioner's updated guidance in this area has yet to be provided.

## TRANSFER PRICING

Australia has stringent transfer pricing rules which are designed to prevent taxpayers engaged in cross-border transactions from increasing deductions or decreasing assessable income to reduce their Australian income tax liability. The ATO may deem the consideration receivable under a cross-border agreement to be equal to the arm's length consideration, allowing the Commissioner to 'negate a transfer pricing benefit' in certain circumstances. The rules may apply to the provision or supply of goods and services, property, technology and the lending of money, between either, members of the same group of corporations or, alternatively, other parties not dealing at arm's length.

## THIN CAPITALISATION

Australia's new debt deduction limitation regime is effective from 1 July 2023 for the general thin capitalisation rules and 1 July 2024 for the new 'debt deduction creation' rules. The changes are significant, and the rules are complex.

Under the thin capitalisation regime, debt deductions (such as interest) of certain foreign entities investing in Australia, Australian entities that are foreign controlled, and Australian entities investing overseas, are limited (subject to an exception applying).

There are generally 3 tests available for calculating an entity's allowable debt deductions:

- a fixed ratio test allowing net debt deductions up to 30% of the entity's tax EBITDA;
- a group ratio test which may increase the percentage of allowable deductions up to the group's ratio earnings limit; and
- a third-party debt test which only permits debt deductions for compliant third-party debt.

The debt deduction creation rules apply in priority to the thin capitalisation rules to completely deny debt deductions incurred in relation to associate debt used:

- to acquire an asset or obligation directly or indirectly from an associate (excluding the acquisitions of new membership interests in Australian entities or foreign companies, new tangible depreciating assets, and new loans to associates); or
- to fund certain payments or distributions to another associate (including dividends, returns of capital, cancellations or redemptions of membership interests, and royalties).

## ANTI-AVOIDANCE

The Australian tax laws (both at the Federal and the State/ Territory level) contain various anti-avoidance rules (general and specific) which purport to cancel certain tax benefits or alter the way a tax law is applied to a particular taxpayer in certain circumstances.

## R&D TAX INCENTIVE

Companies that conduct research and development (R&D) activities in Australia may be able to claim a tax offset for their business expenditure on R&D. The incentive is designed to encourage engagement with these activities despite technical and scientific uncertainty.

An R&D entity may be entitled to a tax offset if the company:

- is incorporated under Australian or a foreign law;
- has incurred R&D expenditure which is notionally deductible; and
- has registered their R&D activities with the Department of Industry, Innovation and Science.

The 2 main kinds of notional deductions are:

- Expenditure on R&D activities (for example, labour, contractors, software and equipment); and
- Decline in the value of tangible depreciating assets used for R&D activities.

In most cases, the sum of the expenditure must exceed A\$20,000 to be eligible. However, there is no minimum for Research Service Provider (RSP) expenditure, thereby encouraging collaboration with these providers.

Eligible R&D activities include 'core' or 'supporting' R&D activities. Core R&D activities include the creation of new knowledge through "basic or applied research" or "experimental development". For most companies, eligible R&D activity under the incentive is the "experimental development" of new or improved materials, products, devices, processes or services.

Certain 'excluded' activities cannot be considered 'core' activities but may be 'supporting' activities if they are for the dominant purpose of supporting 'core' R&D activities. Examples include market research or sales promotion and management studies or efficiency surveys.

R&D tax incentive benefits apply to companies according to aggregated turnover:

- companies with an aggregated turnover of less than A\$20 million may receive a refundable R&D tax offset rate equal to their corporate tax rate plus an 18.5% premium; and
- companies with an aggregated turnover of A\$20 million or more may receive a non-refundable R&D tax offset rate equal to their corporate tax rate plus an incremental premium. The amount of the tax offset is increased for eligible R&D expenditure up to 2% of total expenditure by 8.5%, and for eligible R&D expenditure above 2% by 16.5%. Any unused offsets may be rolled forward and used in future income years.

If eligible annual expenditure exceeds A\$150 million, the tax offset for the amount above A\$150 million is calculated using the company tax rate.

## Other Australian Taxes

### GOODS AND SERVICES TAX (GST)

Transactions in Australia will generally be subject to GST, a broad-based tax conceptually similar to the value added taxes operating in many OECD countries. GST is currently calculated at the rate of 10% on the value of the supply of a range of goods, services, rights and other things acquired in, or in connection with, Australia.

The liability to remit GST is usually on the supplier of the item subject to GST, in which case the supplier will, as a matter of commercial practice, gross up the price to recover its GST liability from the recipient. If the recipient is carrying on an enterprise and registered (or required to be registered) for GST, in most cases it will be able to claim an input tax credit equal to the GST included in the price. Accordingly, it is intended that the GST liability will flow through the supply chain to the end consumers who will ultimately bear the cost of the GST (because they cannot claim input tax credits).

Certain items, known as 'GST-free' supplies and 'input taxed' supplies, are not subject to GST. GST-free supplies include certain foods, exports, health services, educational services and the supply of a going concern. Input taxed supplies include supplies of certain residential premises and financial supplies, such as transfers of units in a trust or shares in a company. Input tax credits can generally be claimed for goods and services acquired for the purposes of making GST-free supplies, but not for goods and services acquired for the purposes of making input taxed supplies.

### STAMP DUTY

Each Australian State and Territory has its own stamp duty regime applicable to a range of different transactions at varying rates.

All States and Territories levy 'transfer duty' on the transfer of land or any interest in land in the State or Territory in which the land is located.

The indirect acquisition of land, on the other hand, may give rise to 'landholder duty' where:

- the acquisition of itself entitles the acquirer to an interest in a landholder at or above the applicable acquisition threshold; or
- when aggregated with other interests held by the acquirer, or together with its associates, the acquisition results in an aggregated interest in the landholder at or above the applicable acquisition threshold.

Broadly speaking, the acquisition thresholds in each State and Territory depend on whether the landholder is a company or trust and whether or not that entity is listed on the ASX or another recognised securities exchange. A 'landholder' is any entity that holds land above a certain value, which differs across the States and Territories. In business or asset transfers, the liability to pay stamp duty (if any) depends on the assets being transferred and the jurisdiction involved.

A stamp duty surcharge may be levied where foreign persons acquire direct or indirect interests in land in New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania. The surcharge ranges between 1.5% and 8%.

### **FRINGE BENEFITS TAX (FBT)**

FBT is a federal tax paid by employers on the value of benefits provided to employees (or their associates) in relation to their employment, such as motor vehicles, schooling, healthcare or loans at discounted rates of interest.

The current rate of FBT is 47%.

### **PAYROLL TAX**

Payroll tax is paid by employers on the value of wages paid to employees.

Each State and Territory imposes payroll tax in its respective jurisdiction. The current rates of payroll tax vary between jurisdictions but are generally around 5%.

# 8. Employment and Workplace Health and Safety



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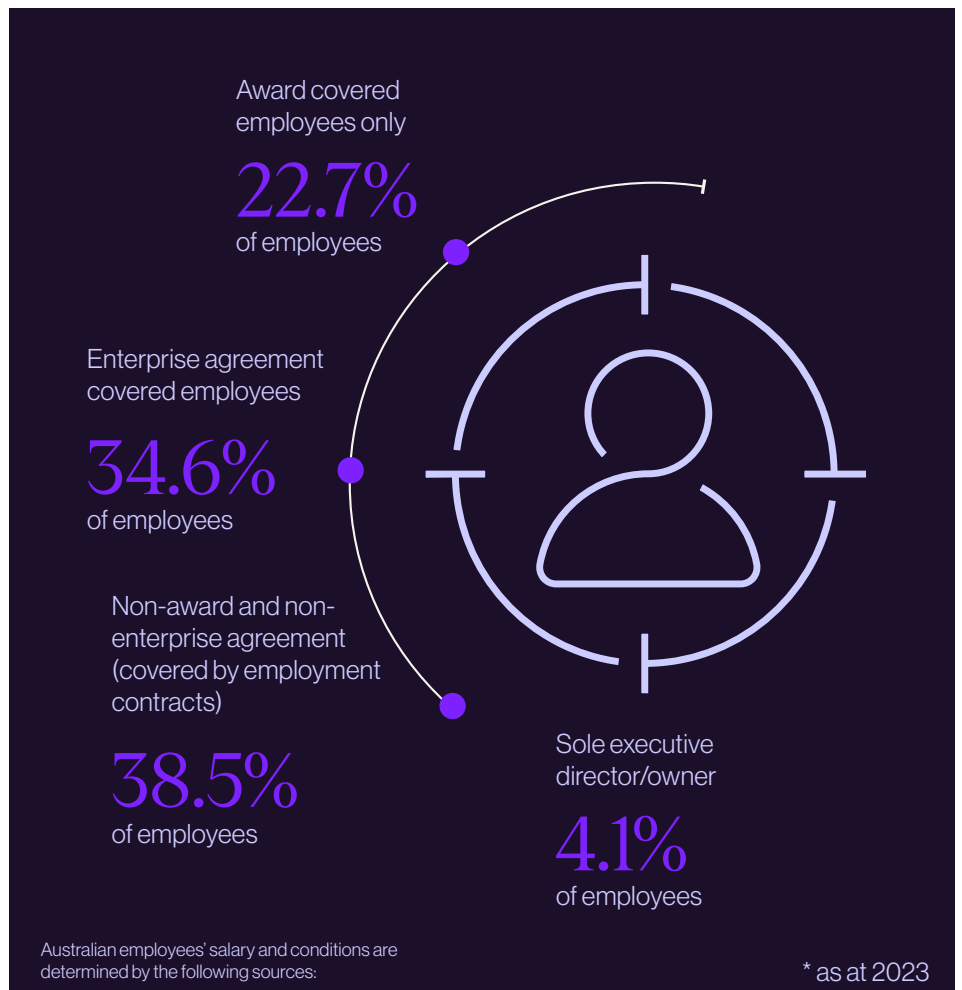
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## Employment Regulation

How are employment terms and conditions regulated in Australia?

The terms of employment of workers in Australia are primarily regulated by legislation and, for certain classes of workers, by industrial awards or workplace agreements. The common law of employment also has an important role.



## FEDERAL LEGISLATION

The *Fair Work Act 2009* (Cth) (FWA) is the key piece of legislation governing workplace relations in Australia. It applies to the vast majority of Australian employers, including all trading corporations. It includes rules relating to:

- unfair dismissal;
- protections from 'adverse action';
- industrial instruments (industrial awards and enterprise agreements);
- collective bargaining;
- industrial action;
- industrial unions;
- transmission of business (which covers a range of scenarios including outsourcing, insourcing and business transactions);
- fixed term contracts, including limitations on their use;
- sham contracting;
- pay secrecy; and
- the federal industrial tribunal known as the Fair Work Commission.

The FWA contains minimum entitlements relating to:

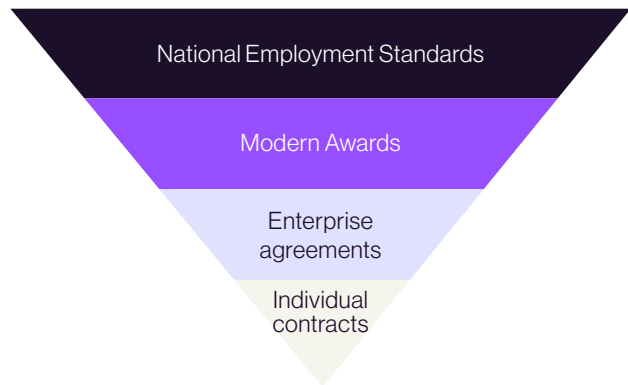
- wages;
- annual leave;
- personal and carer's leave;
- parental leave and related entitlements;
- family and domestic violence leave;
- long service leave\*;
- maximum weekly hours of work;
- public holidays;
- notice of termination of employment;
- severance pay where employment is terminated due to redundancy;
- community service leave;
- superannuation contributions;
- enhanced parental leave;
- provision of a Fair Work Information Statement and Casual Information Statement;

- requests to convert from casual to permanent employment;
- a 'right to disconnect' (ie reasonably refuse to respond to work-related contact after hours); and
- a right to request flexible working arrangements.

\* We note employees are usually entitled to long service leave entitlements under separate State and Territory laws that sit outside the FWA.

Most of the matters mentioned above form part of the 'National Employment Standards' in the FWA.

## AUSTRALIA'S INDUSTRIAL RELATIONS SYSTEM



## THE NATIONAL EMPLOYMENT STANDARDS

Sitting at the 'top' of Australia's industrial relations system are the 'National Employment Standards' (NES), which are a set of 12 minimum entitlements which apply to all national system employees in Australia, regardless of the industry, role or seniority. The NES covers issues such as maximum weekly hours of work, entitlement to certain forms of (paid and unpaid) leave, minimum notice of termination periods and redundancy pay. While other employment instruments (awards, enterprise agreements and employment contracts) can supplement or provide conditions more generous than the NES, parties cannot contract out of, exclude or derogate from the minimum NES entitlements.

## MODERN AWARDS

Modern awards operate as a further 'safety net' for employees in Australia. These are statutory instruments made by Australia's federal employment tribunal, the Fair Work Commission (Commission). Awards supplement the NES by providing for more detailed terms and conditions of employment for relevant employees, including minimum pay rates, entitlement to overtime/penalties and hours of work.

Unlike the NES, awards only apply to employers and employees within their 'coverage', which is usually set by reference to particular industries or occupations, and generally do not cover senior employees.

In recent years, a large number of employers, including sophisticated and long-established companies, have detected significant wage underpayments and other liabilities arising from non-compliance with industrial instruments. This has led to an increased focus from the regulator (the Fair Work Ombudsman) on compliance and enforcement. This is typically managed through routine internal and external legal and payroll compliance reviews, and robust drafting in contractual terms, including through the use of “set-off” clauses. Recent case law dealing with the discharge of modern award entitlements has found that employers must ensure annualised salaries (which are intended to fully absorb modern award entitlements) must be sufficient to discharge those minimum entitlements in each pay period, and not over an annual basis or any other extended period.

If an employer contravenes the NES or a term of a modern award that applies, orders to pay compensation and/or pecuniary penalties (fines) can be imposed by a court – these penalties can be severe (A\$4,950,000, or for contraventions relating to an underpayment, the greater of A\$4,950,000 or 3 times the underpayment amount per contravention for some ‘serious contraventions’).

There is also the potential for individuals involved in contraventions, such as directors, senior managers and HR/payroll staff, to be ordered to personally pay penalties, or even for them to face criminal liability where they ‘intentionally’ underpay an employee. The regulator, the Fair Work Ombudsman, is extremely active in investigating and prosecuting alleged underpayments.

## ENTERPRISE AGREEMENTS

Enterprise agreements may override a modern award which would otherwise apply to the employees covered by an enterprise agreement. See the [Industrial Relations](#) section of this Guide.

## COMMON LAW AND CONTRACTS OF EMPLOYMENT

All employees, regardless of whether or not they are covered by an award or enterprise agreement, will have a common law contract of employment (whether written or unwritten). For employees not covered by awards, the contract of employment is the principal source of obligations between the employer and the employee. A contract of employment can and often does provide for benefits in excess of the minimum standards required by labour laws.

A documented employment agreement should cover a range of key terms, including:

- commencement date;
- employment status;
- remuneration (including whether or not superannuation contributions are included in the salary package);
- the way in which the contract can be terminated; and
- confidentiality, intellectual property and post-employment restraints as appropriate.

## COMPULSORY SUPERANNUATION

Under Federal legislation, employers are required to make compulsory superannuation contributions to complying superannuation funds on behalf of their employees.

The minimum contribution rate is currently 12% of the employee's salary or wages (capped to a maximum contribution in respect of high-earning employees).

## WORKERS' COMPENSATION

State and Territory laws also regulate the obligations of an employer to provide workers' compensation payments to employees suffering from work related injuries or diseases.

Depending on the system applicable in the relevant State or Territory, employers are either required to contribute a levy to the State or to keep and maintain insurance cover for the full amount of the employer's statutory liability.

## EQUAL EMPLOYMENT OPPORTUNITY

Equal employment opportunity Federal and State laws:

- prohibit discrimination against employees and job applicants on certain grounds including race, sex, pregnancy, breastfeeding, gender identity, intersex status, age, sexual preference, politics, religion, trade union membership, experiencing family and domestic violence or disability;
- make provision for equal opportunity and affirmative action in respect of the employment of women, and impose reporting requirements on workforce gender ratios (but do not impose quota requirements); and
- prohibit sexual harassment and vilification in the workplace and render employers vicariously liable for the unlawful conduct of employees. It is also unlawful to subject another person to a workplace environment that is hostile on the ground of sex.

There is also a positive duty on employers and “persons conducting a business or undertaking” to take reasonable and proportionate measures to eliminate sex discrimination, sexual and sex-based harassment, hostile work environments and related acts of victimisation as far as possible.

## WORKPLACE GENDER EQUALITY

Large Australian employers are subject to legislative reporting and gender-equality target requirements. Employers with 100 or more employees in Australia are generally required to submit annual public reports against prescribed gender equality indicators. Employers with 500 or more employees (designated relevant employers) must also, every 3 years, select and report against a set of 3 gender equality targets determined under the legislation, to be achieved over the relevant 3-year target cycle. At the end of the cycle, an employer may be treated as non-compliant if it has not, without reasonable excuse, met each selected target or demonstrated improvement against each selected target compared with its baseline report. Non-compliant employers may be publicly named by the Workplace Gender Equality Agency.

## Foreign Employees

### CAN FOREIGN WORKERS BE EMPLOYED IN AUSTRALIA?

Australia's migration system is geared towards enabling individuals with highly valued skills to work in Australia.

There are a number of pathways available to ensure that businesses have the right expertise from around the world. These pathways fit into 3 different visa classes.

### SHORT STAY VISAS

A range of short stay visas enable individuals to come to Australia for limited work-related purposes. Depending on certain criteria, individuals can obtain short term visas to attend to business visitor activities in Australia. It is important to note that business visitor activities generally only permit a person to make general business enquiries, and investigate, negotiate, sign or review a business contract. They do not permit a person to 'work' in any other sense or be employed in Australia. There are also visas that assist individuals performing temporary activities in Australia (work or culturally related).

## TEMPORARY WORKING VISAS

An array of temporary work visas exist to assist skilled individuals to work in Australia. Skilled individuals may obtain a temporary working visa either as a sponsored employee or on an independent skilled basis. One of the most popular visa classes (the 482 visa or temporary skills shortage visa) requires a valid employer sponsor to nominate a position which is on the list of skilled occupations, to be filled by a specific skilled individual.

## PERMANENT RESIDENCY WORKING VISAS

Australia's permanent residency visas linked to work can be divided into 2 types:

- skilled permanent work visas which flow from skilled individuals having first held temporary working visas; and
- visas that have been specifically designed to attract distinguished skilled individuals and investors to Australia.



**Australian Government Department of Home Affairs**

<https://immi.homeaffairs.gov.au/>

# Work Health and Safety Regulation



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## How is Work Health and Safety Regulated in Australia?

In Australia, work health and safety (**WHS**) is primarily regulated through a system of nationally harmonised State and Territory-based laws.

While there are some differences between the WHS laws in each jurisdiction (most notably in Victoria, where the harmonised legislation has not been enacted), all are based on principles of shared responsibility and accountability to protect both the physical and psychosocial health and safety of workers and other persons.

### Key Duty Holders

#### **Persons conducting a business or undertaking (or employers)**

A primary duty of care to ensure health and safety of workers and other persons is imposed on persons conducting a business or undertaking (**PCBU**) (or employers in Victoria).

The primary duty of care requires PCBUs (or employers) to take reasonably practicable steps to manage risks to health and safety (both physical and psychological) by eliminating or otherwise minimising identified risks through the implementation of suitable control measures. PCBUs (or employers) must also ensure that any control measures implemented remain effective and must regularly review and revise control measures as necessary, so as to maintain a work environment that is without risks to health or safety.

PCBUs (or employers) also have other specific duties under WHS laws, including a duty to consult with workers and other duty holders in respect of WHS matters and to notify certain workplace incidents to the applicable WHS Regulator.

#### **Officers**

In each jurisdiction other than Victoria, officers of a PCBU (i.e. directors and other senior leadership roles) have a duty to exercise due diligence to ensure that the PCBU is complying with its duties and other obligations under the health and safety legislation. This is a personal duty, which requires each officer of a PCBU to take reasonable proactive steps to secure compliance.

#### **Workers**

Workers (including employees, contractors, volunteers) have a personal duty to take reasonable care for their own health and safety and the health safety of others while they are at work. This duty also requires workers to comply with instructions, policies or procedures of the PCBU (or employer).

Workers also have certain rights to cease or refuse to carry out work where they hold reasonable concerns about their health and safety.

## WHS REGULATORS

Each State and Territory has its own WHS Regulator. These agencies are responsible for providing guidance to duty holders about WHS matters, monitoring compliance with WHS laws, investigating non-compliance with the laws and taking enforcement action where there has been a breach of the laws.

WHS Regulators and their inspectors have broad powers under WHS laws to investigate and take other actions to secure compliance with the laws, including rights to enter workplaces, give directions and obtain information and documents through coercive processes.

## PENALTIES FOR NON-COMPLIANCE WITH WHS LAWS

Non-compliance with WHS laws can expose PCBU's (or employers) as well as their officers and workers to criminal and civil penalties. Depending on the nature of the offence, enforcement measures can range from on-the-spot fines up to criminal prosecution, where the maximum penalties for offences relating to serious breaches or industrial manslaughter can be up to A\$20M or 25 years' imprisonment for individuals (or both), depending on the jurisdiction. In some jurisdictions, it is also an offence to hold or take the benefit of insurance coverage or other indemnification for WHS fines.

## INDUSTRY-SPECIFIC REGULATION

In addition to the general WHS laws, there are also industry-specific laws that may apply in place of, or simultaneously with, the general WHS laws. Industry-specific laws aim to provide a separate or additional framework for certain industries and work activities where there are unique hazards and risks that require additional management or oversight (for example, through licensing or health monitoring etc).

These industries include:

- resources (mining, petroleum, gas);
- explosives & dangerous goods;
- heavy vehicles;
- rail;
- aviation; and
- marine.

# Industrial Relations



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## OVERVIEW

Industrial relations in Australia is a particularly complex and constantly evolving area. It is one of the areas of law which sees regular wholesale changes with each change in government. There are a variety of often overlapping statutory bodies and actors (including regulatory bodies, state and federal tribunals and courts, and third parties such as unions), with employers (including small employers without dedicated human resources specialists) and employees being subject to a myriad of responsibilities, rights, obligations and entitlements with which they are required to comply, failure of which may result in civil or criminal penalties.

Many areas of industrial relations are relevant to all employers in Australia, while some will only be of significance to employers in particular industries, sectors or locations.

This section contains an overview of the most critical issues that arise in industrial relations, and which will be relevant to most Australian employers.

## NATIONAL EMPLOYMENT STANDARDS AND MODERN AWARDS

Sitting at the 'top' of Australia's industrial relations system are the 'National Employment Standards' (NES), which are a set of 12 minimum entitlements which apply to all national system employees in Australia, regardless of the industry, role, seniority or pay. Parties cannot contract out of the NES. For more detail on the NES see the Australian [Employment Regulation](#) section of this Guide.

Modern awards operate as a further 'safety net' for certain employees in Australia. These are statutory instruments made by Australia's federal employment tribunal, the Fair Work Commission (Commission). Awards supplement the NES by providing for more detailed terms and conditions of employment for relevant employees. Failure to comply with a modern award exposes the employer (and individuals involved) to both civil and criminal penalties. For more detail on modern awards see the Australian [Employment Regulation](#) section of this Guide.

## ENTERPRISE BARGAINING

The Fair Work Act permits employers to negotiate collective agreements with their workforce containing bespoke terms and conditions of employment which may be more appropriately tailored to their particular enterprise and operations than the relevant modern award(s). These agreements will typically cover terms and conditions such as rates of pay, hours of work, rostering requirements and leave entitlements.

Enterprise agreements may override a modern award which would otherwise apply to the employees covered by an enterprise agreement (if the enterprise agreement was not in operation), but cannot exclude, or operate inconsistently with, the NES. An enterprise agreement can only be approved by the Commission if it leaves all employees 'better off overall' compared to the applicable modern award.

Failure to comply with an enterprise agreement exposes the employer (and individuals involved) to both civil and criminal penalties.

Individual employment contracts can provide more generous entitlements but cannot undercut the terms of an enterprise agreement (or a modern award, if one applies).

There are 3 types of enterprise agreements:

- **single enterprise agreements** (covering 1 employer or 2 or more 'single-enterprise' employers, such as related corporations, entities engaged in a joint venture, or franchisees);
- **multi-enterprise agreement** (covering 2 or more unrelated employers); and
- **greenfields agreement** (covering new businesses or enterprises that don't have any employees yet).

# Enterprise Bargaining Process

<p><b>Commencement of bargaining</b></p>	<p>To commence bargaining, an employer may initiate bargaining, or agree to bargain, for an enterprise agreement. There are also various avenues under the Fair Work Act for employees or a union to force a reluctant employer to bargain (including for a multi-enterprise agreement).</p>
<p><b>Good faith bargaining</b></p>	<p>Once bargaining for an enterprise agreement has commenced, employers and employee bargaining representatives must observe the good faith bargaining requirements in the Fair Work Act, which address matters such as attending meetings, providing (non-confidential information), and responding to proposals. Importantly, however, parties are not required to make any concessions in bargaining.</p>
<p><b>Content requirements</b></p>	<p>An enterprise agreement can only include terms about 'permitted matters'. A term of an enterprise agreement has no effect to the extent that it is not a term about a permitted matter.</p> <p>Permitted matters generally are limited to terms directly relating to its employees, or the relationship between the relevant union and the employer. Terms about an employer's relationship with its suppliers, contractors or other third parties will generally not be permitted.</p> <p>The Fair Work Act also sets out requirements for mandatory terms that must be included in all enterprise agreements (such as consultation, flexibility and dispute resolution terms, and terms providing for the rights of employee workplace delegates).</p>
<p><b>Fair Work Commission (Commission) intervention</b></p>	<p>The Commission can intervene in the bargaining process in a number of ways, including by facilitating a conciliation process. The Commission can also be asked to make bargaining orders where one party alleges that another is not complying with their good faith bargaining obligations.</p> <p>If bargaining has been on foot for at least 9 months and the parties have reached an impasse, a bargaining representative may apply to the Commission for an 'intractable bargaining declaration' in certain circumstances. If the Commission makes an intractable bargaining declaration and bargaining representatives are still unable to resolve the dispute, the Commission must make an intractable bargaining workplace determination, by which the Commission will, through an arbitral process, unilaterally set the terms and conditions of an enterprise agreement.</p> <p>A determination cannot leave the employees any worse off – making it difficult, and in some cases impossible, for the employer to obtain productivity or flexibility related improvements as a trade-off for improvements to other terms and conditions (such as pay rises).</p>
<p><b>Employee vote</b></p>	<p>Before an enterprise agreement (other than a greenfields agreement) can be submitted to the Commission for approval, a majority of the employees who will be covered by the agreement must vote to support the agreement in a formal ballot.</p> <p>For multi-enterprise agreements, the employer must obtain written approval from all relevant unions or a voting request order from the Commission before holding a vote.</p>
<p><b>Approval</b></p>	<p>An enterprise agreement does not take effect until it is approved by the Commission, which must be satisfied that a series of requirements are met.</p> <p>If the Commission is not satisfied the agreement meets one or more of the requirements it may ask the employer/s to provide a signed undertaking to rectify the concern, which if accepted, becomes a term of the agreement. In recent years, it has been increasingly common for the Commission to request undertakings from employers in order to approve agreements.</p> <p>An enterprise agreement commences operation 7 days after it is approved by the Commission, or a later date if specified in the agreement, and can have a nominal term of up to 4 years (although it will continue to operate after that period expires, until it is replaced or terminated by an order of the Commission).</p>

## INDUSTRIAL ACTION

During enterprise bargaining, and subject to strict timeframes and other requirements, parties can seek to assert bargaining leverage by engaging in 'protected' (lawful) industrial action (PIA).

Any industrial action which does not meet the relevant statutory requirements is 'unprotected'. Unprotected industrial action can take many forms, and can often be 'covert', for example, employees engaging in informal 'go-slows', overtime bans or 'blue flu' (employees all calling in sick).

The amount of industrial action resulting in lost working time has been trending downwards in Australia for several decades, although there has been an uptick in recent years.

The most well-known form of industrial action is a 'strike' – ie, the complete refusal to work by an employee or group of employees. Other common forms of industrial action include partial work bans (for example, where employees refuse to perform some aspects of their roles, such as not wearing their uniforms) and lockouts (where the employer refuses to allow employees to work).

## PROCEDURAL REQUIREMENTS FOR ACTION TO BE PIA

There are strict requirements that must be met for industrial action to be PIA. PIA cannot occur prior to the nominal expiry date of any predecessor enterprise agreement. Any failure to comply with these requirements, even if they are minor or inadvertent, can be sufficient to mean that action is not PIA, and so scrutiny of the process leading up to PIA being taken is incredibly important for employers.

## AVENUES TO STOP INDUSTRIAL ACTION

There are a number of avenues open to employers, employees/unions, or even affected third parties to stop protected or unprotected industrial action, including by making applications to the Commission or to a court. The availability of which avenues should be taken will depend on whether the action is protected or unprotected, whether the relevant employees are covered by an in-term enterprise agreement, and whether the employer wishes to stop, terminate or simply suspend the action.

## OTHER MITIGATION STRATEGIES

Industrial action, both protected and unprotected, can be incredibly disruptive and distracting to workplace operations. Accordingly, where industrial action is being taken (or is likely), employers should carefully consider their options to stop the action or mitigate its effects.

Where legal remedies are not available, for example, because the action is protected and does not rise to the threshold to obtain relief, employers are often left to rely on business continuity strategies.

# Interaction with Unions

## RIGHT OF ENTRY

The 'right of entry' regimes under the Fair Work Act and state and territory work health and safety (WHS) laws allow union officials to enter an employer's workplace for various purposes. There are various procedural (including notice) requirements for a right of entry to be exercised.

Whilst exercising a 'right of entry' union officials can:

- speak with employees who are willing to meet with them during breaks;
- interview persons who agree to be interviewed in relation to any suspected contravention; and
- inspect and make copies of records relating to suspected contraventions (however, non-member records cannot be accessed without that individuals consent or as a result of a Commission order).

Employers face significant penalties for stopping, hindering or obstructing a lawful 'right of entry' or the exercise of rights upon such entry, so it is important to seek advice quickly when given notice of a proposed 'right of entry'.

## DELEGATES' RIGHTS

Under the Fair Work Act, workplace delegates, who are persons appointed or elected to represent union members in the workplace have been granted the right to represent employees, use workplace facilities for union purposes, and (in certain cases) access paid leave for union training. All modern awards now include a delegates' rights term, and all new or replacement enterprise agreements must also include an equivalent (or more beneficial) term.

## FREEDOM OF ASSOCIATION

All workers (employees and independent contractors) have the right to 'freedom of association' under the Fair Work Act, including to become (or not become) a member of a union, or to participate (or not participate) in lawful industrial activities.

## **'SAME JOB, SAME PAY' – REGULATED LABOUR HIRE ARRANGEMENT ORDERS**

Although collective industrial agreements are, other than in some transfer of business situations, only applicable to the named 'enterprise' (or named employer(s)), reforms which commenced operation in 2024 seek to have the effect of applying the payment terms of a host employer's enterprise agreement to employees of other employers supplying labour to that host. The reforms are intended to achieve the policy outcome of 'Same Job, Same Pay' – whereby individuals performing the 'same' work alongside each other are to be paid the same regardless of their employer.

### **EFFECT OF AN RLHA ORDER BEING MADE**

When a 'Regulated Labour Hire Arrangement Order' (RLHA Order) is in effect, the supplier must pay its employees no less than the 'protected rate of pay' (PROP) which will be the 'full rate of pay' under the host's enterprise agreement. This includes: wages, incentive payments and bonuses, loadings, allowances, overtime rates, penalty rates and any other separately identifiable amount.

There is also the potential for an 'alternative PROP' order to be made which could result in an enterprise agreement which covers another entity within the host's corporate group applying.

Host employers are under an obligation to provide suppliers with reasonable information to enable them to ascertain the PROP payable to an employee.

Where an RLHA Order is in place, hosts are also under broad obligations to:

- apply to the Commission to vary an RLHA Order to cover additional suppliers of employees who would fall within the coverage of the host's enterprise agreement;
- notify prospective tenderers of the existence of an RLHA Order that may apply to them; and
- notify suppliers of the replacement or variation of the host's enterprise agreement.

There are limited exceptions to the requirement to pay the PROP once an RLHA Order is in place, but these include:

- where the employee is performing work for a period of 3 months or less which is designed to allow for short-term surges in labour (noting that the Commission can reduce or increase this time period upon application); or
- where the employee is engaged pursuant to a training arrangement.

The reforms also contain broad anti-avoidance measures which prohibit conduct which seeks to prevent the making of an RLHA Order or the application of an RLHA Order which is in force.

# 9. International Trade Law



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## Free Trade Agreements

### How does Australia regulate international trade?

Australia, a signatory to various free trade agreements, strictly regulates international trade, including the importation and exportation of goods and services into and out of Australia.

#### FREE TRADE AGREEMENTS

Free trade agreements aim to promote trade, reduce tariff barriers, simplify customs administration and grant access to government procurement opportunities. Australia is party to a number of free trade agreements with various parties including China, India, South Korea, Japan, ASEAN (association of South East Asian Nations), New Zealand, the United States of America, the United Kingdom, Canada and Chile. Most recently, Australia signed a free trade agreement with the United Arab Emirates, which took effect from 1 October 2025. A full list of agreements and their current status can be found on the Department of Foreign Affairs and Trade website.



**Department of Foreign Affairs and Trade**

<https://www.dfat.gov.au/trade/agreements/trade-agreements>

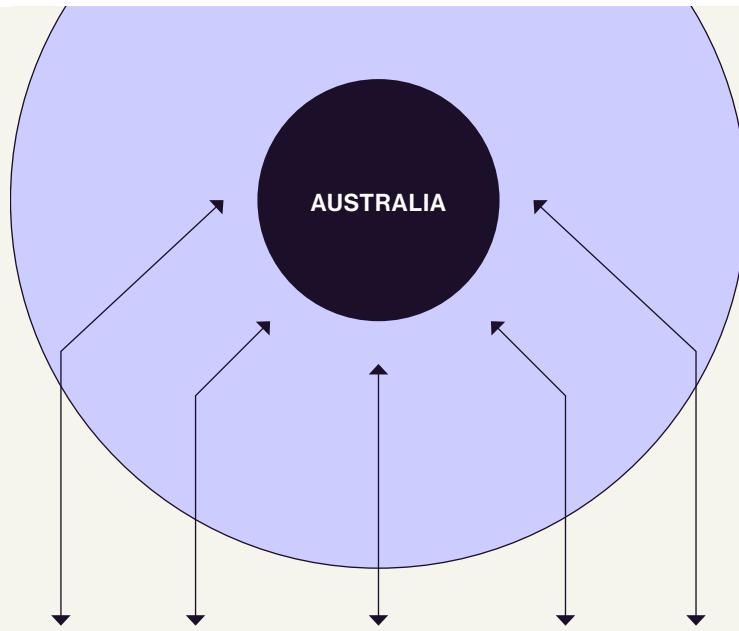
#### THE WORLD TRADE ORGANIZATION AND OTHER TRADE AGREEMENTS

Australia is a member of the World Trade Organization, which administers multilateral trade agreements that may impact on businesses operating in Australia. Other independent agreements also exist. For example, the Australia-European Community Agreement on Trade in Wine governs, among other things, the use of geographical indications between these bodies. Australia is also a founding member of the Asia Pacific Economic Cooperation (APEC) which is the premier forum for facilitating economic growth, cooperation, trade and investment in the Asia-Pacific region.

#### PROCUREMENT BY GOVERNMENTS

Each Australian jurisdiction has implemented certain rules that apply to the purchase of goods and services by government bodies. At the Federal level, the 'Commonwealth Procurement Rules' reflect closely negotiated wording in free trade agreements. There are some exemptions to those procurement rules which allow Government officials to, for example, determine that a contract may be required to protect human health, even if the contract does not comply with all the Commonwealth Procurement Rules. There are also exemptions for certain procurements from the more onerous requirements of the rules. Procurement rules differ between States and Territories. If you are selling to an Australian government, it may be helpful to check the rules that apply to the relevant government body.

## AUSTRALIA AND ITS FREE TRADE PARTNERS



### FREE TRADE PARTNERS

Brunei	Hong Kong SAR	Mexico	Singapore	United Kingdom
Cambodia	India	Myanmar	Solomon Islands	United States
Canada	Indonesia	New Zealand	South Korea	Vanuatu
Chile	Japan	Niue	Thailand	Vietnam
China	Kiribati	Peru	Tonga	
Cook Islands	Laos	Philippines	Tuvalu	
European Union	Malaysia	Samoa	United Arab Emirates	

# Government Contracting



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## Contracting with Federal and State Governments in Australia

Combined, Australian Governments spend more than A\$200 billion annually on goods, services and infrastructure. Australian Governments are a significant market for businesses of all sizes.

Each Australian Government has its own needs and makes its own purchases to meet those needs.

### TYPES OF AUSTRALIAN GOVERNMENT CONTRACTS

Governments in Australia engage third parties via contract to help them achieve their policy outcomes in several ways. These include:

- procurement contracts to buy goods and services;
- outsourcing agreements, asset sales and public/private partnership agreements (PPPs); and
- funding agreements.

### CURRENT TRENDS:

- While in the last decade there has been a trend for Australian Governments to contract external providers to provide services that have been traditionally provided by government, under the current government at the Commonwealth level, this approach has been questioned and agencies are more cautious about outsourcing.
- There is an increased focus on security of supply chains and security requirements generally, including requirements for contractors to be able to secure security clearances.

### PROCUREMENT RULES AND OPEN TENDERING

The Commonwealth, and the States and Territories, each have their own procurement laws and policies. Governments must ensure compliance with these laws and policies when buying goods and services.

Commonwealth procurement is governed by the [Commonwealth Procurement Rules](#) and the State of New South Wales, for example, by the [NSW Government Procurement Policy Framework](#).

### HOW LARGE IS THE COMMONWEALTH MARKET?



<sup>19</sup> ASX Announcement | December 2025 Quarterly Results Presentation

Most of the procurement (and funding) decisions by Australian Governments are made through open tenders. Open tender opportunities are published on government websites. For example, the Commonwealth publishes tender opportunities on [Aus Tender](#) and buys ICT goods and services through the [BuyICT platform](#).

The various procurement laws and policies limit the circumstances in which goods and services can be acquired on a direct (or 'sole source') basis. This facilitates a value for money result for government and means that procurement processes are usually highly competitive.

The Commonwealth does not discriminate between local and foreign entities when selecting third parties to provide goods and services. The preeminent consideration for purchases is value for money, irrespective of where the supplier is based or from where it will provide the goods or services. The Commonwealth is also required to consider the economic benefit of the procurement to the Australian economy, for example, where the goods or services being procured make better use of otherwise under-utilised Australian resources. The value for money assessment is a holistic one and involves a broad assessment of the risks and benefits involved in each tender response. Typically, the Commonwealth will prefer to contract with a local Australian entity, backed up by (if necessary and if there is a foreign parent entity), a financial and performance guarantee issued by the parent.

Despite having different laws and policies, the Commonwealth and the States and Territories all have similar objectives when entering procurement contracts:

- value for money;
- encouraging competition;
- stimulating innovation and local investment; and
- conducting procurement ethically by acting with integrity, probity, accountability, and transparency

### **BUSINESSES SHOULD EXPECT IN THEIR CONTRACTS WITH GOVERNMENT:**

- provisions that implement a wide range of government policies;
- robust reporting, audit and accountability requirements; and
- a right for the government party to terminate the contract for convenience.

These inclusions are generally non-negotiable when contracting with governments in Australia.

### **ASSET SALES ON THROUGH THE OPEN MARKET**

Like procurement, most sales and disposals of surplus government assets (including property) by the Commonwealth and the States and Territories are conducted via the open market and are made at full market value. Opportunities are advertised nationally (and in some cases internationally) in various mediums.

### **POLICIES APPLIED TO CONTRACTS**

Businesses selling to government should expect a significant number of policies to be applied in all government contracts.

Businesses should also expect that the relevant government will propose terms of contract. It is standard practice for Australian Governments to contract on their own terms and not on supplier terms. Draft contract terms will usually be provided as part of the request for tender documents and compliance assessed as part of tender evaluation. If you want to negotiate alternative terms, you must propose variations during the tender process and provide justification.

Governments expect to apply and enforce their policies contractually. While each Australian Government has its own policies, these policies will broadly cover:

- ethical principles;
- transparency (including requirements for the supplier to assist in government reviews by providing information and reports and cooperate in audits);
- security (some government contracts will have restrictions imposed on off-shoring – for example if the collection or storage of personal data is required); and
- local industry participation (policies focused on ensuring that competitive local businesses are given opportunities to participate in the provision of goods and services to government).

Most Australian Governments have also implemented supplier codes of conduct that set the minimum expectations of suppliers and their subcontractors in providing goods and services to the relevant government. These codes include things like ethical behaviour, corporate governance, business practices, and health, safety and employee welfare. Usually the supplier codes are incorporated into contracts with government, so a breach of the code is also a breach of the contract.

Conflicts of interest and corrupt conduct, including those that arise through procurement, are regulated by each jurisdiction, including at the Federal level through the National Anti-Corruption Commission Act 2022 (NACC Act). The NACC Act provides for broad jurisdiction to investigate serious or systemic corruption, including criminal and non-criminal conduct and conduct and, significantly, covers not just parliamentarians and public servants, but 'any person' who 'could' seek to corrupt a public official. The legislation also expressly treats 'contracted service providers' as public servants.

## EXECUTIVE NECESSITY / GOVERNMENT IMMUNITIES AND PRIVILEGES

Contracting with government in Australia is complicated by a doctrine, recognised in Australian law, that governments cannot fetter the future exercise of their discretionary power.

This is reflected in termination for convenience clauses which are applied to all government contracts.

Termination for convenience clauses reflect Australian law and enable a government party to terminate a contract at will. Usually, these clauses include a requirement for the government to pay an appropriate (or a pre-agreed) amount of compensation. Contractual rights to terminate for convenience are often used by governments as part of a negotiated end to a contract. A high-profile example of the Commonwealth exercising its contractual right to terminate for convenience was its decision to end the A\$90 billion submarine contract with France in 2021.

## REPORTING AND SCRUTINY OF CONTRACTS

Commonwealth and State Parliaments have oversight and wide-ranging powers to inquire into government contracts and contracted service providers. The Commonwealth also has several standing committees of the Parliament which review contracts, grants and associated expenditure.

Each Australian Government has numerous laws, rules, policies and procedures for the scrutiny of contracts.

Auditing and access to premises and records provisions are usual in government contracts.

All Commonwealth contracts are subject to audit by the Auditor-General under law. The Auditor-General is an independent officer of the Parliament with responsibility for auditing Commonwealth entities and reporting to the Australian Parliament. The Auditor-General is supported by the Australian National Audit Office (ANAO). The Auditor-General's powers extend to the comprehensive review of all contracts the Commonwealth enters. Each Australian State and mainland Territory has similar arrangements to the Commonwealth for the auditing of contracts that they enter.

The [Commonwealth Procurement Rules](#) require Commonwealth entities to report relevant contracts and publish key information relating to procurement contracts. At the Commonwealth level, contracts and procurement information are published on AusTender. Each Australian State and mainland Territory has its own equivalent tender reporting website.

**Be aware:** Confidential supplier information is not automatically exempt from mandatory reporting requirements.

### To be considered confidential by the Commonwealth, information must meet all 4 criteria of the 'Confidentiality Test':

1. The information needs to be specifically identified.
2. The information needs to be commercially sensitive.
3. Disclosure of the information would cause unreasonable detriment to the owner of the information or another party.
4. The information was provided under an understanding that it would remain confidential.

Helpful guidance on the Commonwealth's reporting requirements for confidential information can be found [here](#).

## CARETAKER PERIODS

Elections are held every 3 to 4 years for each Australian Government. During the weeks after an election is announced and that immediately precede an election, the incumbent government operates on a caretaker basis and according to conventions. During caretaker periods, major decisions are put on hold and negotiation of significant contracts are often paused. Businesses should generally expect slower response times during caretaker periods, as the public service will tend to park anything that is significant or politically contentious.

# Import and Export Excises



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Australia's import and export regulation includes a number of items which must be considered:

## IMPORTS

- Import restrictions
- Customs declaration
- GST
- Customs duty
- Tariff concessions
- Wine equalisation tax
- Luxury car tax
- Anti-dumping laws

## EXPORTS

- Declare for export
- Authority to deal
- Government approvals
- GST (but in many cases GST does not apply)

## BOTH

- Australian Trusted Trader program
- Record retention
- Reporting requirements

## Imports

### IMPORT RESTRICTIONS

There is no requirement for importers to hold an import licence to import goods into Australia. However, the import of certain classes of goods, such as drugs, animal products and weapons, may be prohibited or restricted unless a permit to import is obtained. In certain circumstances, it is also possible to obtain post-importation permissions, licences or other documents. Australian businesses can join the Australian Trusted Trader program, an initiative of the Australian Border Force, to reduce regulatory red tape and expedite flow of cargo into and out of Australia.

### CUSTOMS DECLARATION

Import cargo reporting requirements require all air and sea cargo to be declared to the Australian Border Force at or before the time the goods arrive in Australia. Importers do so through an import declaration, which requires details of all goods being imported. However, if the customs value of imported goods is A\$1,000 or less, only a self-assessed clearance declaration needs to be completed. From the time of importation until the time of the payment of duty (and, in some cases, goods and service tax (GST)), goods generally remain under the control of the customs authorities.

### GST

Imported goods will normally be subject to GST on importation (at a rate of 10%). In some circumstances, however, eligible importers may register for the Deferred GST Scheme and defer the payment of GST on imported goods.

Services which are 'imported' into Australia will generally be subject to GST where they are performed through an Australian place of business. Furthermore, the supply of services will be subject to GST where they are provided by overseas suppliers to entities in Australia which are not entitled to full input tax credits (such as banks). In these cases, the GST liability will generally fall on the Australian recipient.

GST also extends to certain cross-border supplies of digital products (for example, video streaming services) and other services (for example, architectural or legal services) imported by Australian consumers. GST will apply in these cases even where the supplier does not provide the services through an Australian place of business.

GST also applies to the supply of low value goods (generally goods with a value of A\$1,000 or less) where the supplier arranges for the goods to be imported into Australia and the recipient is not registered for GST in Australia (ie end consumers). Where this applies, the overseas supplier would generally be required to register for GST in Australia.

## CUSTOMS DUTY AND TARIFF CONCESSIONS

Where goods are not exempt from duty under any concession, an amount of customs (import) duty will generally be payable. In general, a percentage of the customs value of the goods is charged, as assessed based on the total amount paid for the goods, packaged and in export condition, at their place of export.

The point at which the duty is payable depends primarily on the nature of the storage and movement of the goods once imported into Australia. For instance, if certain goods are temporarily stored in a licensed warehouse, the payment of customs duty in relation to the goods can be deferred up until clearance of the goods from the warehouse. Alternatively, the importer can apply for 'periodic settlement permission' which allows the importer to move the goods out of the warehouse and defer payment of customs duty until the period specified in the permission.

A range of concessions relating to customs duty may be available in certain circumstances. For example, a Tariff Concession Order (TCO) can be sought. If provided, a TCO means that goods are subject to a lower rate of duty. TCOs may be issued with respect to specific goods where there are no equivalent goods already produced in Australia. In determining whether equivalent goods are available or produced in Australia, the assessment does not consider whether the Australian goods compete with the imported goods in any market.

The concession is available to all importers of goods which are subject to a TCO and meet the description set out in the TCO. An intending importer should check if the goods they are importing are the subject of such an order or if an order can be obtained. There are approximately 15,000 existing TCOs.

The importation of certain goods under a free trade agreement may also be subject to duty concessions. For example, the Australia-United States Free Trade Agreement allows goods originating in the US to benefit from a customs duty exemption upon importation into Australia.

Other concessions are available with respect to specific goods (for example, raw materials, chemicals and certain textiles). From 1 July 2024, the Government abolished 457 'nuisance' tariffs across a broad range of goods (including household necessities such as toothbrushes, tools, fridges, dishwashers and clothing). The Government has also indicated that it will abolish a further tranche of around 500 tariff lines from 1 July 2026, subject to final confirmation in this year's Budget.

## WINE EQUALISATION TAX

Certain beverages imported to Australia may be subject to the wine equalisation tax (WET). WET applies to imports of grape wines, sake, mead and some types of cider and perry where those beverages contain more than 1.15% by volume of ethyl alcohol.

In some circumstances, eligible importers may be exempt from WET.

## LUXURY CAR TAX

Imports of luxury cars are generally subject to a type of tax known as luxury car tax. Cars with a GST inclusive luxury car tax value that exceeds the luxury car tax threshold are considered to be luxury cars for this purpose. The threshold for the 2025/26 financial year is A\$91,387 (in relation to fuel efficient vehicles) and A\$80,567 (for other vehicles).

From 1 July 2025, the definition of 'fuel efficient vehicle' was significantly tightened to limit the higher threshold to vehicles with combined fuel consumption that does not exceed 3.5 litres per 100 kilometres, being electric or hybrid vehicles. The previous threshold of 7 litres per 100 kilometres will continue to apply to some vehicles supplied or imported before 1 July 2025.

Some types of cars are exempt from this tax. They include emergency vehicles, motor homes and commercial cars designed mainly for carrying goods and not passengers.

## ANTI-DUMPING LAWS

Competition from imports can be considered by the Australian Government to be unfair in certain circumstances. Under the Australian anti-dumping legislation, local industries are entitled to protection where dumped imports, or imports which are subsidised by foreign governments (ie a countervailable subsidy), are found to cause or threaten material injury to Australian industry.

Dumping is taken to occur when the export price of products of one country is less than their normal value in the domestic market of the exporter. If these criteria are met, the Australian Government may impose a dumping duty, which in effect is the difference between the export price of the goods and their normal value.

A good is taken to be subsidised for the purposes of countervailing duty in a number of circumstances. This includes where the subsidy favours particular enterprises and where eligibility for the subsidy is not based on objective criteria.

## Exports

There are few regulations on exports from Australia. Generally, goods to be exported must be declared for export with the Australian Border Force and an authority to deal with the goods must be granted. However, certain goods, such as wildlife, heritage and hazardous materials, may be subject to additional requirements, which may include Australian Government approval, or even total prohibition. The Australian Government recently reformed the arrangements for export of defence sensitive goods and items, involving a comprehensive adjustment to the export controls arrangements for goods, services and information on the Defence Strategic Goods List (DSGL). This included expanding the scope of defence sensitive items, introducing new offences (including disclosures to foreigners), and exempting Australia, the United Kingdom and the United States (AUKUS) partners from the existing licencing regime. AUKUS is a tri-lateral security partnership amongst Australia, the United Kingdom and the United States.

## GST

Exports of most goods will be GST-free if they are exported within a specified time of receiving payment or issuing an invoice. Exports of services are also GST-free in many cases, provided that relevant requirements in the GST legislation are met.

## EXCISABLE GOODS

Duty is not payable on the export of excisable goods (for example, alcohol, fuel and tobacco) from licensed premises in Australia. However, specific permission is required from the Australian Tax Office to move such goods between licensed premises in Australia or to a place of export where excise duty has not been paid on the production, storage or manufacturing of the goods in Australia. An export declaration must also be lodged with the Australian Border Force to export these goods.



**For further information on importing into, and exporting out of, Australia**

[www.business.gov.au](http://www.business.gov.au)

# Defence Export Controls



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## How does Australia Regulate Defence Exports?

### THE DEFENCE EXPORT CONTROLS FRAMEWORK

The Australian Government maintains and actively enforces policies for the export of defence and strategic goods and technologies, ensuring their export is in line with Australian national interests and international obligations.

On 1 September 2024, significant amendments to the *Defence Trade Controls Act 2012* (Cth) (DTC Act) were introduced by the *Defence Trade Controls Amendment Act 2024* (Cth) (DTCA Act). These changes were intended to align Australia with international non-proliferation and export control regimes and significantly expanded the scope of defence sensitive exports from Australia. Importantly, exports are not limited to movements over Australia's borders – the DTC Act regulates certain movements even within Australia.

The DTCA Act also introduced several offences for non-compliance, and it is important for exporters and brokers of DSGL goods and technology to understand the requirements imposed on activities under the DTC Act or risk attracting material penalties. 'Exports' can also be internal to Australia through transfers or disclosures to 'foreign persons' – so it's important to be aware of the requirements even if you're not technically exporting outside Australia.

We recommend that entities review and monitor their export activities on an ongoing basis to ensure they are not caught by the legislation and take appropriate steps where required. This may include applying for exemption from the application of State and Territory anti-discrimination laws to allow companies to collect and use information about workers' nationality – an activity that may be necessary to comply with export control laws.

Broadly, there are 3 primary considerations for businesses seeking to export or broker potentially sensitive goods or technology:

1. Is the good or technology listed in the Defence and Strategic Goods List (DSGL)?
2. If so, is the DSGL good or technology being exported, supplied, published or brokered?
3. Do any exceptions apply to the export of the DSGL good or technology?

### THE DEFENCE STRATEGIC GOODS LIST

The Defence Strategic Goods List (DSGL) contains a substantial list of goods and technology that cannot be exported, supplied, published or brokered from Australia without a permit. The list is divided into 2 parts:

- Part 1 – munitions list relating to military goods and technology or non-military goods that are inherently lethal; and
- Part 2 – dual-use list relating to goods and technologies developed to meet commercial needs but have the potential for military use.

Parts 1 and 2 are both controlled by provisions of the DTC Act, but different requirements may apply to goods and technologies in each category. The goods and technologies in the DSGL were recently changed by the DTCA Act and more changes are anticipated. It is imperative for exporters and brokers to ensure they keep up to date with any upcoming changes to the DSGL and understand how those changes may affect their business.

## EXPORTING, SUPPLYING, PUBLISHING OR BROKERING DSGL TECHNOLOGY

Unless an exception applies, exporters or brokers must apply to the Defence Export Controls office for a permit before they can export, supply, publish, or broker goods or technologies that are included in the DSGL. Failing to do so may attract significant penalties, discussed below.

Before granting a permit, a Defence Export Controls delegate will assess whether issuing the permit could compromise Australia's national security interests, taking into account the criteria outlined in the DTC Act. To assist with this assessment, businesses are required to provide a clear description of the DSGL goods or technology, outline the proposed activities involving those goods or technologies, specify the duration of these activities, and identify the end users.

If a permit is issued, the exporter or broker will be required to comply with any conditions imposed on the permit. These conditions will differ depending on the good or technology but will generally include requirements to maintain detailed records of all transactions involving the DSGL goods or technologies covered by the permit. The Minister for Defence also has the right to change the conditions of a permit or revoke the permit.

## EXCEPTIONS

In some circumstances, exporters of DSGL goods or technology may not be required to obtain a permit.

The DTCA Act introduced a 'licence-free environment' waiving the permit requirement for the transfer of DSGL goods and technology between Australia, the United Kingdom and the United States (the AUKUS countries), provided the transfer fulfils all the following criteria:

- the destination for the supply must be a place in Australia, the UK or the US;
- the supply or export must be to an Australian, UK or US citizen or permanent resident, corporation or government entity;
- the goods or technology must not be on the excluded goods and technology list, or the Australian Military Sales Program;
- the business must be registered as an AUKUS authorised user; and
- the Department of Defence must be notified of the export before the activity occurs.

For the transfer of goods outside AUKUS countries, exporters may be able to export or supply the DSGL goods or technology without a permit under one of the following exceptions:

- the technology is already in the public domain;
- the supply of the DSGL goods or technology is for basic scientific research intended for public disclosure and is not subject to any disclosure restrictions;

- in some circumstances, the supply of the DSGL technology for the purpose of seeking a patent in Australia or overseas; or
- the DSGL goods or technology is for a clinical trial or designed specifically for medical end-use.

## PENALTIES FOR NON-COMPLIANCE

The DTC Act contains several provisions creating offences for breaching the Defence Trade Controls, including for:

- the supply of DSGL technology from inside Australia to outside Australia without a permit;
- the supply of DSGL technology to a foreign person in Australia;
- the re-supply of certain DSGL goods and technology previously exported from Australia to another place outside Australia;
- the provision of DSGL related services to a foreign person outside Australia;
- breaching permit conditions;
- arranging to supply goods or technology on the DSGL without a permit;
- arranging to supply DSGL goods or technology in contravention of a Minister's notice prohibiting the arrangement of supplies of those goods or technologies; and
- failing to keep and retain records.

Many of the offences carry significant penalties, including fines of 2500 penalty units (A\$825,000 as of 30 January 2026 ) or up to 10 years imprisonment.

## IMPLICATIONS FOR BUSINESS

The licence-free environment for the supply of controlled technology between AUKUS countries streamlines export collaborations between businesses and individuals located in those countries.

However, the offences and associated penalties add additional risk for businesses dealing with controlled goods and technologies. Exporters should ensure they have robust due diligence checks in place, including:

- determining what DSGL goods or technology they hold;
- reviewing who in the entity has access to the goods or technology;
- reviewing and preparing internal procedures to ensure they impose appropriate controls on the supply and export of controlled goods or technologies;
- ensuring accurate record-keeping procedures are in place for all exports of DSGL goods or technologies; and
- ensuring they are compliant with all permit conditions.

# 10. Aboriginal and Torres Strait Islander Peoples



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## Native Title

### What Aspects of Native Title and Aboriginal Cultural Heritage do you need to Consider?

Establishing and maintaining strong relationships with the Aboriginal and Torres Strait Islander Peoples is critical for project success.

Native title is the recognition that some Australian Aboriginal people continue to hold rights and interests in their traditional lands and waters which are exercised in accordance with their traditional laws and customs.

The *Native Title Act 1993* (Cth) (NTA) provides for the recognition and protection of native title rights and interests of Aboriginal and Torres Strait Islander Peoples.

Separate Commonwealth and State laws protect Aboriginal and Torres Strait Islander Peoples' archaeological and ethnographic heritage (see the [Indigenous Heritage](#) section of this Guide).

Both typically require agreement with Traditional Owners to be reached before a project can begin particularly in the case of Crown lands and waters, parks and reserves, land reserved for Aboriginal people and lands the subject of certain non-exclusive leases and licences (for example, pastoral leases).

Additional pathways for the recognition of Traditional Owner rights, or the return of public land, are available:

- In Victoria, under the *Traditional Owner Settlement Act 2010* (Vic); and
- In New South Wales, under the *Aboriginal Land Rights Act 1983* (NSW).

## NATIVE TITLE

Many projects in regional Australia affect Native Title, with 3 key consequences:

### VALID TENURE, CONSULTATION AND NEGOTIATION

Project proponents may need to negotiate or consult with Native Title holders or claimants to obtain new or extended project tenure, for example the grant and renewal of mining tenements and pastoral leases, particularly where they relate to non-Freehold land.

Native Title parties usually have a right to be notified, consulted, to object or to negotiate about (and receive compensation for) the impacts of the tenure on their Native Title rights and interest.

If these processes are not followed, there is a risk that project tenure will not be valid against Native Title rights.

### NATIVE TITLE AGREEMENTS

The project proponent will need to comply with any existing agreements made with Native Title holders or claimants in respect of past grants of tenure.

Agreements typically deal with matters such as financial compensation, other benefits (for example training and employment opportunities for Aboriginal peoples), access to traditional lands and waters, the protection of Aboriginal cultural heritage and ongoing consultation.

### COMPENSATION RISK

The project proponent may be liable to pay compensation to Native Title holders.

The Federal Court of Australia handed down its first assessment of Native Title compensation in 2019 where it found that the assessment of just compensation requires the Court to determine the economic value of extinguished Native Title rights and interests and the estimated value of non-economic or cultural loss occasioned by the diminution in the group's connection to country.

This is a developing area of law and, pending further judicial consideration including how cultural and economic loss is to be calculated, the full scope of its implications for project proponents remains unclear.

Native Title  
exists over

~45%

of Australia

Exclusive Native  
Title exists over

~15%

of Australia

96

compensation claim  
applications to date,  
with many more  
expected

# Indigenous Heritage



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The protection of Aboriginal cultural heritage is related to Native Title but has additional and bespoke Commonwealth and State laws including:

<b>Australian Capital Territory</b>	<i>Heritage Act 2004 (ACT)</i>
<b>Commonwealth</b>	<i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth) (ATSIHP Act)</i> <i>Environment Protection and Biodiversity Conservation Act 1999</i>
<b>New South Wales</b>	<i>National Parks and Wildlife Act 1974 (NSW)</i>
<b>Northern Territory</b>	<i>Heritage Act 2011 (NT)</i>
<b>Queensland</b>	<i>Aboriginal Cultural Heritage Act 2003 (Qld)</i>
<b>Victoria</b>	<i>Aboriginal Heritage Act 2006 (Vic)</i>
<b>South Australia</b>	<i>Aboriginal Heritage Act 1988 (SA)</i>
<b>Tasmania</b>	<i>Aboriginal Heritage Act 1975 (Tas)</i>
<b>Western Australia</b>	<i>Aboriginal Heritage Act 1972 (WA)</i>

Aboriginal cultural heritage legislation protects sites, objects and places or landscapes of significance to Aboriginal and Torres Strait Islander Peoples.

Aboriginal cultural heritage may exist on land, whether or not Native Title exists. Aboriginal cultural heritage protection often requires additional assessments and measures that may not be addressed through Native Title agreements, particularly if the agreement was entered into before 2020.

It is an offence to disturb or interfere with Aboriginal cultural heritage without authorisation. It is also an offence not to comply with the conditions of an authorisation. Maximum penalties have been materially increased in a number of jurisdictions in recent years (for example, in Victoria up to a maximum of A\$2,035,100 for a body corporate, and A\$366,620 for an individual as at 1 January 2026), as has the rate of regulatory enforcement action (fines and prosecutions) for alleged non-compliance.

A proponent who intends to carry out activities that may harm Aboriginal cultural heritage should undertake a due diligence heritage assessment, often including surveys with traditional owners, and may be required to seek authorisations or develop agreements to undertake the activity. The Commonwealth ATSIHP Act provides for emergency (and permanent) declarations if State legislation fails to protect a significant Indigenous site.

The various registers kept by government agencies are generally not a complete record of all heritage values and are not a reliable source of information for avoiding harm to heritage.

Following the Juukan Gorge incident in May 2020, where rock shelters of exceptional significance were destroyed, there has been a heightened focus on the importance of protecting Aboriginal cultural heritage and collaborating with Traditional Owners to ensure projects avoid or mitigate harm to Aboriginal cultural heritage.

International conventions and standards, and new policies and legislation in Australia encourage project proponents to reach fully informed agreements with Traditional Owners about how activities proceed and how to manage impact to indigenous cultural heritage, for example, via an agreed cultural heritage management plan.

Proponents are also being increasingly encouraged to ensure agreements include meaningful benefit sharing and provide for regular reviews.

In some States and Territories, agreements between project proponents and Traditional Owners for the identification and protection of Aboriginal cultural heritage are a precondition to the grant of other project approvals.



**National Native Title Tribunal**

[www.nntt.gov.au](http://www.nntt.gov.au)



**Native Title Summary – Attorney-General**

<https://www.ag.gov.au/legal-system/native-title>

Aboriginal and Torres  
Strait Islander culture in  
Australia dates back over

**65,000  
years**

It is the oldest continuing  
culture in the world

# 11. ESG and Responsible Business



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## Governance Overview

### What Governance Requirements Need To Be Observed in Australia?

#### INVESTORS NEED TO BE AWARE OF THE GOVERNANCE RULES THAT APPLY TO ENTITIES IN AUSTRALIA

In Australia, companies and trusts, particularly those listed on the Australian Securities Exchange (ASX), are subject to a large range of corporate governance requirements, which arise from various sources including:

- the *Corporations Act 2001* (Cth) (Corporations Act);
- the ASX Listing Rules for listed entities;
- the ASX Corporate Governance Council's 'Corporate Governance Principles and Recommendations' dated February 2019 (ASX Recommendations) for listed entities;
- prudential standards issued by the Australian Prudential Regulation Authority (APRA) for regulated financial and superannuation institutions, including banks, building societies and insurers, including standards for governance, risk management and remuneration; and

- other industry standards which are adopted voluntarily, often in line with those adopted in the United States and the United Kingdom.

#### THE BOARD OF DIRECTORS

Most listed entities in Australia have boards of directors which comprise more non-executive, independent directors than executive non-independent directors. The ASX Recommendations make various recommendations regarding director selection, appointment and independence and also the role of the chairperson. In Australia, it is rare for the chairperson of a listed entity to hold an executive position with the entity.

Larger listed entities usually establish board committees to address oversight of audit, risk, nomination, remuneration and, increasingly, sustainability issues.

Generally, directors of both listed and unlisted entities may delegate any of their powers to another director, a committee of directors, an employee of the company or any other person.



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<https://www.owladvisory.com/>

## DIRECTORS' DUTIES

Directors' duties in Australia are prescribed by legislation, in particular the Corporations Act, and an extensive body of case law (common law). Directors owe stringent duties:

- to exercise care and diligence;
- to act in good faith in the best interests of the company and for a proper purpose;
- not to improperly use their position or company information; and
- to disclose their material personal interests and avoid conflicts of interest.

A breach of these duties involving dishonesty may be a criminal offence.

Directors have duties regarding financial reporting and other forms of reporting and disclosure, including requirements to certify reports, and can be liable under various laws for failing to take reasonable steps to prevent contraventions. If the company they manage is in financial distress, there are additional duties and issues that arise for them. Breaches of directors' duties carry a range of fines or terms of imprisonment, or both. Some defences are available to directors under the Corporations Act.

Directors may be indemnified against liability that arises in the performance of their office, by the subject company or its parent (subject to the law, which prohibits indemnities against liability to the company or liability arising from conduct not in good faith). Companies often take out D&O (directors' and officers') insurance to cover directors' liabilities to the extent permissible.

## AUDITORS

With exceptions for small proprietary companies and small companies limited by guarantee, all companies must appoint an independent auditor. The ASX Recommendations suggest that listed entities in Australia have audit committees comprising only non-executive directors, a majority of whom are independent directors. This is obligatory under the ASX Listing Rules for entities in the top 300 of the S&P/ASX All Ordinaries Index.

## What are the relevant disclosure obligations?

### FINANCIAL AND OTHER REPORTING

All listed entities must prepare and lodge an annual audited financial report and an audited or audit reviewed half year financial report. These reports must comply with Australian accounting standards or equivalent local requirements. All directors (executive and non-executive) are responsible for the entity's financial reports being accurate and complying with accounting standards.

Unlisted companies and registered schemes are generally also required to prepare annual financial reports and directors' reports each financial year. There is an exception for small companies limited by guarantee and small proprietary companies unless they have been controlled by a foreign company for all or part of a year.

### SUSTAINABILITY REPORTING

Many large Australian entities and financial institutions must prepare annual audited sustainability reports containing mandatory climate-related financial disclosures and keep records of relevant climate-related information. The number of entities required to prepare those reports will gradually increase over the next few years.

Entities covered by the new regime must prepare climate statements that comply with the relevant sustainability standards made by the Australian Accounting Standards Board and contain details on the entity's material climate-related financial risks and opportunities, the entity's climate related metrics and targets for the financial year (including in relation to scope 1, 2 and 3 greenhouse gas emissions), and information about the entity's governance, strategy, and risk management in relation to those risks, opportunities, metrics and targets.

Directors of entities required to prepare a sustainability report must provide a declaration that in their opinion the report complies with the relevant legislative requirements.



### Mallesons Report on ASIC's Sustainability Reporting Guide

[ASIC's sustainability reporting guide finalised - Mallesons](#)

### REPORTING ON GOVERNANCE ARRANGEMENTS

Listed entities must describe their corporate governance practices in detail in their annual reports (or in a separate corporate governance statement). They must report on whether they comply with the ASX Recommendations and if not, why not.

### CONTINUOUS DISCLOSURE

Listed entities and the responsible entities of listed managed investment schemes must fully disclose price sensitive information to the market (via communications made to the ASX) as soon as they become aware of the information, subject to limited carve outs. Non-compliance with the requirement results in civil penalties (fines imposed by ASIC), criminal penalties or private actions (such as shareholder class actions). Unlisted 'disclosing entities' must provide similar information to ASIC.

## What corporate conduct is prohibited?

### ANTI-BRIBERY AND ANTI-CORRUPTION

Australia's foreign anti-bribery and anti-corruption laws make it a crime for companies and individuals to bribe foreign government officials to obtain or retain business. Corporations are deemed to be at fault if they expressly, tacitly or impliedly authorised or permitted the conduct. This includes failing to create and maintain a corporate culture of compliance with these laws.

It is also a criminal offence for a person to make, alter, destroy or conceal an 'accounting document':

- intending to conceal the giving or receiving of a bribe; or
- which is reckless as to whether the giving or receiving of a bribe is concealed.

A director may be in breach of their duties under the Corporations Act if the bribery is found to have occurred within their organisation. In addition to regulatory investigations, companies and their directors are increasingly exposed to private actions from shareholders for failing to prevent and disclose bribery and corruption.

### INSIDER TRADING IN SECURITIES AND OTHER FINANCIAL AND INVESTMENT PRODUCTS IS PROHIBITED.

Insider trading laws in Australia apply in a broader range of circumstances than laws in most other jurisdictions. The laws apply to all financial products, not just equity securities. Relevant information includes intentions, matters of supposition, and information that is not sufficiently definite to be published.

Listed entities must have trading policies which comply with minimum content requirements of the ASX Listing Rules, including specifying that key management personnel cannot trade in the entity's securities or in financial products issued or created over or in respect of the entity's securities during prohibited periods (generally the periods before the release of annual and half yearly financial statements, and before the AGM). The Corporations Act prohibits key management personnel hedging their incentive remuneration.

Directors of listed entities must disclose to the ASX full details of trading in securities of those entities.

### MARKET MISCONDUCT

Manipulation of securities and financial markets is prohibited. The operators of those markets are also required to actively monitor transactions in their markets and report any suspicious trading to the corporate regulator.

Further, Australia's laws include an overriding requirement that extends to financial transactions, which prohibits any person from engaging in misleading or deceptive conduct.

### INSOLVENT TRADING

A director will contravene the insolvent trading prohibition of the Corporations Act (and may be personally liable for debts of the company) if:

- the company incurs a debt while it is insolvent or becomes insolvent by incurring the debt; and
- at the time the company incurs the debt, there are reasonable grounds for suspecting that the company is insolvent or will become insolvent.

To monitor against the risk of insolvent trading, directors should keep themselves informed about the company's financial position, regularly assess the company's solvency and obtain professional advice if necessary.

### RELATED PARTY TRANSACTIONS

Australia has strict rules about related party transactions, particularly for public entities. In general, shareholder approval is required unless the transactions are entered into on arm's length terms. Listed entities are subject to additional rules for related party dealings.

### WHISTLEBLOWER PROTECTIONS

Enhanced whistleblower protections in the Corporations Act require public and large proprietary companies to have compliant whistleblower policies, which should be disclosed on the company's public website.



#### Mallesons Alert on Corporate Whistleblower Programs

<https://www.mallesons.com/au/en/insights/latest-thinking/whistleblower-laws-under-review-insights-and-impacts-five-years-on.html>

## DIVERSITY

The ASX Recommendations suggest S&P/ASX 300 entities target 30% of each gender on their boards. However, a target of 40:40:20 is generally considered more appropriate (ie 40% women, 40% men and 20% of any gender). As at June 2025, the percentage of women on S&P/ASX 300 boards was 37.5%.

## THE IMPACT OF RECENT ROYAL COMMISSIONS AND INQUIRIES

Recent Royal Commissions and inquiries into casino giants and the financial services sector have led to an increased focus on governance in Australia. While no mandatory changes in broader governance practices or standards have yet been introduced as a result, there has been an increasing focus on culture, community expectations, and remuneration practices.



### Mallesons Alert on the Victorian Royal Commission into Crown

<https://www.mallesons.com/au/en/insights/latest-thinking/key-governance-outcomes-from-the-victorian-royal-commission-into-crown.html>



### Mallesons Alert on the New South Wales Casino Inquiry

<https://www.mallesons.com/au/en/insights/latest-thinking/the-crown-inquiry.html>

## ELECTRONIC SIGNING OF CONTRACTS

While Australian courts have broadly recognised that electronic contracts and electronic signatures are valid, there are, or have been, difficulties with:

- electronic execution of deeds and agreements by companies under s 127 of the Corporations Act;
- electronic execution of deeds by individuals and corporations that are not companies registered under the Corporations Act; and
- remote witnessing and attestation by electronic means.

Australian legislation now facilitates the execution of deeds and agreements using electronic signatures and audio-visual witnessing:

- a company registered under the Corporations Act can electronically sign a deed under s 126 and s 127 of the Corporations Act;
- an individual can electronically sign a deed governed by the law of New South Wales, Queensland and Victoria — this includes an individual who is signing as an agent or attorney for a corporation;
- a foreign corporation and statutory corporation can in certain circumstances electronically sign deeds governed by the law of New South Wales, Queensland and Victoria; and
- signatures on deeds and agreements governed by the law of New South Wales and Victoria can be witnessed remotely by audio visual link.



### Mallesons Alert on E signing by companies under the Corporations Act here to stay

<https://www.mallesons.com/au/en/insights/latest-thinking/e-signing-by-companies-under-the-corporations-act-here-to-stay.html>

# Modern Slavery



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## What is modern slavery?

Modern slavery refers to misconduct that involves coercion, threats or deception to exploit people and undermine or deprive them of their freedom to choose whether they work or not. This can include practices such as human trafficking, slavery, servitude, forced labour, debt bondage, deceptive recruiting and the worst forms of child labour. Practices such as substandard working conditions or underpayment of workers do not constitute modern slavery, although these practices are also illegal and harmful.

Modern slavery is not confined to certain industries or regions, although some industries and regions are considered higher risk. It continues to exist in Australia and is generally acknowledged to be a risk in every supply chain.

In Australia, the Federal *Modern Slavery Act 2018* (Cth) (Modern Slavery Act) identifies certain businesses as 'reporting entities' that are required to report annually on the risks of modern slavery in their operations and supply chains, and the actions they take to address those risks.



### **Mallesons Backgrounder on Managing Modern Slavery Risks**

<https://www.mallesons.com/au/en/insights/latest-thinking/managing-modern-slavery-risks-in-the-age-of-covid-19-and-beyond.html>

## Who is required to report?

Companies that carry on business in Australia, as well as Australian incorporated companies, that have an annual global consolidated revenue of at least A\$100 million are required to prepare a modern slavery statement for each financial year. The assessment for 'carrying on business in Australia' is considered in the [Carrying on Business in Australia](#) section of this Guide. The assessment of consolidated revenue is made on a case-by-case basis, with reference to accounting standards.

The Modern Slavery Act permits joint modern slavery statements to be given by related entities that are required to report. It also permits other entities that are based or operating in Australia to report voluntarily.

Statements are publicly available on an online register.

## What are the reporting requirements?

The Modern Slavery Act requires modern slavery statements to report against 7 mandatory criteria:

- identity of the reporting entity;
- structure, operations and supply chains of the reporting entity;
- risks of modern slavery practices in the operations and supply chain of the reporting entity, and any entities it owns or controls;
- actions taken by the reporting entity, and any entities it owns or controls, to assess and address those risks, including due diligence and remediation processes;
- how the reporting entity assesses the effectiveness of such actions;
- process of consultation with entities it owns or controls, and any entity with which a joint modern slavery statement is issued; and
- any other information that the reporting entity, or the entity giving the statement, considers relevant.

### THE NSW MODERN SLAVERY ACT

The *Modern Slavery Act 2018* (NSW) (NSW Modern Slavery Act) was passed in 2018 but did not come into force at that time. Its requirements overlapped with the federal Modern Slavery Act and included reporting obligations for businesses with over A\$50m annual turnover.

Amendments in 2021 to the NSW Modern Slavery Act removed the duplicative reporting obligations, and the NSW Modern Slavery Act came into force in January 2022. This means that the only modern slavery reporting obligation for businesses in New South Wales is under the federal Modern Slavery Act.

The NSW Modern Slavery Act also provides for the appointment of the NSW Anti-Slavery Commissioner. Dr James Cockayne was appointed as the first NSW Anti-slavery Commissioner in 2022 and remains in that appointment.



#### **Mallesons note on the amended NSW Act and business considerations**

<https://www.mallesons.com/au/en/insights/latest-thinking/amendment-and-entry-into-force-of-the-nsw-modern-slavery-act.html>

## REPORTING REGIMES IN OTHER JURISDICTIONS WITHIN AUSTRALIA?

There are an increasing number of modern slavery reporting regimes in other jurisdictions, such that businesses may be faced with multiple reporting obligations, depending on their nature and structure.

## What are the upcoming developments?

### PROPOSED REFORMS TO THE MODERN SLAVERY ACT

A review of the Modern Slavery Act which considered the first 3 years of the Modern Slavery Act's operations and reporting entities' compliance, was completed in 2023.

A report prepared by Professor John McMillan AO comprising that review was released on 25 May 2023 (the McMillan Report). Among others, some of the McMillan Report's key recommendations concerned the introduction of civil penalties for reporting entities that fail to comply with the reporting requirements and a due diligence obligation on reporting entities.



#### **Mallesons Alert on Modern Slavery – Reforms at home and abroad**

<https://www.mallesons.com/au/en/insights/latest-thinking/publication/modern-slavery-reforms-at-home-and-abroad.html>

### AUSTRALIAN GOVERNMENT PROGRESSES ITS RESPONSE TO PROPOSED REFORMS

In December 2024, the Australian Government released its formal response to the McMillan Report, confirming the key focus areas for future reform to Australia's federal modern slavery reporting regime (Government Response).

Of the 30 recommendations made in the McMillan Report, the Government Response agreed, or agreed in principle, to 25 of those recommendations.

In July 2025, the Government released a consultation paper entitled 'Strengthening the *Modern Slavery Act 2018* (Cth)' (the Consultation Paper) as part of the first stream of consultation (Stream A) which addressed 6 of the 30 recommendations in the McMillan Report. This included seeking feedback from stakeholders on proposed reforms to introduce penalties for non-compliance with the Modern Slavery Act, to enhance the Modern Slavery Act's mandatory reporting framework for large entities, and to improve the quality and simplicity of reporting.

The public consultation period closed on 1 September 2025, while the second stream (Stream B) will be progressed through targeted consultations with relevant specialists in government, business and non-government sectors. These targeted consultations will focus on 2 of the more complex recommendations - the introduction of obligations for a due diligence system and introducing written declarations of high-risk matters.

At the time of publication, the Federal Government has not yet published a timeline or indicated next steps under Stream A, or when Stream B will commence. We will be closely monitoring the next steps and the outcome of any developments of the consultation.



#### **Mallesons Insight on Government Response**

<https://www.mallesons.com/au/en/insights/latest-thinking/new-majority-government-same-modern-slavery-commitments-what-to-watch-in-2025.html>

### **THE COMMONWEALTH ANTI-SLAVERY COMMISSIONER**

In November 2024, the *Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Act 2024* (Cth) came into effect and established an independent statutory office for a Commonwealth Anti-Slavery Commissioner. The establishment of this office was another important recommendation arising from the McMillan Report.

In December 2024, Mr Chris Evans was appointed as the first Commonwealth Anti-Slavery Commissioner for a 5-year term.

While the Anti-Slavery Commissioner cannot compel compliance with the Modern Slavery Act or enforce penalties for non-compliance, it plays an important role in shaping modern slavery reporting and direction of the reporting framework generally.



#### **Mallesons Alert on the Appointment of the Commonwealth Anti-Slavery Commissioner**

<https://www.mallesons.com/au/en/insights/latest-thinking/modern-slavery-update-government-appoints-commonwealth-anti-slavery-commissioner-to-enhance-national-response.html>

### **CALLS FOR GREATER COMPLIANCE**

In 2025, the Anti-Slavery Commissioner issued a letter to law firms, industry associations and professional services with a call to action for these bodies to remind their clients of any potential reporting obligations under the Modern Slavery Act.

The letter also highlighted the Attorney-General's Department's increasing capability to detect non-compliant reporting entities through data matching.

Along with the recommendations of the McMillan Report, the letter also prefaces the potential introduction of penalties for non-compliance (following the Consultation Paper) and reminds entities who may have a reporting obligation of the potential risks for failing to report.

### **STRATEGIC PLAN FOR 2025-2028**

In October 2025, the Anti-Slavery Commissioner released its office's Strategic Plan for 2025 to 2028 (Strategic Plan).

The Strategic Plan, which is required to be prepared by the Commissioner under the Modern Slavery Act, commits to 4 strategic modern slavery priorities for the future:

- 1 transforming systems to center survivors and people with lived experience;
- 2 strengthening law and policy;
- 3 driving business and government towards better due diligence; and
- 4 improving access to justice and remedy.

The Strategic Plan was developed in consultation with stakeholders and people with lived experience of modern slavery. Some examples of the proposed initiatives in the Strategic Plan include to:

- advance a coordinated and survivor-informed national agenda to strengthen law and policy responses to modern slavery;
- advocate for reform of the Modern Slavery Act that requires effective action by reporting entities and drives positive outcomes for people;
- build business commitment to effective due diligence in supply chains; and
- promote better regulatory support for business to prevent importing goods suspected of being produced with forced labour.

# Climate Change



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Climate Change is a rapidly evolving area in Australia and is a continuing focus for companies and their stakeholders. The Australian government has developed a Net Zero 2050 plan, while reducing annual emissions limits for facilities covered by the Safeguard Mechanism mandating reporting on greenhouse gas emissions and encouraging companies to reduce emissions in various ways.

## WHAT IS DRIVING CLIMATE CHANGE DEVELOPMENTS?

For those meeting the relevant thresholds, there are emissions limits under the Safeguard Mechanism and mandatory reporting requirements under the National Greenhouse and Energy Reporting scheme and mandatory climate-related financial disclosures.

For other companies, developments have also been driven by the landscape of climate litigation including greenwashing action by regulators, the recent or upcoming (depending on business size) mandatory climate-related financial reporting regime, an increasing understanding of what directors' duties require and stakeholder (including shareholder, regulator and activist) pressure.

In addition, many Australian companies view climate change as an opportunity, not just a risk. They have developed innovative products, financing and other solutions to deliver on customer needs and bolster their responsible business credentials. A snapshot of some of the opportunities are set out in the [Opportunities abound](#) section below.

## AUSTRALIA'S NET ZERO PLAN

In September 2025, the Australian Government published its Net Zero Plan to deliver Australia's target of net-zero greenhouse gas emissions by 2050. The plan increases Australia's medium-term target of 43% below 2005 emissions levels by 2030, to a 62-70% reduction by 2035 (although this is not yet legislated). The Net Zero Plan focuses on 5 decarbonisation priorities:

- **Clean electricity across the economy**, including by streamlining approvals processes for renewable energy projects by reforming the *Environment Protection and Biodiversity Conservation Act 1999* (Cth);
- **Lowering emissions by electrification and efficiency**, including by introducing the New Vehicle Efficiency Standard (NVES) which sets CO<sub>2</sub> emissions targets for new passenger cars and light commercial vehicles entering Australia from 1 July 2025;
- **Expanding clean fuel use**, including by creating new fuel quality standards for renewable diesel in Australia and committing \$8 billion over 10 years to renewable hydrogen investment;
- **Accelerating new technologies**, including by creating a \$5 billion Net Zero Fund to help large industrial facilities invest in decarbonisation, energy efficiency, and manufacturing low emissions technologies; and
- **Net carbon removals scaled up**, including by opening a second round of the Carbon Capture Technologies Program.

## GREENWASHING

Greenwashing is misleading and deceptive conduct in relation to sustainability matters. It includes the practice of companies overstating the 'green credentials' of a product or investment. It also includes companies reporting or disclosing emissions targets when they do not have a reasonable ability to meet them. In Australia it is illegal for a business to engage in conduct that misleads or deceives or is likely to mislead or deceive consumers or other businesses.

## THE CLIMATE LITIGATION LANDSCAPE

The Grantham Research Institute's (GRI) 'Global Trends in Climate Change Litigation: 2025 Snapshot' reports that at least 226 new climate cases were filed in 2024. The GRI classifies over 80% of those cases as 'strategic' cases, which are designed to influence public debate or change the behaviour of a specific group of actors. Around 20% of those cases targeted companies or their directors and officers, with an expanding range of sectors being targeted, including the animal agriculture, food retail and professional services sectors.

The GRI's global dataset confirms that the United States, Australia and the United Kingdom continue to have the largest number of climate disputes, with Australia having 164 climate-related disputes in 2024 (the second highest number of cases behind the United States). The University of Melbourne's [Australian and Pacific Climate Change Litigation database](#) recorded a decline in climate litigation in Australia in 2025, compared to peak periods between 2021-2024. This trend may be driven by greater certainty on Australia's net zero targets, increased regulatory guidance on environmental and sustainability claims, and several high-profile climate litigation applications being dismissed in recent years.

Notwithstanding this recent trend climate-related cases continue to be pursued in Australia across a range of sectors and actors.

In particular, regulators continue to be active in pursuing litigation against corporations who engage in greenwashing or contravene reporting obligations, and civil society remains at the forefront of many novel climate claims against corporations.

Climate change disputes are occurring across multiple areas of law, including administrative, corporate and consumer law. The following key cases demonstrate some of the legal avenues being pursued in Australia:



### **Mallesons Alert on Climate Change Disputes 101 – What are Climate Change Disputes?**

<https://pulse.mallesons.com/dispute-resolution/climate-change-disputes-101-what-are-climate-change-disputes/>

## **AUSTRALIAN CENTRE FOR CORPORATE RESPONSIBILITY V SANTOS**

The Australian Centre for Corporate Responsibility (ACCR) filed claims against Australian oil and gas company Santos. The ACCR alleged that Santos' claims to its investors that the natural gas it produces is a 'clean fuel', that Santos will be able to produce 'clean' or 'zero-emissions' hydrogen, and that its plans to reach net zero emissions by 2040 were misleading and deceptive, and without reasonable grounds, contrary to the Australian Consumer Law (under misleading and deceptive conduct provisions) and the Corporations Act.

This was the first greenwashing case in the world to challenge a company's net zero emissions target for being misleading (rather than merely inadequate).

The case was heard before the Federal Court in December 2024 and judgment handed down in February 2026. The Court dismissed the ACCR's claims in full, finding that Santos' representations were not misleading and had reasonable grounds when considered in the context of investor-facing materials and broader policy, technology and organisational contexts.

The decision reinforces the need for companies that are setting emissions reduction targets and communicating these targets to the market to ensure that their targets are robustly developed, based on reasonable policy, technological and market-based assumptions, and that they are continuously monitoring progress against these targets, including updating the market if the likelihood of achieving the targets changes.

The decision also has implications for companies reporting under the mandatory sustainability reporting regime (see below under Directors' Duties and Climate Reporting). ACCR has appealed the judgment but no date for the appeal has been set as at the date of publication of this Guide.



### **Mallesons Alert on Santos Greenwashing Case**

<https://www.mallesons.com/au/en/insights/latest-thinking/a-lesson-on-climate-disclosures-world-first-greenwashing-case-dismissed-in-full-accr-v-santos.html>

## PARENTS FOR CLIMATE V ENERGYAUSTRALIA

Another significant greenwashing claim was brought against Australian electricity and gas provider, EnergyAustralia. Parents for Climate, a climate advocacy organisation, alleged that EnergyAustralia made misleading or deceptive statements when it advertised its 'Go Neutral' carbon offset product. The parties settled the claim in May 2025 and EnergyAustralia withdrew its 'Go Neutral' product to residential customers and issued a statement confirming a shift in focus to direct emissions reductions.



### Mallesons Alert on EnergyAustralia Greenwashing Case

<https://www.mallesons.com/au/en/insights/latest-thinking/climate-litigation-is-shaping-the-regulatory-landscape-in-australia.html>

## A CLIMATE DUTY OF CARE - MINISTER FOR THE ENVIRONMENT V SHARMA

Brought by a group of teenagers from across Australia, the Sharma case considered whether the federal Minister for the Environment owes Australian children a duty of care when approving a coal mine project under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).



### Mallesons Alert on ACCC's Draft Guide on Sustainability Collaboration

<https://www.mallesons.com/au/en/insights/latest-thinking/7-takeaways-for-businesses-from-the-accc-s-draft-guide-on-sustain.html>

The applicants alleged a novel duty of care owed by the Minister to young people in exercising these approval powers. They asserted that digging up and burning coal will exacerbate climate change and harm young people in the future.

The judge of first instance of the Federal Court of Australia ruled in favour of the teenagers and established a new duty of care to avoid causing personal harm to children. However, this was overturned on appeal by the Full Court of the Federal Court of Australia. While the Full Court overturned the duty of care, it did not disturb the primary judge's findings of fact regarding the risks and dangers of climate change.

## PABAI PABAI & ANOR V COMMONWEALTH OF AUSTRALIA

Pabai Pabai & Anor is a claim brought in the Federal Court by leaders of the Aboriginal and Torres Strait Islander Peoples. The applicants alleged that the Australian Government owes a duty of care to Torres Strait Islanders to take reasonable steps to protect them, their traditional way of life, and the marine environment of the Torres Strait Islands from the current and projected impacts of climate change.

This claim was founded on various international treaties, plans and programs that Australia has entered into specifically concerning the Torres Strait Islands and the Torres Strait Islanders. Grounded in the existing obligations and responsibilities of the Australian Government, this claim bears similarities to the landmark *Urgenda* decision against the Dutch government.

The case was heard in 2024, including on-Country (on land owned by Torres Strait Islander Peoples). Judgment was handed down in July 2025. The Court made detailed findings about the severe and ongoing impacts of climate change on the Torres Strait Islands, including environmental degradation and cultural loss. However, the Court dismissed the negligence claim and found that the Australian Government did not owe a duty of care to Torres Strait Islander Peoples, including because such matters are more appropriately determined by government policy.

The judgment was appealed and is expected to be heard in 2026.



### Mallesons alert on the Federal Court decision in Pabai:

<https://www.mallesons.com/au/en/insights/latest-thinking/climate-obligations-in-australia-and-abroad-are-oceans-apart-what-does-it-mean.html>

## REGULATORY ACTION

At the regulatory level, ASIC and the ACCC continue to be active in addressing greenwashing misconduct by businesses and by issuing guidance to avoid legal risk.

Although greenwashing is not expressly listed as an ASIC enforcement priority, it remains a focus via the regulators' focus on misleading practices and is borne out in regulatory successes.

In February 2023, ASIC commenced its first civil penalty proceedings in relation to alleged greenwashing conduct. ASIC alleged that Mercer Superannuation made misleading statements about the sustainability of some of its superannuation products, including that it excluded investments in companies involved in carbon intensive fossil fuels, alcohol and gambling. In August 2024, the Federal Court ordered Mercer to pay an A\$11.3m penalty, after Mercer admitted to making certain misleading sustainability claims.

ASIC was also successful in civil proceedings against Vanguard Investments Australia and Active Super. In September 2024, the Federal Court ordered Vanguard to pay a A\$12.9 million penalty for misleading claims made about its ESG exclusionary screens. In March 2025, the Federal Court imposed a A\$10.5 million penalty against Active Super, for making misleading representations concerning the ESG credentials of the fund's investments.



#### **Mallesons Alert on ASIC greenwashing actions**

<https://www.mallesons.com/au/en/insights/latest-thinking/asics-enforcement-priorities-for-2026-momentum-and-fresh-focus-for-the-year-ahead.html>

The regulators are expected to continue to be active in this space and to expand its regulatory actions to sustainability reporting. ASIC published guidance on its administration of the sustainability reporting requirements in the *Corporations Act 2001* (Cth) and will undertake its first review of sustainability reports lodged by reporting entities in 2026. ASIC will publicly report on the findings of its review and will have powers to direct an entity to explain, amend or take other actions in relation to a sustainability report which is incorrect, incomplete or misleading.



#### **Mallesons alert on ASIC's Sustainability Reporting Guide**

<https://www.mallesons.com/au/en/insights/latest-thinking/asics-sustainability-reporting-guide-finalised.html>

The ACCC also continues to prioritise climate-related action, as highlighted in its 2025/26 enforcement priority of consumer, fair trading and competition concerns around environmental claims and sustainability, with a focus on greenwashing.

In 2024, the ACCC commenced greenwashing proceedings against Clorox Australia for misleading environmental claims regarding the 'ocean plastic' used for its garbage bag products. In April 2025, the Federal Court ordered an A\$8.25 million penalty against Clorox Australia.

In July 2025, the ACCC commenced proceedings against Edgewell Personal Care Australia and its parent company, over claims that their sunscreen brands Hawaiian Tropic and Banana Boat were 'reef friendly'. The ACCC alleges that these claims are false or misleading.

These actions underscore that businesses should have credible evidence to support their environmental claims and that Australian regulators are closely scrutinising such claims.

It is also expected that the ACCC will be at the forefront of implementing recommendations from the Senate inquiry into greenwashing, once recommendations are published in June 2026. The inquiry will consider:

- domestic and international examples of regulating companies' environmental and sustainability claims;
- advertising standards in relation to environmental and sustainability claims; and
- legislative options to protect consumers from greenwashing in Australia.



#### **Mallesons alert on the ACCC's Greenwashing Action against Clorox Australia**

<https://pulse.mallesons.com/consumer-protection/ocean-bound-or-ocean-found-cloroxs-greenwashing-costs-8-25-million/>

In 2025, the ACCC also updated a guide for businesses on sustainability collaborations. The guide is intended to signal that competition law is not a barrier to sustainability collaborations amongst businesses and clarify where competition law risks are unlikely to arise when collaborating to improve sustainability outcomes.



#### **Mallesons Alert on ACCC's Guide on Sustainability Collaborations**

<https://pulse.mallesons.com/in-competition/5-new-learnings-for-businesses-from-the-acccs-final-guide-on-sustainability-collaboration/>

There are also new avenues for regulatory action concerning new initiatives proposed under the Australian Government's Net Zero Plan, such as by the recently established New Vehicle Efficiency Standard Regulator (NVESR). Under the NVESR, the NVESR has the power to issue infringement notices and commence proceedings against a car manufacturer, supplier or importer, in relation to non-compliant vehicle emissions.

## INTERNATIONAL PROCEEDINGS

In 2025, the International Court of Justice (ICJ) issued its milestone Advisory Opinion on the Obligations of States in respect of Climate Change. Among other things, it found that where countries fail to take appropriate action to protect the climate, it may constitute an internationally wrongful act, a breach of human rights and of customary duties to prevent significant harm and to cooperate.

While ICJ Advisory Opinions are not directly enforceable in Australia, the standards they set have considerable influence and may inform future Federal Government policy, as well as future climate litigation. Notably, the Australian Government argued that countries do not have legal obligations on climate change beyond existing agreements such as the United Nations Framework Convention on Climate Change and the Paris Agreement, signaling the likely policy direction of the incumbent Federal Government.



### **Mallesons alert comparing the *Pabai* decision with the ICJ Advisory Opinion**

<https://www.mallesons.com/au/en/insights/latest-thinking/climate-obligations-in-australia-and-abroad-are-oceans-apart-what-does-it-mean.html>

## THE FUTURE OF CLIMATE LITIGATION IN AUSTRALIA

Climate change disputes remain an active risk in Australia and have the potential to affect clients across multiple sectors and industries, not merely those directly involved in fossil fuels. The appetite for action and enforcing responsibility has not dissipated, meaning we can only expect to see sustained litigation in this area. Further, it is likely we will see more successful litigation as new precedents are set and arguments are refined.

Key growth areas of climate litigation in Australia are expected to involve:

- challenges to development and planning applications and approvals on the grounds that projects have high greenhouse gas emissions, including scope 3 emissions;
- consumer and regulator-led greenwashing actions, including claims made by companies concerning climate and nature offsets; and
- renewed shareholder actions focused on a companies' market disclosure of climate risk to business, as well as business risks arising from actions taken in response to climate change.



### **Mallesons Alert on Climate Change Disputes – Trends from Australia**

<https://pulse.mallesons.com/dispute-resolution-litigation/climate-change-disputes-trends-from-australia/>

## Directors' duties and climate reporting

While there has not yet been an Australian judgment on directors' duties in the climate change context, leading commentary (including by a former Justice of the High Court of Australia) indicates that directors must consider, report on and respond to relevant climate-related risks. Many directors, particularly of large, listed companies, have considered it necessary or appropriate in accordance with their directors' duties to set net zero and/or emissions reduction targets for their companies, and report on their progress.

The GRI reports that climate-related enforcement actions or climate litigation against companies may trigger increased claims under corporate insurance policies to cover the costs of responding to, and the possible penalties associated with, these types of claims. Entities in the insurance and financial sectors increasingly need to grapple with the financial risk resulting from climate litigation.



### **Mallesons climate-related disclosure and governance trends of the ASX50 analysis**

<https://www.mallesons.com/au/en/insights/latest-thinking/climate-governance-and-reporting-trends-of-the-asx50-in-2024-banks-and-insurers.html?redirect>

Australia's new mandatory climate reporting regime commenced on 1 January 2025 and is being phased in over 3 years, depending on financial size thresholds and, where relevant, existing reporting obligations under the National Greenhouse and Energy Reporting scheme. The regime will apply not just to Australian companies but also to some Australian subsidiaries of international companies.

The purpose of the regime is to provide investors and Australia with more transparent and comparable information on exposure and management of climate-related risks and opportunities, in line with other jurisdictions such as the UK and New Zealand.

Under the reporting regime, reporting entities will be required to disclose their material climate-related risks and opportunities, and the governance, strategy, risk management and targets and metrics associated with those risks and opportunities. That includes scope 1 and 2 emissions and, from the second reporting year, scope 3 emissions. In December 2025, the Australian Accounting Standards Board updated the standard related to greenhouse gas emissions disclosures, which reporting entities will need to apply from 1 January 2027.

Directors will be required to make a declaration on whether the report complies with the requirements (and assurance requirements will be phased in over time) with reasonable assurance across the full report from 1 July 2030.

There will be a limited immunity that will apply in relation to certain statements made in the report for a temporary period while the regime is being phased in.

The legislation will be reviewed after 1 July 2028 to assess whether it is operating effectively and in accordance with intended outcomes



### **Mallesons alert on climate-related financial disclosure**

<https://pulse.mallesons.com/dispute-resolution-litigation/climate-change-disputes-trends-from-australia/>

## **JUST TRANSITION**

The 'just transition' towards the new climate focused economy aims to ensure that the greening of the economy is done in a way that is fair and inclusive as possible to everyone concerned, creating decent work opportunities and critically, leaving no one behind (as defined by the International Labour Organisation).

In November 2025, COP30 in Belem, Australia became a signatory to the Belém Declaration on the Transition Away from Fossil Fuels to enhance international cooperation, technical assistance, capacity-building and knowledge sharing for equitable transitions.

Information on what the 'just transition' will look like in Australia is emerging. The Australian Council of Trade Unions consider there are key elements required to achieve a just transition, such as no forced redundancies, comprehensive and funded mine rehabilitation plans, retraining of workers and fundings and support to diversify regional economies.

As more guidance about the 'just transition' emerges, companies will need to be mindful of the impacts of the energy transition on workforces and the practical transition away from fossil fuels. More broadly, companies should also be mindful of their exposure to corruption and modern slavery risks, including their reporting requirements and litigation risk. For example, in August 2025, the Australian Uyghur Tangritagh Women's Association commenced proceedings in the Federal Court of Australia seeking documents to determine whether a misleading and deceptive conduct claim should be brought against Kmart for potential links in Kmart's supply chain to Uyghur forced labour. This was heard in February 2026, with the outcome pending.



### **Mallesons Article**

[A not-so 'just transition' - corruption and modern slavery in clean energy - Mallesons](#)

## **Opportunities abound**

While globally 2025 saw a softening of sustainability-linked finance and investment, Australian activity remains strong. In Australia, global sustainable debt issuance reached \$US42 billion, the highest year to date. Sustainable (or green) finance is no longer just a public relations matter for companies. Investors are now seeing sustainable finance yielding true investment opportunities, with sustainable finance seeing a shift in 2025 from design to implementation. 2026 is anticipated to be the year for accelerated capital deployment ([Australian Sustainable Finance Institute](#)).

Companies without clear and credible transition strategies in line with the Paris Agreement are beginning to experience an adverse impact on access to and cost of funding. To assist companies and institutions in credibly allocating capital towards activities aligned with the Paris Agreement, the Australian Government and Australian Sustainable Finance Institute published the first Australian Sustainable Finance Taxonomy to provide common language for green and transition finance in Australia.

There has been a substantial increase in sustainable investment in Australia in recent years and this trend is expected to continue. Australia's market trajectory is in line with global developments. By the end of Q2 2025, the Climate Bonds Initiative had recorded cumulative volume of US\$6 trillion of green, social, sustainability and sustainability linked debt, despite the softer markets following the imposition of global tariffs. The Climate Bonds Initiative indicates that the green, social and sustainability bonds market had added US \$1 trillion in just over 12 months.

Following the issuing of the nation's first sovereign green bond in June 2024, now A\$10.0 billion of 'Green Treasury Bonds', have been issued as of November 2025, representing an effort to boost institutional investment in the transition to net zero.



### **Mallesons Alert on ESG Predictions**

<https://www.mallesons.com/au/en/insights/latest-thinking/esg-predictions-what-path-awaits-in-2024.html>



### **Mallesons Alert on Sustainable Finance: Exponential Growth Continues**

<https://www.mallesons.com/au/en/insights/latest-thinking/sustainable-finance-exponential-growth-continues.html>



### **Mallesons Alert on the Federal Budget May 2024-25: Green Energy & Advanced Manufacturing**

<https://www.mallesons.com/au/en/insights/latest-thinking/australian-federal-budget-may-2024-25-green-energyand-advanced-manufacturing.html>

## CARBON MARKETS

In Australia, the Clean Energy Regulator (**CER**), through the new Unit and Certificate Registry, is responsible for administering the Australian Carbon Credit Unit (ACCU) Scheme (formerly known as the Emissions Reduction Fund), under which businesses can earn ACCUs. ACCUs represent one tonne of carbon dioxide equivalent stored or avoided by a carbon reduction project. ACCUs are a tradeable financial product issued to businesses who run 'eligible projects' under the ACCU Scheme. Eligible projects require ongoing monitoring, reporting and auditing.

ACCUs can be traded on the carbon market or sold to the Federal Government through a carbon abatement contract. In October 2025, the CER announced that following stakeholder consultation, it had concluded that the proposed Australian Carbon Exchange was not fit for the market. It has instead prioritized connecting the Unit and Certificate Registry to third party trading systems. This interoperability approach complements private sector trading infrastructure already operating in the market and is intended to enhance transparency and investor access to trading in ACCUs and, over time, other carbon and environmental units.

This growth is also being recognised and driven by companies. For example, National Australia Bank joined forces with multiple international financial institutions to develop a new trading platform called 'Carbonplace' that provides buyers access to the voluntary carbon markets. New trading platform Betacarbon has also launched 'the Australian Carbon Token' using blockchain technology and allows carbon trading.



**Mallesons Alert on the Rise of Carbon Trading between Governments: Can Businesses Benefit from Intergovernmental Carbon Credits under Article 6.2?**  
<https://www.mallesons.com/au/en/insights/latest-thinking/the-rise-of-carbon-trading-between-governments-can-businesses-benefit-from-intergovernmental-carbon-credits-under-article-6-2.html>

## CARBON CAPTURE AND STORAGE PROJECTS

Australia's potential for developing carbon capture and storage (CCS) projects has been touted for some time — legislation for CCS projects has been in place in Victoria and Queensland for over a decade. As of December 2024, there were 18 CCS projects at various stages of progress in Australia, including two operational, commercial-scale projects. As of July 2025, Gorgon CCS project had stored more than 11 million tonnes of carbon dioxide .

There is general Australian and State Government support for CCS. In 2024, the Australian Government provided 7 applicants with grants – the largest totalling A\$15 million – under the Carbon Capture Technologies Program. This scheme aims to help support the research and development of new and novel ways to capture and use carbon dioxide, especially in hard to abate sectors such as cement manufacturing. A second round of this program is expected to open in early 2026.

In May 2024, the Australian Government released its Future Gas Strategy, which highlighted the need to grow the CCS industry in Australia to support a least-cost energy transition. Recognising opportunities for development of CCS offshore, the Australian Government has pledged A\$12 million over 3 years to deliver regulatory and administrative certainty for offshore CCS projects, with 17 active offshore Commonwealth Greenhouse Gas Assessment Permits in place as of January 2026. These permits authorise proponents to explore and appraise offshore carbon dioxide storage formations, as a precursor to CCS project licences.



**Mallesons Alert on CCS in Australia – a legal guide**  
<https://www.mallesons.com/au/en/insights/latest-thinking/ccs-in-australia-a-legal-guide.html>

## NATURAL CAPITAL

In Australia, the Australian Government has committed to protecting 30% of Australia's land and water by 2030. To give effect to this commitment the Australian Government passed Nature Repair Market legislation in the form of the *Nature Repair Act 2023* (Cth).

On 1 March 2025, the world-first Nature Repair Market launched and applications could be made to register nature repair market projects.

The development of the Nature Repair Market is intended to incentivise eligible participants, including landholders, Aboriginal and Torres Strait Islander Peoples and organisations, farmers and conservation groups to register and carry out nature restoration projects. These projects allow participants to apply for biodiversity certificates, which can be subsequently traded (in a similar way to ACCUs). This will enable entities to invest in nature repair projects through the purchase of biodiversity certificates. Given this alignment, proponents can design projects on the same area of land and be eligible for both a Nature Repair Market Biodiversity certificate and ACCUs (providing the projects meet each set of requirements).

In November 2025, further amendments were passed allowing for methods to specify whether biodiversity credits could be used as environmental offsets. Extensive guidance and various tools are available under the Nature Repair Market, such as PLANR – the marketplace where it is possible to see listing for projects seeking investments or to create listing for investors seeking projects.



### Mallesons Article

<https://www.mallesons.com/au/en/insights/latest-thinking/ready-set-launch-australias-world-first-nature-repair-market-is-now-operational.html>

# Environmental Issues



**Mark Beaufoy**  
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## What environmental issues need to be considered?

Environmental considerations are a priority for proposed developments, continuing operations, and project closure. With constant reform and an evolving regulatory landscape, challenges to projects and project approvals are increasingly common. Delivering ecologically and socially sustainable outcomes is an expectation of the wider community and is important for securing a project's 'social licence'.

The environmental impacts of projects in Australia are closely regulated from a substantive and holistic perspective, both at a Federal and State or Territory level. Environmental and land use planning considerations vary across sectors, including real estate, mining, resources and energy (including renewables). Assessing a project for approval requires up-front consideration of the project's environmental and social impacts, as well as a land use assessment. The environmental impact assessment focuses first on risk avoidance, then on mitigation where risks cannot be avoided, and finally on offsetting any residual significant impacts through a physical and/or financial offset. Approvals are granted subject to conditions, which increasingly require objective outcomes to be achieved and compliance with monitoring and reporting requirements. Recently, there has been increased regulatory emphasis on compliance and enforcement where project activities pose a risk of environmental harm or fail to comply with approval conditions.

Environmental assessment and approval processes are often undertaken in parallel with wider land access and other stakeholder engagement processes, including with First Nations people. Public scrutiny and challenges are becoming more common, particularly for major projects releasing greenhouse gas emissions and those with significant impacts on biodiversity or Aboriginal cultural heritage and local communities.

### PROJECT LIFE-CYCLE



### LAND USE AND DEVELOPMENT

Once access rights to project land are secured, project planners need to consider land use restrictions and planning, building and environmental approvals.

In built-up areas of Australia, land use is controlled by zoning (and various other controls including overlays and codes), which group land parcels together so that land may be used in a way that is compatible with the surrounding locality. Common zonings are residential, commercial, light industrial, general industrial, rural and public purpose/special use.

Land use in a particular zone may be subject to assessment as permitted or permissible development. Certain land uses may be prohibited or exempt from assessment.

Many developments will require planning approvals, which are usually controlled by local governments. Planning approvals may be required for use of land and development, and sometimes may require amendment of the underlying planning scheme or instrument. Larger developments may require approval from other planning bodies, State or Territory Ministers, or the Commonwealth Environment Minister. Selecting an appropriate planning pathway is a key consideration for a project proponent.

Whether a development receives a planning approval is informed by policy guidelines but may also involve discretionary judgments by decision makers. Planning approvals can be very detailed. Conditions may govern various aspects of a project, including the time within which the building or parts of the building must be commenced and completed, requirements which must be satisfied for the built form of the development, and hours of operation.

The erection of buildings is primarily regulated by State and Territory laws relating to the building code which covers fire safety and access for people with disabilities. Generally, a technical permit, certificate or licence must be issued before any building can be erected or occupied. Developments generally require both planning and building approvals before construction can commence.

Land use planning and development law continues to evolve, with regulatory reform a constant theme. For example, renewable energy projects may be subject to different regulatory processes in each Australian State and Territory.

## ENVIRONMENTAL IMPACT ASSESSMENT

Where a project, including a new development or the expansion of an existing development, might have a significant impact on the environment, Commonwealth, State and Territory legislation may require an 'environmental impact assessment' to be completed before the project can be approved. An approval usually needs to be obtained before any on-ground element of the project can commence. The level and complexity of assessment varies based on how significant the impact on the environment is likely to be. An assessment can take between 3 months to 3 years (or more) to be finalised, depending on the circumstances.

Environmental impact assessments commonly involve considering a description of the project and its impacts, assessing the project's environmental impacts (direct, indirect and cumulative) against environmental objectives for the area, considering adaptive plans for proposed environmental management and public consultation.

Depending on the jurisdiction and the nature of the assessment required, third-party objectors may be able to challenge approvals both during and following assessment. This is becoming more common.

## ENVIRONMENTAL PROJECT APPROVAL

All States and Territories have their own environmental legislation and regulations which govern acceptable impacts on local environmental values, and which set out a pathway for a project proponent to obtain an environmental approval. Generally, a proponent must apply to a regulator for a licence or permit to undertake activities that have the potential to cause environmental harm. Approvals are granted subject to conditions that require environmental impacts to be avoided or managed against outcomes-based criteria (including requiring extensive management and monitoring plans to be developed and implemented, once approved by a regulator). Conditions can also require the proponent to provide an environmental offset to ensure that net environmental objectives are maintained or improved.

Where a project is likely to have a 'significant impact' on matters of national environmental significance (MNES) (which includes plants, animals, marine areas, and heritage sites), a Commonwealth environmental approval may be required for the project under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Recent reforms to the EPBC Act passed in December 2025 introduced new tests which must be satisfied before an approval is granted. First, the proposed action (ie project) must not result in an "unacceptable impact" on a MNES. Second, the proponent must demonstrate that the proposed action is consistent with relevant National Environmental Standards (NES) published by the Commonwealth Environment Minister. Third, the proposed action must pass the 'net gain' test, which requires the proponent to compensate for any significant residual impacts on protected matters by providing an environmental offset or paying restoration contribution charges.

The chart on the following page shows that, in financial year 2024 to 2025, 39% of projects referred for Commonwealth assessment did not require a Commonwealth environmental approval ('not a controlled action' decision) while 61% of projects referred did require a Commonwealth approval ('controlled action' decision).

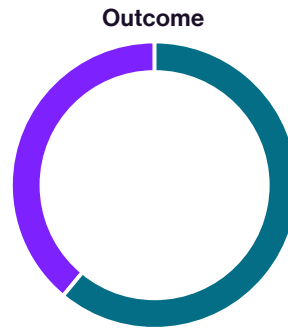
## Outcomes of Commonwealth environmental impact referrals

FROM 2024-2025\*

\*Does not include referrals that were clearly unacceptable or where no decision was made

No approval required

39%



Approval required

61%

### POLLUTION, CONTAMINATION AND ENVIRONMENTAL HARM

All States and Territories have environmental legislation that manages the pollution of air, land, and water, however pollution controls vary across jurisdictions. Site specific licences are often required, which generally set limits for pollutants and require monitoring and reporting.

Most jurisdictions also specifically regulate land clearing, environmental harm and biodiversity impacts.

The penalties imposed for the offences of unlawful pollution or clearing are significant and include fines, jail sentences, or both. Some offences have a statutory defence available where appropriate due diligence has been exercised in relation to environmental management. Other offences are 'strict liability', without a defence available. Directors and managers can also be held personally responsible for pollution, contamination and environmental harm caused by an organisation in certain circumstances.

### SPOTLIGHT ON ENVIRONMENTAL COMPLIANCE

We are seeing an increased focus on environmental compliance and enforcement. For example, State-level legislative changes in 2024 resulted in Queensland imposing new environmental duties and offences, and New South Wales increasing the maximum penalties for 'Tier 1' environmental offences to A\$10 million for corporations. In Victoria, there has been an increased focus on compliance and enforcement, including prosecuting offences for breach of the general environmental duty.

Under recent reforms to the EPBC Act, the Commonwealth Government introduced a new National Environmental Protection Agency (NEPA) with expanded enforcement powers, including powers for the CEO of the NEPA to issue an Environmental Protection Order (EPO) where they reasonably believe there has been a breach of the EPBC Act. The reforms significantly increased the maximum penalties that can be imposed for breaches of the EPBC Act. For individuals, courts can impose a maximum penalty of the greater of: A\$1.65 million; or 3 times the combined value of any financial benefit obtained and costs avoided from the breach. For corporations, courts can impose a maximum penalty of the greater of: A\$16.5 million; 3 times the combined value of any financial benefit obtained and costs avoided from the breach; or 10% of the corporation's annual turnover for the 12-month period ending on the month before the breach occurred capped at A\$825 million.

### RETROSPECTIVE LIABILITY FOR CONTAMINATION

Most of the clean-up provisions relating to contaminated land or waters under State legislation operate retrospectively.

Regardless of fault, liability can be imposed for recent contamination incidents at sites that are currently occupied by an entity, and also for past events that occurred many years ago. Liability may exist even though, at the time the contamination incident occurred, the operations were lawful and approved under an environmental permit and the permit holder was unaware of the harmful effect.

Liability is generally imposed on the polluter, but most jurisdictions also allow clean-up notices to be served on owners or occupiers of sites. For example, in circumstances where a polluter is unknown or cannot be located, a current landowner or occupier may be held liable for historical contamination.

### WATER LICENSING

All States and Territories have regimes that regulate surface water and ground water use, and that grant allocations for water in quality or quantity constrained areas. In some circumstances, a project proponent may need to obtain a water licence for water supply or dewatering. While many land users located in major cities and towns do not need to engage directly with these regimes, licensing may be an issue for large water users and users in regional and rural Australia.

## COMPLIANCE REPORTING

If an entity's operations are subject to any particular and significant environmental regulation, the annual directors' report must set out details of the entity's performance in relation to environmental regulation. Most jurisdictions also have laws requiring public disclosure of a project's environmental impacts, for example, where conditions of an environmental approval require the proponent to prepare and submit public annual air emission monitoring reports.

Climate reporting is increasingly shifting from voluntary to mandatory, with many large Australian businesses now required to prepare annual sustainability reports from 1 January 2025 as a result of legislative amendments passed in 2024. Voluntary nature reporting is also on the rise, and we expect this will become mandatory with time (see the [Climate Change](#) section of this Guide).

## IMPLICATIONS

Given the potential for significant environmental liability and the heightened importance of environment, social and governance matters (see the [Climate Change](#) section of this Guide for further information), corporations in Australia should pursue various risk management strategies, environmental management programs and projects that deliver broad value to the environment and the community.

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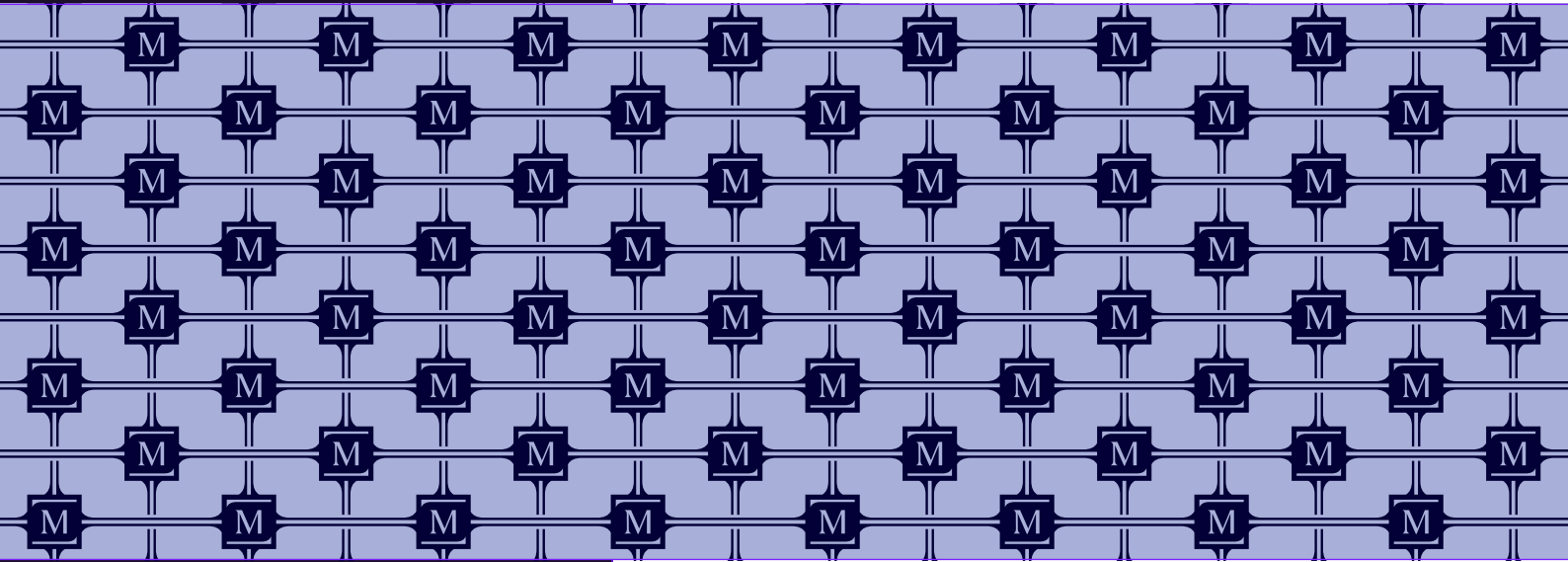
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