

## Australia

<b>General</b>		
Type of entity	<b>Proprietary Limited</b>	<b>Public Limited</b>
Type of law	Common	Common
Shelf company availability	No	No
Our time to establish a new company	1 -3 Days	1-3 Days
Minimum government fees (excluding taxation)	Aust\$444 1 <sup>st</sup> year Aust\$236 p.a. thereafter	Aust\$444 1 <sup>st</sup> Year Aust\$1113 p.a. thereafter
Corporate Taxation	30%	30%
Double taxation treaty access	Yes	Yes
<b>Share Capital or Equivalent</b>		
Standard currency	Aust \$	Aust \$
Permitted currencies	Aust \$	Aust \$
Minimum paid up	Concept of minimum capital does not apply	
Usual authorised	Concept of authorised capital does not Apply	
<b>Directors or Managers</b>		
Minimum number	1	3
Local required	1	2
Publicly accessible records	Yes	Yes
Location of meetings	Anywhere	Anywhere
<b>Members</b>		
Minimum number	1	1
Publicly accessible records	Yes	Yes
Location of meetings	Anywhere	Anywhere
<b>Company Secretary</b>		
Required	No	Yes
Local required	Yes, if Appointed	Yes
<b>Accounts</b>		
Requirement to prepare	Yes	Yes
Audit requirements	No, but large or overseas owned companies require an audit	Yes
Requirement to file accounts	Yes, if audit Required	Yes
Publicly accessible accounts	No, but yes if filed	Yes
<b>Other</b>		
Requirement to file annual return	No, Annual Review	No, Annual Review
Change in domicile permitted	No	No

## GENERAL INFORMATION

### Introduction

Australia is an island continent, located in the Southern Hemisphere. It has an area of nearly 7.7 million square kilometres making it the world's sixth largest nation after Russia, Canada, China, the USA and Brazil. It has, however, a relatively small population. The Australian federation consists of six States and two Territories. Canberra is Australia's national capital. The Parliament of Australia is located in Canberra, as is most of the Australian Government public service

### Population

The population of Australia is just over twenty two million. Most of Australia's population is concentrated in coastal areas with the majority living in State and Territory capital cities.

### Political Structure

Australia has a federal system of government under which the States retain considerable power and authority. There is also an independent system of local government, which operates at municipal level. Australia is a democracy and has a written Constitution. Federal Parliament is comprised of two houses, the House of Representatives (the lower house) and the Senate (the upper house). The House of Representatives is responsible for introducing legislation, the Senate being more of a house of review.

### Infrastructure and Economy

In 2011 Australia had one of the OECD's fastest growing economies with an estimated GDP of USD 40,800. While the economy has been affected by the global economic recession Australia is out performing more advanced economies and is set to recover from the downturn earlier than expected.

A large portion of Australian trade has diverted away from Europe and North America towards Japan and other East Asian markets. Australia boasts world-class infrastructure. There are over three million domestic and international flights carrying some 47 million passengers each year. Transport plays a critical role in supporting economic growth and community needs with about 1.5 billion tonnes of freight being moved along Australia's road network every year. Maritime transport is critical to the Australian economy with 99 per cent of imports and exports, carried by sea, whilst the majority of all exports from Australia use airfreight to some degree. Tourism is now one of Australia's most important industries and accounts for 5.7 per cent of total employment.

### Language

English

### Currency

Australian dollar (AUD)

### Type of Law

Common

### Principal Corporate Legislation

Corporations Act 2001

## COMPANY INFORMATION

### Type of Company for International Trade and Investment

The following type of companies can be registered in Australia.

#### Proprietary Companies:

- Limited by Shares
- Unlimited with Share Capital

#### Public Companies:

- Limited by Shares
- Limited by Guarantee
- Unlimited with Share Capital
- No Liability Company



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**Procedure to Incorporate**

An Application to Register is lodged with the Australian Securities & Investments Commission ("ASIC").

- A proprietary and a public company limited by shares may rely upon what is known as "Replaceable Rules" rather than adopt a Constitution (formerly: Memorandum & Articles of Association).
- A proprietary company limited by shares, if it is to have a Constitution, does not need to lodge its Constitution with its Application.
- A public company relying on the "Replaceable Rules" does not have to have a Constitution but, if it has a Constitution, a copy must be lodged with the Application.
- In all other cases a copy of the company's Constitution must be lodged with the Application.

**Restrictions on Trading**

Yes, for specific activities, which include banking, providing public trustee services, insurance, financial services and personnel consultancies must acquire applicable licences.

**Powers of Company**

An Australian company possesses under the Companies Act, the same powers as those of a natural person.

**Language of Legislation and Corporate Documents**

English

**Registered Office Required**

Yes, it must be maintained in a State or Territory of Australia and be open to the public for specified minimum hours on business days.

**Principal Place of Business**

Yes, it may be the same address as a company's registered office but it must be the physical address from which the company's principal business is carried out.

**Shelf Companies Available**

No

**Time to Incorporate**

One day

**Name Restrictions**

- An Australian company cannot be registered with a name identical to an existing company name or a registered business name (sole trader or partnership) unless the company is being incorporated for the owners of the registered business name and it will acquire such registered business name upon incorporation.
- Other restrictions apply to names that would be considered to be offensive or undesirable, suggest a connection with the Crown, State and Federal governments and their departments, the government of a foreign country, aboriginal councils, and the police, the words "Bank", "Trust" or "Trustee". The ASIC maintain a data base of restricted names and their foreign language equivalents, offending names will be computer rejected.

**Language of Name**

English. Names can be in a foreign language but restrictions as described in the previous section apply.

**Names Requiring Consent or a Licence**

Yes, for specific activities, which include banking, providing public trustee services, insurance, financial services and personnel consultancies. There is an extensive list of words that can only be used with the consent of the appropriate Minister of APRA (Australian Prudential Regulation Authority).

**Suffixes to Denote Limited Liability**

Proprietary Companies

- Limited by Shares (Pty. Ltd. or Proprietary Limited or a combination of both)



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- Unlimited with Share Capital (Pty. or Proprietary i.e. no Ltd or Limited)

#### Public Companies

- Limited by Shares (Ltd or Limited)
- Unlimited with Share Capital (No suffix required)
- Limited by Guarantee (Ltd or Limited. Application can be made to dispense (Associations, clubs, with either under certain circumstances) charities etc)
- No Liability Company (N.L. or No Liability) - (Mining companies only)

#### Proprietary & Public Companies

A proprietary company is one which is limited by shares and the number of members is limited to 50 non-employee members (counting joint holders of shares as one person) and not counting a person who:

- Is employed by the company or any of its subsidiaries and is a member of the company, or
- Was an employee of the company or any of its subsidiaries when he or she became a member of the Company.

The Constitution of a proprietary company usually restricts the transferability of its shares by bestowing absolute discretion upon the Directors and a proprietary company cannot offer its shares for sale or subscription to members of the general public.

All other companies not covered by the above definition are deemed to be public companies.

#### Disclosure of Beneficial Ownership to Authorities

Companies must disclose on incorporation and whenever situations change:

- The ultimate holding company (if any) of an Australian Company, and
- Whether or not (Y/N) shares held by a registered member are beneficially held.

### COMPLIANCE

#### Authorised and Issued Share Capital

The Companies Act no longer provides for the concepts of a company having a stated Authorised Capital or a "par" value for its shares. A company can issue up to any amount of shares it wants to and within reason, at any value.

#### Classes of Shares Permitted

Shares may be issued carrying varying attributes and obligations relating to voting rights, rights to dividends and profits on winding up and as to priority of payment of dividends and whether or not they are cumulative. Shares may also be issued as partly paid with set instalments or with future instalments to be determined by the directors.

#### Taxation

Tax is levied at the rate of 30% of net assessable income less allowable deductions on a World-wide basis. Tax losses may be carried forward indefinitely.

#### Tax year

The tax year in Australia ends on 30th June. A substituted accounting period can be applied for to coincide with overseas holding companies.

#### Goods & Services Tax

The rate of GST is 10%

#### Dividends Paid by an Australian Company

If fully franked dividends (i.e. dividends derived from profits on which Australian corporate tax has been paid) are paid by an Australian subsidiary to its foreign parent, no dividend withholding tax is payable. To the extent that dividends are unfranked, dividend withholding tax of 30% (or as reduced under a relevant double tax treaty) is payable on the gross unfranked account.

### Double Taxation Agreements

Australia has entered into double tax treaties with over 40 countries.

### Financial Statements Required

Yes, Companies must prepare up to date financial records that:

- Correctly record and explain the company's transactions (including any transactions as a trustee)
- Explain the company's financial position and performance.

All companies must have financial records so that:

- True and fair financial statements of the company can be prepared if needed
- Financial statements can be conveniently and properly audited if necessary, and
- The company can obey the tax laws.

If the company is a 'small proprietary company' (as defined in the Corporations Act 2001) it will generally not have to prepare formal financial reports under the Corporations Act each year and lodge them with ASIC. However, the company must still keep financial records, and may need financial reports for tax purposes. Large proprietary companies and public companies - even non-profit public companies - must prepare financial reports, have them audited and lodge them with ASIC.

Large Pty or Small Pty which are controlled by foreign entities must provide an auditor's report to the ASIC together with their written financial statements and director's report for each financial year.

### Directors

A proprietary company have at least one Director (who must be a resident of Australia) and a public company must have at least three Directors (at least two of whom must be residents of Australia). Directors must be natural persons.

### Company Secretary

A proprietary company may or may not have a company secretary and it can have more than one. If a company secretary is appointed he or she must be a resident of Australia. If more than one is appointed at least one must be a resident of Australia. A public company must have a company secretary who is a resident of Australia.

### Annual Review

An annual return is not required to be lodged on the anniversary of the date of incorporation. The ASIC sends to the company, annual review documentation, which shows what details the ASIC has recorded as to the structure of the company. The company is required to review these details and inform the ASIC of any changes or discrepancies.

At the same time:

- The Directors are required to pass a Declaration of Solvency.
- The company is required to pay the annual review fee of Aust \$236 to the ASIC within two months. Late payment penalties apply and deregistration could be the eventual outcome

### Disclaimer

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