

Doing Business In Australia



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Purpose of this Guide

Whether you are Australian or a foreigner, doing business could appear complex at first sight. Indeed, there are several laws and regulations that must be respected in addition to the different conditions that may apply depending on the structure of the business or your status.

If you start a business for the first time or you are already experienced, this guide has been created for you to have an overall view of the Australian legal system and to help you develop a full understanding of how to do business in Australia.

Disclaimer:

We are convinced that the information provided in this guide will be helpful for your projects in Australia. Please note this is a guide only and individuals and corporations should seek legal and expert advice as to their individual circumstances.



Australia is divided into six states: New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia.

About Australia

History in Brief

Australia was first settled over 50,000 years ago, and the culture that arose is today the longest surviving continual traditions in human history. Prior to European settlement there were over 600 tribes with over 150 languages living in Australia and surrounding islands.

The first European contact with Australia came in 1606, when a Dutch explorer discovered the continent, but it was not until 1770 when English explorer James Cook arrived, that any attempt to settle the land was made by Europeans. The English began sending ships in the 1780s to establish a penal colony, and for the following century the European settlers and explorers established colonies. This led to a weakening of the indigenous population, who were greatly affected by conflict and were not resistant to the European diseases. The country was a

British colony until 1901 when Australia was officially founded, although the British remained a strong political force for many decades. Australia has retained the British monarchy and Queen Elizabeth II is still officially the head of state in Australia.

Geography and Climate

Australia is in the southern hemisphere and is the sixth largest nation in the world, after Russia, China, Canada, the US and Brazil. 18% of Australia is desert, but it also has snowy mountains and tropical and temperate forests. Apart from Antarctica, Australia is the driest continent in the world, and it is also the flattest – the highest peak in Australia, mount Kosciuszko, is half the height of the highest peaks on other continents. Thousands of small islands and numerous larger ones surround the Australian mainland and Tasmania.

Natural Disasters

Australia is subject to a number of natural disasters, including bushfires, droughts, floods, storms, earthquakes and landslides. Disasters are however infrequent, and the enormity of the landmass and the small and concentrated nature of the population means that they often occur without cost to human life. Of the threats Australia faces, droughts are the most dangerous.

There are also two major territories on the mainland: the Northern Territory and Australian Capital Territory. There is one other inhabited territory, Norfolk Island, and there are also several minor, uninhabited territories.

The difference between a state and a territory is that according to the constitution states have the right to convene their own government and pass laws. The three largest territories; Northern Territory, Australian Capital Territory and Norfolk Island, are able to pass their own laws, but this power is not defined by the constitution, but given by the Australian government, who can alter or revoke these powers at will.

Despite Sydney and Melbourne being the most populated centres, Australia's capital is Canberra located in the Australian Capital Territory.

The distances between the major cities in the different states are very large and in fact the fifth most travelled aviation route in the world is between Sydney and Melbourne.

Australia's Economy

Australia boasts one of the strongest, most competitive and flexible economies in the world, and was one of only 11 countries to escape entering recession in the wake of the 2007/8 financial crisis. Thanks to high levels of income, social equality and good access to healthcare and education, Australia ranks second in the Human Development Report, beaten only by Norway.

The growth in Australia has been accompanied by steady inflation, which has averaged 2.5% over the last 15 years.

Australia is one of the largest economies in the Asia Pacific after China, Japan and Korea. It has significant trading relationships with all of these countries, and China is Australia's largest trading partner.

Demographics

Australia is home to just under 23.5 million people, over a quarter of whom were born overseas.

The majority of these people were born in the UK, New Zealand, China, India, Vietnam and Italy.

Immigration numbers are set by the Australian Federal government on a yearly basis, and are open to all applicants who meet the criteria. Australia has a mixed, multilingual and highly educated and skilled workforce.

Australia has a relatively low unemployment rate which hasn't risen above 6.1% in the last ten years. The average salary across Australia is \$63,767. Agriculture, manufacturing and mining are Australia's top three industries, closely followed by commercial services.

Australia's population is growing at a rate of 1.8%, which has fluctuated in recent years, but has not risen above 2.2% for several decades.

The Government of Australia

Australia is a Federal constitutional monarchy, under a parliamentary democracy. It was formed by six self-governing British colonies (now the six Federal states: New South Wales, Victoria, Western Australia, Queensland, South Australia and Tasmania).

The terms of the agreement were ratified in the Constitution of Australia, which came into force on 1 January 1901. Australia has three levels of government: Federal, State and Local. For Australian citizens over 18 years of age, it is compulsory to vote.

Federal Government

The Federal government rules on national affairs, including defence, immigration, foreign affairs, taxation, banking, customs and interstate and overseas commerce and trade. The Federal government has two chambers: the House of Representatives or lower house, and the Senate or upper house. The Federal Government, after election, lasts for three years, before it is dissolved and an election is held.

The Federal Governmental sits in Canberra. It is formed from the governmental parties, or a coalition of the parties, who hold a majority of seats in the House of Representatives. The leader of the party is the Prime Minister. The body regulating the Federal government is the Ministry.



Composition of Ministry

Prime Minister

The Prime Minister is the head of the Government. He or she achieves this position by being the elected leader of the party in government (in the case of a coalition government, the major party).

Cabinet

The Cabinet, consisting of senior Ministers presided over by the Prime Minister, is the Government's pre-eminent policy-making body. Major policy and legislative proposals are decided by the Cabinet. The Prime Minister selects Ministers for Cabinet positions.

Ministers

Ministers are selected by the Prime Minister. There are currently 30 Ministers. The maximum number can be increased by legislation. About 19 or so senior Ministers administer the major departments and are, usually, members of Cabinet. Other Ministers are responsible for particular areas of administration within a major department, or may be in charge of a small department.

Ministers are appointed from both Houses of Parliament, although most (about two thirds) are Members of the House of Representatives.

Parliamentary Secretaries

Up to 12 Members and Senators are appointed by the Prime Minister as Parliamentary Secretaries to assist or represent Ministers in their administrative responsibilities.



State Government

Each state is able to hold their own government and pass laws. The six states have this right written into the constitution. For the three largest territories, the right to govern and pass laws is given by the Federal government, who is able to revoke this power at will.

Local Government

Local governments are responsible for regulating local community matters, such as construction and maintenance of public facilities, town planning, public libraries and recreation areas. They do not have the power to pass legislation directly.

Role of the Queen

The Queen is the constitutional head of state of Australia. Her position is symbolic and ceremonial and the role is inherited.

Her powers in Australia are limited by law and are only exercised in accordance with the decisions of the Australian government.

The Queen of Australia is the same as the Queen of the United Kingdom. However her role is greatly different from that played by her in the UK. Her role and obligations in the UK have no bearing on her role in Australia.

The Legal System of Australia

“

*In Australia powers are separated
in order to ensure that the
governmental powers never
become so absolute that there is
room for governmental oppression*

”

Separation of Powers

Political theory recognizes three powers of government: the legislative power to make laws; the executive power to carry out and enforce the laws; and the judicial power to interpret laws and to judge whether they apply in individual cases.

The Judiciary

The power to interpret laws and to judge whether they apply in individual cases has been given by the Constitution to the High Court and other Federal Courts. “Federal Judicial Power” is the power to decide a dispute of the kind set out in sections 75 and 76 of the constitution. The government appoints Federal Judges.

The four principal Federal Courts are: The High Court, The Federal Court of Australia, The Family Court of Australia, The Federal Magistrate’s Court of Australia, The government appoints Federal Circuit Court of Australia.

The Legal System

The legal system in Australia is based on the British Common Law system as opposed to the European Napoleonic system.

Since Australia became an independent country there has been significant changes to the law, and Australia differs from England in that each nation is devolved to the extent that they have their own laws (although the case law of each nation may influence courts in the other).



Lawmakers

Laws are made and passed by Parliament and by judges in court cases. These laws may be Federal or State-wide. Local councils and public servants can also make by laws and regulations, if the Federal government has bestowed this power on them.

Australia has two levels of Parliament, the State and the Federal levels. Where laws conflict, Federal (or Commonwealth) law will override state legislature.

Court System

The High Court of Australia is the final court of appeal in Australia. There are six High Court Judges and one Chief Justice.

The principal function of the High Court is to decide on matters relating to the constitution. It is also the final court of appeal for matters that have failed to be settled in other courts.

The Federal Court of Australia

It sits in each state and in the Australian Capital Territory and in the Northern Territory. It presides over matters such as bankruptcy, industrial relations, corporations and trade practice laws, as matters that arise under Commonwealth laws.

The Family Court of Australia

It specializes in settling disputes arising relating to family and child support matters. It has power in all States except Western Australia, where the Family Court of Western Australia has these powers.

The Federal Magistrates Court

It deals with less complex disputes that arise under Commonwealth Laws. It shares its jurisdiction with the Family Court of Australia and with the Federal Court of Australia.

State and Territory Courts

These Courts can decide numerous matters arising under Commonwealth Law. Most criminal matters are dealt with in the State and Territory Courts. Each State and Territory has its own Supreme Court, which will deal with the most important civil litigation and most serious criminal offences. They will also hear appeals from lower courts within the state when the matter is escalated.







Australia and the rest of the world

International Relations

Australia is a leading trading nation with strong ties to the Asia-Pacific region, to Western Europe and to America.

Australia has a particularly strong relationship with New Zealand, with whom Australia formed a partnership (ANZAC – Australia and New Zealand Army Corps) during WW I. ANZAC day is celebrated every year to commemorate the lives lost by soldiers during the battle of Gallipoli in Turkey, and “ANZAC spirit” refers to the common characteristics shared by the two nations.

Australia, New Zealand and the US have an agreement (ANZUS) which binds the countries to working together on defense matters in the Pacific. Australia and the US have Australia is active with ASEAN, an organisation representing South East Asian Nations, and has a free trade agreement with all countries represented (Thailand, Indonesia, Malaysia, the Philippines, Singapore, Brunei, Cambodia, Laos, Myanmar (Burma) and Vietnam).

Australia is also an active member of the United Nations and the Commonwealth of Nations.

Trading Partners

Australia’s top trading partners are America, China, Germany, New Zealand, Thailand, Malaysia, the UK, Singapore, Korea and Japan.

Export

Both law and policy control the exportation of goods from Australia. Note only does this facilitate the control of goods that are prohibited or restricted from export, but also enable Australia's international trade to be monitored and recorded.

All goods that are exported from Australia with a value of or greater than AUD\$ 2,000 are required to be declared to Customs. This is ordinarily done electronically by completing an export declaration, though paper lodgment is also accepted. However, where the value of the goods being exported is less than AUD\$ 2,000 there is no requirement to complete an export declaration.

The amount of GST to be paid is calculated at 10% of the Value of the Taxable Importation (VoTi). The VoTi is calculated by adding the customs value of the goods, the Customs Duty, and the cost of the freight and insurance to bring the goods to Australia.

Restricted and Prohibited Exports

The exportation of certain types of goods from Australia are prohibited or restricted. Goods of the type that are classified as prohibited are not, under any circumstances, permitted for export from Australia. However, goods of the

type that appear on the restricted list may be exported so long as written consent in the form of a permit is granted from the relevant consent authority. This is the case regardless of the value of the goods being exported.



Australia's 10 two-way trading partners

Free Trade Agreements and Australia's FTA Partners

Free Trade Agreements (FTAs) are international treaties that remove or reduce barriers to trade between the States party. These FTAs are of an advantage to business involved in both the import and export of goods as they provide preferential tariff rates between Australia and the partner State. FTAs also provide a more subtle use for business in the form of increased risk management due to the increased competitiveness in foreign markets, as well as, better access to an increased range of goods and services.

Currently Australia has 7 FTAs in force with New Zealand, Singapore, Thailand, United States of America, Chile, the Association of South East Asian Nations (ASEAN) and Malaysia. Further to this list of FTA partners, in 2014 Australia signed FTAs with Korea and Japan, which will be in force when ratified by the each State. Moreover, Australia has completed negotiations for a FTA with China. These new FTAs are of importance as currently these States represent 39% of Australia's total trade.

Immigration

Australia has been populated since around 50,000 BC by Aboriginal Australians.

In the 17th and 18th century the local population had its first contact with Europeans, and the British began colonising the country in 1788. Many Europeans were encouraged to migrate to Australia, particularly after WW II, which has meant that Australia is culturally very close to Europe. In recent years, increasing numbers of immigrants have come from Asia. According to the 2011 census, one in four Australians was born overseas.

Import

In Australia there is no requirement for individuals or businesses to hold a license in order to import goods. When goods are imported into Australia there two important considerations: the value of the goods being imported. In particular, whether the value of the goods is greater than AUD\$1,000. whether there is a restriction or prohibition on importing the goods into Australia.

Imports with a value of AUD \$1,000 or below

With the exception of alcohol and tobacco products, those goods are permitted to be imported free of Customs Duty and Goods and Services Tax (GST).

Import via the postal system: those goods do not require documentation in order to clear customs, save the parcel documents or any restricted goods permits, and will be delivered directly by Australia Post.

Import via air or sea freight: those goods are also Customs Duty and GST. However, goods imported via these methods must be reported to Customs and Border Protection as a Self-Assessed Clearance declaration (SAC). Ordinarily the SAC will be completed by the freight forwarder, though, if required, can be completed by the importer electronically via Custom and Boarder Protection's Integrated Cargo System once a digital certificate is obtained. Alternatively a licensed customs broker, for a fee, can carry out this process.

Imports with a value of AUD \$1,001 and above

Those goods may be subject to Customs Duty and GST. Depending on the goods being imported they may also be subject specific import taxes, such as, Luxury Car Tax or Wine Equalisation Tax.

The amount of Customs Duty to be paid is determined by the classification the goods are given by the *Customs Tariff Act*. If Customs Duty is required to pay on the imported goods it is based on the price paid for the goods converted into Australian dollars.

The amount of GST to be paid is calculated at 10% of the Value of the Taxable Importation (VoTi). The VoTi is calculated by adding the customs value of the goods, the Customs Duty, and the cost of the freight and insurance to bring the goods to Australia.



Moving to Australia

Immigration advice in Australia can be given by Registered Migration Agents or overseas Australian diplomatic posts. The following is not to be taken as an advice on individual matters, and is only an overview of Australian immigration laws.

Visas

Temporary and permanent visas for individuals looking to come to Australia for business reasons may be issued when criteria requirements are met. There are a variety of visa options open.

The Australian government regulates visas through the DIMIA (Department of Immigration and Multicultural and Indigenous Affairs). Visas can be granted to those wishing to work in Australia as a Temporary Work Short Stay Activity, Working Holiday Visa, Business Migration Visa or Temporary Resident Visa.

Individuals can become permanent residents after meeting a set of criteria (such as a period of stay of more than two years in the country, or sponsorship by the Regional Migration Scheme).

People can become citizens of Australia if they meet a set of eligibility requirements (which may include being a permanent resident or being the spouse of an Australian citizen). When coming to Australia for business purposes the most common scenario is for people to enter with a provisional or temporary visa, and then apply after two years for a permanent Business Skill Visa.

A person's hands are clasped together on a light-colored desk. In the background, there are several documents and a laptop. One document in the foreground has the word 'CONTRACT' printed vertically. The overall scene is a professional office environment.

Business Visitors' visas: Short Stay Business or Subclass 400 visas

Australia allows people to enter and remain in the country for a period of 3 months on a Short Stay Business Visa. When entering Australia for business purposes, care must be taken to not enter the country on a tourist visa. If you wish to work less than 6 weeks in a highly specialized area, a subclass 400 visa is required.

Business innovators and investors: Subclass 188, 888 and 132 visas

If you intend to invest, start or manage your own business in Australia without a sponsor, it is possible for you to apply for the subclass 188, 888 or 132 visas. For those different visas, you will have to demonstrate that you respect all the requirements.

The Immigration Department revamped Australia's Business Skills visa program in July 2012, resulting in the amalgamation of 13 subclasses of visa into three.

Sponsoring Employees: the 457, 186 or 187 visas

It is possible to provide sponsorship for employees to come to Australia if the company is based in Australia, or if the overseas company is wishing to establish a new entity in the country.

The employee will be provided with a 457 visa, which is valid for four years, or a 186 or 187 visa, which is permanent, provided that they can show proof that they meet the necessary requirements, namely:

- a nomination in an approved occupation (in the Skilled Occupation Lists);
 - the skill requirements for the nominated application;
 - the registration and licensing obligations;
 - the speak vocational English (sometimes a test will be required) and
 - a nomination by an approved business.
- It is however most likely that overseas businesses would provide overseas employees with 457 visas.

For overseas people who wish to be sponsored by an Australian company, you must respect the requirements.

For an overseas business, you will be required to establish a branch, joint venture, subsidiary or agency distributorship of your current operation in Australia, or fulfill obligations on behalf of the sponsoring entity in Australia.

Anyone based overseas and is providing sponsorship for an individual on a 457 will be required to demonstrate that:

They are lawfully employing an individual in a business that is actively engaging in business activities.

The sponsor is not implicated by negative information regarding business practices (for example relating to discrimination, taxation, immigration or other), or that any information regarding matters of this nature can be reasonably disregarded.

They directly employ the sponsored employees.

They have made efforts to employ local labour where possible

Subclass 188 visa

You will have to demonstrate that you:

- are nominated by a state or territory government or Austrade on behalf of the Australian government;
- are invited to apply;
- meet health and character requirements (and all your family members);
- meet the additional requirements for the stream in which you apply.
- This temporary visa subclass includes the four following streams.

1) Business Innovator

You need to provide valuable input into the Australian economy.

You also must:

- be under years of age; score at least 65 on the points test; have had an rship interest in an established business or business that had at least \$500 000 turnover for two out of the four fiscal year before you are invited to apply.
- own at least a certain percentage of the business depending on the turnover or if it is a publicly listed company; have an overall successful business career and have a genuine desire to continuously own and maintain a management role in a business in Australia.

2) Business Investor

You must maintain your designated investment for at least four years. Also, you will have to demonstrate that you :

- are under 55 years of age;
- score at least 65 on the points test;
- have a high level of management skill in relation to the eligible investment or qualifying business activity;
- have at least three years' experience of direct involvement in managing one or more qualifying businesses or eligible investments;
- have an overall successful record of eligible investment or qualifying business activity;
- have a genuine and realistic commitment to continuing your business and investment activity in Australia after the original investment has matured
- have a genuine intention to live for at least two years in the state or territory in which you have made a designated investments.
- Moreover, you will have to demonstrate that you or your partner (you and your partner together) meet certain conditions regarding your previous business activities.

3) Significant Investor

You must commit that you will:

- reside in the state or territory whose government agency nominated you;
- continue your business and investment activity in Australia after the conclusion of your provisional visa,
- live in Australia for at least 40 days per year (calculated cumulatively) for the duration of your provisional visa, or your spouse to live for at least 180 days per year (calculated cumulatively) for the duration of your provisional visa.
- You, your partner and other family members must meet other requirements regarding to net assets and prior business activities or legal action in case of loss.
- Also, you must make an investment of at least \$5 million into a complying investment in Australia over four years.

4) Premium Investor

- This is by nomination of Austrade on behalf of the Australian government only.
- You must make a complying investment of at least AUD\$15 million in any of the seven possible options.
- You, your partner and other family members must meet other requirements regarding to net assets and prior business activities or legal action in case of loss.
- Also, you must make a minimal investment of \$15 million into a complying investment in Australia over four years.



Subclass 888 visa


This permanent visa subclass is the logical following of the subclass 188 visa. It enables you to pursue your business and investment activities in Australia.

To apply for this visa you must have fulfilled the requirements of your provisional visa.

You will have to demonstrate that:

- you are nominated by a state or territory government agency or Austrade on behalf of the Australian government if you are seeking to satisfy the primary criteria. You can satisfy this condition by completing form 1414 (nomination - business skills class).
- the government entity which nominated you for that visa has not withdrawn the nomination (if you are a holder of the subclass 188 visa).
- you, your partner and other family members must meet other requirements regarding your prior business activities and meet the health and character requirements (you do not need to prove this again if you have already done this for the subclass 188 visa).
- you commit to maintain business or investment activities in Australia.

Other requirements depend on the stream in which you held your subclass 188 visa.

A young woman with dark hair, wearing a white t-shirt and a grey backpack, is smiling warmly. She is standing in an orchard, with several red and yellow apples visible in a green basket in the foreground. The background is a soft-focus view of green leaves and orange fruit.

Subclass 132 visa

This permanent visa is for business people who are nominated by an Australian state or territory government agency. This visa enables you to develop an existing business or create a new one. It includes two streams: the Significant Business History and the Venture Capital Entrepreneur.

For both of those streams, you will have to demonstrate that: you are nominated by a state or territory government, you are invited to apply, you and your family members meet health and character requirements and you meet the additional requirements for the stream in which you apply.

1) Significant Business History

It was created for high-caliber business owners or part-owners who want to do business in Australia.

For this stream, as an additional requirement you will have to prove that:

- you are under 55 years of age
- you, your partner, or you and your partner combined must have all of the following:
 - total net asset of at least AUD\$400 000 as the ownership interest in one or more qualifying businesses for least two of the four fiscal years immediately before you are invited to apply and if the qualifying business was a publicly listed company, a shareholding of at least 10 per cent of the total issued capital;
 - net business and personal assets of at least AUD\$1.5 million that are legally acquired and can be transferred to Australia within two years after the visa is granted;
 - a total annual turnover of at least AUD\$3 million in one or more of your main businesses in at least two of the four fiscal years immediately before you are invited to apply;
 - a minimum of ownership depending on the turnover, or 10 per cent of a publicly listed company;
 - an overall successful business career;
 - no involvement in unacceptable business activities and
 - a genuine desire to own and maintain a management role in a business in Australia.

2) Venture Capital Entrepreneur

For this stream, as an additional requirement you will have to prove that you have received at least AUD\$1 million in funding (for the start-up, product commercialization or business development of a promising high-value business idea) from an Australian venture capital firm (which is a member of the Australian Private Equity and Venture Capital Association Limited (AVCAL).

Concerning the funding, a formal agreement must have been ratified.

Australian Employment Law

Employment Laws

The Australian government and the Work Fair Ombudsman are the best online resources for finding out exactly what obligations you have to your staff in Australia.

The law in Australia is based on common law, which applies to all citizens of Australia, on the statutory and regulatory framework for your industry, and on industrial instruments, such as modern awards and enterprise agreements

Common Law

The common law dictates the obligations on the part of the employer and employee. Regulations and expectations are set out in the contract of employment, which can be written or oral. All working relationships must have some form of employment contract.

Prior to creating a contract, there are four things that must exist:

- An offer
- An acceptance
- A consideration
- An intention to create legal relations

The contract will set out the employee's duties, status and seniority within the firm, the manner in which the employment contract may be terminated, the constraints placed on the employee during and after employment, and the requirements of the employer.

It is highly recommended to have the contract in writing. Written employment contracts are increasingly important as they can be used in court in cases concerning disputes over obligations and rights in an employment setting.

Statutory and Regulatory Framework

Australia has a two-tiered governmental system, with duties divided up between the State and Federal governments. There are differences between the States, so it is vital to ensure that your business practices adhere with local as well as Federal laws.

Depending on the nature of the business, the regulation will come from either the state or the Federal laws. Most employers will be covered by Federal laws.

Employees will be covered by Federal laws if:

- They are employed by a trading, financial or foreign corporation operating in Australia;
- They are employed in the Northern Territory or Australian Capital Territory.
- The organisation they work for has referred powers to the Federal government (Western Australia has not done this).

Certain legislation by the state will apply regardless of the above (this legislation refers to areas of employment such as health and safety in the workplace, and workers compensation).

Industrial Instruments

Industrial instruments refers to the terms and conditions of employment. Industrial instruments include modern awards and enterprise agreements.

Awards are industry or occupation specific, and set out the minimum wages and conditions the industry is required to give them. There are 122 awards that employees may be eligible for, and an employer may have to adhere to the rules of more than one award (for example for restaurant staff involved in food preparation, and for office staff involved in clerical duties).

There have been changes in recent years to the awards system. If you are already operating a business in Australia, please ensure that you keep up to date with these changes.

Enterprise agreements also set out minimum standards for employers and employees, and can be created between either an employer or a group of employees, or between an employer and a trade union.

Annual and Long Term Leave

The usual annual leave for an Australian employee is four weeks, or 20 days. Workers in certain industries can be eligible for more than this (e.g. shift workers who work 7 days), but this annual leave cannot be exchanged with the employer for payment. Many employees are also entitled to receive “loading”, where they receive 17.5% of their ordinary pay during the time the leave is taken. Where the industry is not required to make this happen due to legal or regulatory frameworks, it is nevertheless possible that their contract may give them the right to “loading”.

Long service leave is usually given to employees who have worked for the company for an extended period of time. This can vary, but is commonly between 10-15 years. Where the employee is terminated for reasons other than misconduct, they may be able to claim long service leave in lieu. The regulations vary from state to state.

Parental Leave

All Australian employees are entitled to parental leave, although the length and pay during parental leave are subject to variations by state. It is illegal to terminate the employment of any individual on the grounds that they are pregnant, and you are also unable to terminate an employee whilst they are on parental leave.

People are eligible for parental leave if they:

Have worked for their employer for at least 12 months:

- Before the date or expected date of birth if the employee is pregnant
- Before the date of the adoption, or
- When the leave starts (if the leave is taken after another person cares for the child or takes parental leave)

Have or will have responsibility for the care of a child.

- The circumstances in which parental leave can be given are:
- If an employee gives birth;
- If an employee's spouse or de facto partner gives birth;
- If an employee adopts a child under 16 years of age.

Workers Compensation

All employers are required to maintain insurance for all employees to cover any eventualities in which the employees fall sick or suffer injury during the course of their working lives.

Again, there are different regulations and regulatory bodies by state and industry. In the event that the injury or illness sustained is not the fault of the employer, the employee is provided with immediate assistance in the form of weekly wages, medical expenses, and rehabilitation services.

If the illness or injury is due to a fault of the employer, the employee can sue for damages, providing the injury is serious enough to cause permanent incapacity.

Superannuation

Superannuation refers to the funds Australian workers contribute to in order to access them after retirement. In Australia it is mandatory to provide superannuation in accordance with awards and legislation. Employees can negotiate for higher contributions to superannuation as part of their contract. Currently employers must give 9% of the employee's salary into a superannuation fund. The employee has the power to dictate where their superannuation is held.

Budget and Accounting

When you start a new business, it is essential to have a strong and healthy basis concerning your finance and accounting.

Prior to Invest in Australia it is strongly recommended that expert advice being obtained regarding market values, accounting, tax, and legal matters.

Setting up a business bank account

The choice of opening a separate bank account depends on your status: You need to consider the following:

You are a sole trader

It is not necessary to open a business bank account, your personal bank account is sufficient.

Nevertheless, opening a separate business bank account could be interesting: it is easier to control cash flows and determine all your key figures.

Also, it will save time when you will have to provide information for the accountancy or the taxation.

If you choose to have only one bank account, you should be aware that all payments and expenses have to be clearly identified as personal or business.

Your business is a partnership, a company or a trust

A business bank account is necessary regarding tax implications. You can find further information about bank account in the Australian Taxation Office website.

Bookkeeping system

The Australian tax law compels sole traders and companies to keep records regarding several documents: income tax, GST, payments to employees, superannuation, fringe benefits tax, fuel tax credits and business payments.

Therefore, an efficient bookkeeping system is necessary to track and save these documents.

Creating such a system can turn out to be complex, so you may need some help from an account or a business advisor. Indeed, the two main systems are:

- ***Cash accounting***

It records transactions at the time the cash was paid or received.
The date of the transaction is not relevant.

- ***Accrual accounting***

It records transactions at the time they are effectively carried out.
The date of the payment is irrelevant (it can be at the same time or in the future).

Each system has advantages and drawbacks. You will choose one of those systems regarding to which systems fits your needs best and the types of transactions you will conduct. For further information, you can visit the dedicated web page on the Australian government business website.

Obtaining finance

Whether you are looking for finance to grow your business and invest in new equipment or to face difficulties you may need to search for capital.

Prepare a business plan

To obtain capital from potential investors you need to demonstrate that your company will be successful. To do so, you have to prepare a business plan.

This business plan will represent your company and all the key figures: its current income, the potential consumers, the net profit expenditure and turnover in the future. It must be detailed and you need to attach your research.

The different financial products

The main financial products are loans, overdraft facilities, chattel mortgage, commercial hire-purchase, lines of credit, fully drawn advances, commercial bills, rent to buy, debtors finance and invoice finance. Savings, government grants and investors are different ways to obtain finance.

Be cautious

You need to be careful when choosing from the different options that are offered as they differ in consequences regarding tax and GST. Also you need to pay attention to financial products, specifically regarding interests, costs, terms and hidden charges.

Moreover, it is common sense to be cautious when dealing with compelling propositions: every year, overseas scammers take millions of dollars from companies settled in Australia. To avoid any risk, you must do research. Also, the Australian Securities & Investments Commission by its tool website “MoneySmart” provides you a list of companies you should not deal with.

If you need further information, you can visit the Australian Government Business and the Australian Taxation Office (ATO) websites.



Infrastructure



Agribusiness



Mining



Tourism



Real Property

Business in Australia

Australia : a land of opportunities

Australia is a great and safely place to do business. Indeed, the three global rating agencies rated its economy by an AAA and last year in the Index of Economic Freedom, Australia ranked fourth. In this Index, it is recognized that the Australian system is efficient and has *"a well-established open-market policies sustain flexibility, competitiveness, and large flows of trade and investment"*. Australia's market is well known to be one of the most transparent in the world.

Australia is the world's 12th largest economy. For 25th year, Australia has an uninterrupted annual growth. Between 2016 and 2020, it is expected that a GDP growth of 2.9 per cent and is one of the main place to invest in the Asian region.

The main sectors expected to drive future global growth are agribusiness, infrastructure, innovation, tourism, energy and resources, but also education or wealth management.



Agribusiness

In order to offer the healthier, cleaner and safer products, Australia has a strict regulation regarding the agriculture sector. Thanks to the proximity with the Asian market, the agribusiness is flourishing. The main unprocessed products exported are grains (wheat, barley), animal hair, cotton, oil seeds and oil fruits, live animals, fruits and nuts, fish and crustaceans, vegetables. Meat, beverages, dairy, sugars, animal feed, sauces, soups, cheese, cereal preparations, chocolate add cocoa are the main processed products exported.

As an Island continent, Australia offers a lot of space: building an extended farm plant is simple. Thanks to its size, different climates coexist. Therefore, it is easy to settle to crop every type of vegetables and to offer a broad range of fruit and vegetables for export across the year.

Fresh food wholesalers in central markets play a significant role in the pricing and distribution of product into various retail and foodservice channels.

Australia has been a pioneer in developing farming techniques and biotechnologies. From this culture for innovation and R&D, Australia is now at the leading edge in agricultural and food product developments. Several funding and collaborations exist and agribusinesses are also eligible to benefit from tax offset regarding to innovation and R&D expenditures.

Due to a very performing logistic network by air and seas, the trade to Asian-Pacific region is profoundly efficient.



Infrastructure

Australia's infrastructure system is based on a public-private partnership, which is efficient by the backup of the different laws and regulations. In this system, financial obligations and risk are shared, and it permits to projects to be finished on time and with according to the forecasted budget.

In order to develop Australia's productivity, projects include transport systems (roads, airport, light rail...) hospitals, prisons, schools, housing, sports and treatment facilities.

For instance, the following infrastructure were set up with the public-private partnership: the Sydney Harbour Tunnel, the M2 Motorway, the Peninsula Link, the Gold Coast Rapid Transit (Light Rail), the ports of Botany and Kembla, Perth Airport Redevelopment, Sydney Airport Rail Link, the Melbourne Convention Centre and the Long Bay Prison.

One of the strength of Australia is its rail infrastructure. Indeed, due to the application of various and high technologies, Australia rail infrastructure is at the cutting edge and known to be efficient, flexible and reliable. It has been tailored to reduce the cost and optimize time: it has a 24/7 driverless trains, the heaviest and longest heavy haul trains, different control centres situated far from the train networks, maintenance facilities. As a result, every logistic situation (even concerning businesses located in distant places), can be held and easily solved by the rail infrastructure.



Energy, resources

Energy, resources

Thanks to its unique localization and continent size, Australia is full of various resources and is number one for the availability of some natural resources such as iron core, gold, zinc, nickel or uranium. Moreover, there are multiple underexplored, unexplored or undiscovered sites. Therefore, associated with high expertise and a permanent will to innovate and to stay a leader in this field, Australia is one of the best place to make business regarding the energy/resources sectors.

Regarding the energy, the main resources are gas, unconventional gas, oil. It is expected that Australia will become the first producer of liquefied natural gas. Also, thanks to the renewable energy major challenge, it exists a lot of opportunities to invest in Australia, especially in bioenergy, solar, wind, geothermal or wave and tidal energy.

This favorable ground for the development of the energy and resources sector is highly back up by programs developed by the government in all the levels (national, state and territory).

Also, the government put at businesses' disposal geoscience information and data to help investors.

Eventually, companies can bid for a temporary exploration permit on vacant offshore petroleum areas released by the government.

This sector has a bright future by the proximity with the growing Asian market which is at the door of Australia and as there exist several projects regarding the building of oil and gas' pipeline.

Innovation

Australia offers brand-new ICT infrastructure, high levels of investment, generous research and development (R&D) and tax incentives for businesses.

The government highly promote innovation and research so that the companies settled in Australia stay attractive and competitive. As a result, it has created:

The National Innovation and Science Agenda

Its aim is to develop collaboration and ideas. It allows concessional tax treatments and specific investment products as for instance, the Venture Capital Limited Partnership (VCLPs) which permit tax exemptions and to be internationally attractive and competitive. It will allow more universities to benefit from funding and partnerships with companies and encourage the youth to study in specific innovative fields. By this program, the government pledge to help companies by sharing its data.

The Innovation and Science Australia

It will be an independent body which the goal is to advise the government about innovation, science and research in Australia, aside the Chief Scientist and the Commonwealth Science Council.

Information and Communication Technologies (ICT)

Media and Telecommunication are two of the main industries sectors in Australia. Indeed, entertainment (films, television, radio, video games), advertising or social medias are flourishing. Without an efficient ICT industries, those activities could not be competitive or even exist.

For instance, regarding the video game sector, Australia sector is known to be creative, dynamic and qualitative. It is said to be one of the best place to develop games and platforms for all the existing support (computer, mobile, tablet, console...). Number of the last famous mobile game like "Fruit Ninja" or "Star Wars: The Force Unleashed" had been developed in Australia. Several recent development studios made their place and work with the greatest name in this sector as THQ, Konami or Microsoft. Other Australian companies are themselves considered as the best in their field, as for example Firelight Technologies which is at the cutting-edge for the audio aspects and has for famous client Activision Blizzard, Ubisoft, Sony or Disney.



Tourism

Tourism

Australia is enriched by Indigenous culture which go back to tens of thousands of years. Uluru (a red dome rising out of the Central Australian desert which has spiritual significance to the Indigenous people). The Dreamland of the Indigenous Australians is a captivating tale of the Indigenous peoples' association in the land of Australia. This is depicted in many ancient relics drawings in caves around Australia.

With its dreamy and sun-drenched beaches, the unique Great Barrier Reef and rainforest, the west wild coast, Australia suits to adventure or relaxing holidays, all the more for international travelers. With plenty of different activities, from skydiving, snorkeling to hiking, Australia offers a huge range of choice and so is a perfect land to invest in tourism.

Corporate travelers are extremely present in Australia, and therefore, tourism in the big town is assured during the weeks in the main Australian cities.

Investing in this sector is quite safe: Australia ranks at the eight place regarding tourism and has one of the most stable hotel investment markets in the world. A lot of investors come from overseas and the proximity with Asia (which economy is highly developing), creates opportunities and assured a bright future regarding tourism. Indeed, the government intend to back tourism industry by its policy "Tourism 2020", conducted jointly with companies.

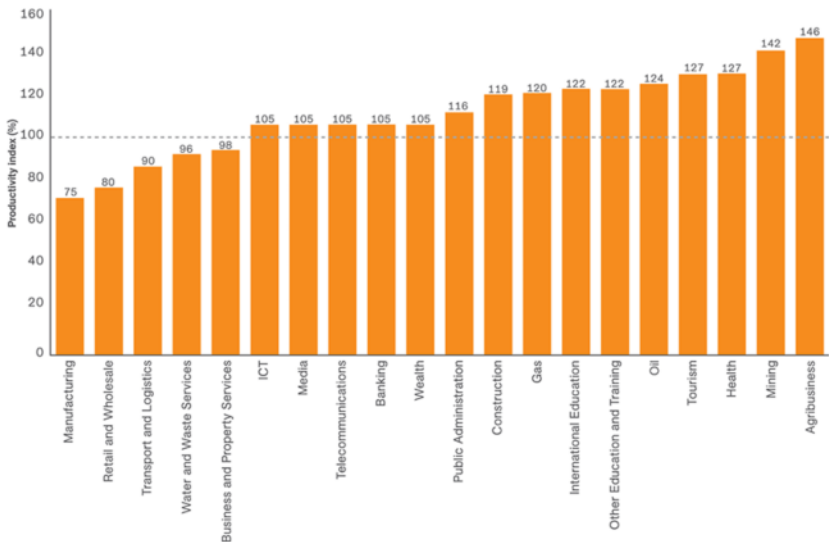
Presently, there is a lack of place in the different accommodation and it is expected that by 2020 Australia's annual overnight tourism expenditure will increase to between \$115 billion and \$140 billion. Those new opportunities are supported by a stable economy, and by the development of new aviation routes: there will be an increase of 50% of the aviation capacities by 2020. Moreover, Australia has one of the most transparent real estate market.

Real property

Buying a property is an easy way to invest in Australia and it is encouraged by development of the real-estate sector. Besides the traditional income you earn if the property is tenanted, there are a lot of benefit to invest in real property: it is possible to have a capital growth if the value of the property increase over time or to benefit from tax deductions. Nevertheless, there are also the usual drawbacks: you could have a mortgage that your income did not cover, a loss of value of the property or no tenant during a certain period.

Manpower

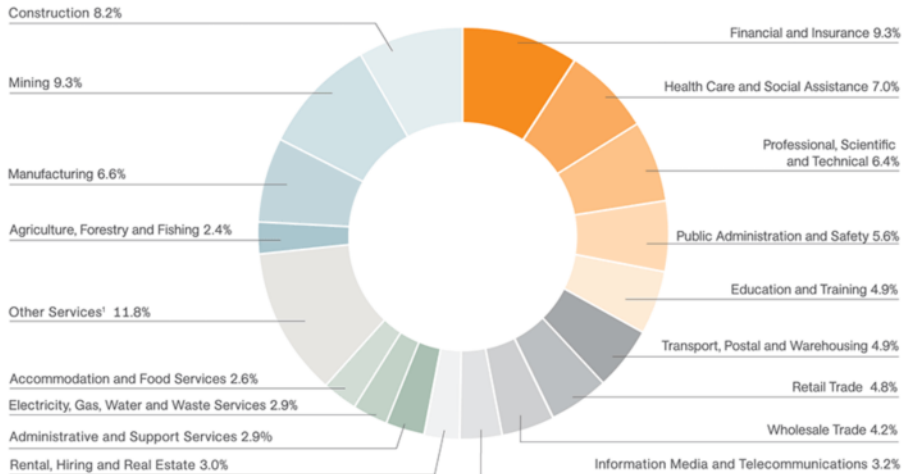
Workers in Australia are highly skilled and qualified. The enrolment rate in the secondary education is the highest in the world and is one of the most popular destination for international student. The workforce is multicultural: almost 30 per cent of the manpower is born abroad.



Note: A score of 110 means Australia is 10% more productive than the average productivity of global competitors in the industry.

Sources: Deloitte Access Economics analysis, 2015. Based on data provided in The Conference Board Total Economy Database™, May 2015; Austrade

Productivity of Australian industry sectors compared with global competitors



Note: Gross value added measures the contribution to the economy of each individual producer, industry or sector.

¹ Other Services include: Ownership of Dwellings (9.0%), Arts and Recreation Services (0.8%) and other (1.9%)

Sources: Australian Bureau of Statistics, Cat. No. 5206.0 Australian National Accounts: National Income, Expenditure and Product (released 2 September 2015), Table 37. Industry Gross Value Added, Chain Volume Measures, Annual; Austrade

Australia's real gross value added by industry



Foreign Investment

Foreign investment in Australia is encouraged by the government, so long as it is consistent with the needs of the Australian community. The government has the power to block proposals and it has the final say in what constitutes businesses acting contrary to the interests of Australians. Foreign investors are expected to act in accordance with OECD Guidelines for Multinational Enterprises, which can be found on the Australian Government website. Although these guidelines are voluntary, complaints can be raised with the Foreign Investment Review Board's (FIRB) National Contact Point if a company breaches them.

Companies looking to come to Australia are encouraged to discuss proposals with the FIRB in order to ensure that endeavors comply with Australian law and won't be subject to investigations further down the line.

Foreign investments in Australia are regulated by the Treasurer and the Foreign Investment and Trade Policy Division (the Division). The FIRB acts as an advisory body to the treasurer, and will alert the treasurer to foreign investments being made in Australia which may contravene Australian interests.

Foreign Investors

A foreign investor is:

- a person who is not an Australian resident;
- a foreign company, a trustee of a trust estate or a company in which a non-Australian resident has a substantial interest; or,
- a foreign company, a trustee of a trust estate or a company in which two or more persons are not Australians residents have an aggregate substantial interest.

Foreign Interests

A "foreign interest" is defined as an individual who may be a natural person who resides overseas, or it may be a business wherein 2 or more of the non-resident individuals have 40% or more of the voting power or ownership in aggregate, or where a non-resident individual or organization has 15% or more of the voting power or ownership.



Prior Approval

The FIRB requires an approval regarding some investments. The regime is set out in the Foreign Acquisitions and Takeovers Act (FATA) 1975. As there exist a lot of categories, exceptions and thresholds, the system created is particularly complex.

But basically, aside from the exceptions, an approval is necessary for a foreign investor when it concerns a substantial interest (20 per cent plus) via the issue or transfer of securities if you wish to acquire: an Australian company carrying on an Australian business; an Australian unit trust; or a holding entity of either of them. Moreover, the threshold value is \$252 million (or \$1.094 million if the entity is an enterprise or a national of an FTA country, but some exceptions apply here once again).

Written agreement

You must to be careful about verbal agreements as they are difficult to prove. Therefore, it is common sense to write every agreement you reach to avoid any problems in the future. To do so, it is wise to approach a lawyer or any expert in this matter.

Also, you must be aware of the existing specific laws that requires a written agreement. For instance, if you intend to buy a property in Australia the agreement must be in writing.

Starting and Investing in Business in Australia

People who are looking to start a business in Australia or invest in an Australian business can do so without the need for a sponsor (see below for visa and sponsorship information). This is done through the Business Skills Programme and is subject to the individual and business meeting a certain set of criteria, and undertaking business background and asset checks. The visas can be awarded to business owners, senior managers and executives of businesses (subject to certain criteria), and successful business owners or investors wishing to invest in a Designated Investment (a government approved venture requiring an investment of at least \$1,500,000 AUD for at least four years).



Starting a Business in Australia

If you wish to start a company in Australia or establish a subsidiary organisation of your existing business, which will operate as an Australian business.

Australian business structures have four main types: sole trader; partnerships; trusts; and companies. The structure you choose will dictate what legislation you will need to follow.

Companies in Australia must be registered with the Australian Securities and Investments Commission (ASIC).

Investing in Australia

Foreign interests must notify the FIRB if they plan to invest in Australia if it intends to:

- Acquire a substantial interest in an existing Australian business with total assets valued at \$50,000,000 AUD or more.
- Buy residential real estate, accommodation facilities or vacant urban real estate.
- Acquire interest in an offshore business whose assets exceed the value of \$50,000,000, or who account for more than 50% of the target company's global assets.
- Portfolio investments in the media of 5% or more
- Establish a new business in other sectors of the economy with investment totalling \$10,000,000 or more.
- Buy commercial real estate valued at \$50,000,000 or more (properties bought for less than \$100,000,000 are not subject to investigation by the FIRB unless it has the potential to conflict with national interest).

Business Etiquette and Customs in Australia

When Australians conduct business they tend to be very matter of fact and are very direct in the way they communicate. As Australians are typically very down to earth people they get down to business quickly with minimal small talk. However, there is often an element of humor in their conversation, employing colourful language that is unlike any other country. In greetings, Australians are not very formal and prefer to use first names and may say 'G'day' or 'G'day,mate', which may sound patronizing to a foreigner.

Australians are highly mindful of not giving an impression that they are better than anyone else and tend to not draw attention to their achievements, often downplaying their success. In the community, Australians place a high value on relationships, as with such a small population, it is important to maintain friendly relations, this creates positive feelings which in turn facilitate sfuture business dealings.

In business meetings, punctuality is important and it is important to arrive a few minutes early than to keep someone waiting. When making a presentation, Australian businessmen prefer the presentation of facts and figures as opposed to making exaggerated claims or bells and whistles. It is not customary to bargain and negotiations tend to proceed quickly where Australians will expect your initial.


Operating as a Foreign Business in Australia

If you wish to operate as a foreign business, you will need to register with ASIC, and will be subject to the regulations of the FIRB and the Australian government.

A foreign company is defined as an incorporated or an unincorporated body that is formed in an external territory of Australia or outside Australia. Therefore, are excluded unincorporated bodies and corporations' sole (exempt public authorities) which have their head office or principal place of business in Australia.



***“ A registration is necessary with ASIC.
You will be subject to either regulations of
the FIRB and of the Australian government ”***

A low-angle, upward-looking photograph of several modern skyscrapers with glass facades. The buildings are arranged in a way that creates a sense of height and depth, with the sky visible in the background. The lighting is bright, suggesting a clear day.

Acquiring an Australian Company

Proposals to take over existing businesses are audited by the FIRB on behalf of the Australian government, and may require formal proposals. Both the FIRB and ASIC have extensive information relating to rules and regulations for acquiring and Australian company.

Listing on the Australian Stock Exchange

Australian and international companies may apply for listing on the Australian Securities Exchange (ASX) Australian Securities Exchange (ASX). The ASX is the primary stock exchange in Australia. It has a set of criteria that businesses must meet before being listed on the ASX, which can be found on their website.

Intellectual Property

Australian Law and IP

The Australian legal system protects intellectual property, such as logos, patents, designs and trade marks, from being copied or stolen. It also protects against third parties “passing off” designs as something else. Confidential information and trade secrets are protected by Australian common law.

Intellectual property rights should be registered with the Australian Government. This is not a requirement, but it will robustly increase your chances of success should a third party attempt to infringe upon your intellectual property.

Websites

Purchasing a website domain name can be done through numerous online outlets. The name will be leased for two years, at which point the purchaser must make a payment to continue use. The domain names have subdivisions, such as .org.au, .com.au and .edu.au.

Online information is subject to the same intellectual property laws as the rest of Australia.

The types of IP protection you can purchase are:

- Patents
- Trade marks
- Designs
- Plant Breeders’ rights
- Copyright



Tax in Australia

Tax

For foreign entities engaging in business practices in Australia, the following tax regulations may apply.

Income Tax

Income tax in Australia is levied on business income, personal income, and capital gains. It is the largest source of revenue for the Australian government.

Individuals are taxed on their income based on a sliding rate of tax. The top rate of tax is 44.9%, which is levied on incomes of over \$180,000 p.a. For businesses, income tax is calculated at a flat rate of 30%.

For a company to pay income tax in Australia it must be:

- Incorporated in Australia, or
- The central management and control are based in Australia or
- The voting power is controlled by shareholders resident in Australia

Capital Gains Tax

Capital gains tax is paid on the difference between the cost of acquiring an asset and the amount received when it is disposed of. All assets are subject to capital gains tax unless specifically excluded. Exclusions can be found on the ATO website.



Real Estate

Real estate can be purchased by non-Australian citizens, provided that they and the property adhere to a set of criteria set out by the FIRB and an application is approved where necessary. People who have been resident in Australia for 12 months are free to purchase property. Citizens and permanent residents are free to purchase property.

There are three broad categories of real estate considered by FIRB:

- Residential real estate, which includes all land and housing that can be used for residential purposes;
- Commercial real estate, which includes developed property and vacant land which is not for residential purposes; and
- Other types of real estate, which contains real estate similar to residential or commercial but with different characteristics and notification requirements.

It is important to categorize the property to be purchased, and also the residency status of the person or company purchasing the property. If you are uncertain about the status of either of these it is recommended to obtain legal advice.

Residential

New Dwelling

All foreign persons (including temporary residents or foreign non residents) must apply to buy new dwellings, vacant land to build a new dwelling, vacant land for residential development and established dwellings for the purpose of redevelopment. This application must be made to FIRB, there are no fees or charges for the application and there is a 30 day timeframe in which they should provide a response. An application must be made for the specific property, a general application cannot be made by the purchaser. However a developer may have obtained pre-approval for new dwellings.

Established Dwelling

There is a distinction between established (or second hand) dwellings and new dwellings. A temporary resident may apply to purchase an established dwelling with the following conditions: the property is vacant at settlement, the property is used as a principle place of residence, no part of the property is rented and the property is sold when it ceases to be the principle place of residence. A foreign non resident cannot purchase an established dwelling unless it is for redevelopment.

Commercial

There are **two broad categories** of commercial real estate: developed commercial real estate and vacant land for commercial development.

Vacant land for commercial development

It is not for residential purposes and will require a foreign person to apply to buy or take an interest regardless of the value of the property. This application will normally be subject to the condition that continuous construction commences within 5 years..

Developed commercial real estate

It will require a foreign person to apply to buy or take an interest where the property is valued at \$54 million or more, or \$5 million where the real estate is heritage listed.

Other

There are specific real estate purchases that are considered separately to residential or commercial, these are: developers wanting advanced off the plan approval, rural land, urban land corporations/trusts, accommodation facilities, time share resorts, integrated tourism resorts and annual programs. If you are uncertain whether your purchase fits within one of these categories or what the specific requirements will be, you can find more information directly from FIRB and it is recommended that you seek legal advice.

After approval has been granted by FIRB for a foreign investor, the normal conveyance practice will apply and will require a licensed conveyancer or solicitor.

A close-up, blue-tinted photograph of a person in a business suit holding a pen over a document. The document features various charts, including a bar chart and a line graph. A pair of glasses is resting on the document in the foreground. The background is blurred, showing the person's hands and part of their suit.

Written Agreement

To be enforceable, agreements regarding property transactions must be in writing.

Websites

- **General Australian Government:**
<http://www.australia.gov.au/>
- **Australian Government Business:**
<http://www.business.gov.au/>
- **National Innovation and Science Agenda**
<http://www.innovation.gov.au/>
- **Australian Government Fair Work Ombudsman:**
<https://www.fairwork.gov.au/>
- **Australian Securities & Investments Commission:**
<http://asic.gov.au/>
- **Australian Taxation Office:**
<https://www.ato.gov.au/>
- **Money Smart:**
<https://www.moneysmart.gov.au/>
- **Department of Immigration and Border Protection:**
<https://www.border.gov.au/>



About Mitry Lawyers

Mitry Lawyers is a boutique law firm, with branches in Sydney and Melbourne, Australia. Our clientele range across Australia and the globe. We are associated with immigration agents to whom we refer our business migration issues through.

Mitry Lawyers specialises in:

- Commercial litigation
- Corporate/Commercial
- Criminal Law
- Defamation and Media
- Entertainment Law
- Insolvency
- Intellectual Property Law
- Public and Private International Law
- Human Rights Law
- Property Conveyancing
- Wills, Succession and Estate Planning