

## Doing Business in Australia / FAQs

Updated: 4 September 2018

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### General Comment

As a broad generalisation, the laws, regulations and processes in Australia are very similar to the UK and the “learning curve” is therefore not a major challenge – the biggest hurdle is learning the different acronyms that we use!

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### Q1. What’s a useful checklist of issues to start thinking about?

1. **Trading Structure.** Do you want to set up an Australian company (a subsidiary of your UK company) and use that company to trade in Australia? If so, go to Question 2 on the next page for more details.

NB in certain circumstances, this will be a mandatory (legal) requirement if you are in fact “carrying on business in Australia” (or intend to do so).

2. **Partnering.** Are you thinking of “partnering” with an Australian company, perhaps under a joint venture / reseller / distribution / representation / agency arrangement? This option might be an alternative to setting up a subsidiary, or in addition to doing so. The terms of the arrangement with the Australian “partner” will of course be important and the nature of the relationship often varies considerably (in terms of the specific roles and responsibilities, risk allocation, apportionment of financial returns, etc).
3. **Terms of business.** You’ll probably have terms of business and other standard contracts, but they will need to be localised – in particular to comply with Australian trade practices law. That’s not a big task by any means (you’ll be pleased to know) because commercial law here is very similar to the law in England.
4. **IP, patents, trade marks and designs.** Register your IP here, especially your trade marks / brands / logos / designs. Certainly make sure that they don’t conflict with an existing Australian registration. It is not uncommon for UK-based companies to encounter trade mark issues (and sometimes disputes) with the owner of a conflicting mark in Australia. Go to Question 4 on page 4 for more information about registering your trade marks (and remember that whatever rights/registrations you may have in the UK, they count for nothing here in Australia, or anywhere else in the world).
5. **Domain names.** It’s prudent, and usually commercially desirable, to register an appropriate Australian domain name (even if it simply points (or “resolves”) to your existing UK website). The [.com.au](#) and [.net.au](#) extensions are the most common domains. It’s very easy to check availability and it’s a good idea to register quickly before a cyber-squatter does so. Cyber-squatters are known to monitor company name and TM registrations and then pounce on the corresponding domain name in order to extract (i.e. extort) a transfer fee. Go to Question 5 on page 4 for more information.
6. **Leasing premises.** If/when you want to open a physical office or need warehousing space (and the like). Very similar issues that arise in the UK.

7. **Employees.** In due course, you'll probably need an employment contract for local staff. Although HR/employment law in Australia has some similarities with UK law, your UK employment contracts will only be of limited use when engaging an Australian employee (which includes a UK-based employee who relocates to Australia). That's because all workers in Australia are governed and protected by Australian law (even if they remain employed by your UK company). The broad terms of your UK contracts can be replicated here but Australian HR/employment law incorporates a series of mandatory "awards" that you won't be familiar with.
8. **Visas.** If anyone from the UK is going to be based in Australia then they'll almost certainly need a working visa (unless they already have an Australian passport). Working visas can take some time to be processed and, if relevant, the process should be actioned as soon as practicable because it's often the single most time-consuming part of the exercise (that said, the process is much simpler than, say, trying to obtain a "green card" in the US, thankfully!).
9. **Tax, accounts and financial advice.** It's obviously very important to make sure that you appreciate fully your tax and accounting obligations in Australia. For example, you will normally be required to file quarterly Business Activity Statements (known as a BAS), as well as annual tax returns. We can introduce you to a number of excellent, mid-size, cost-effective, local accountants who can manage your BAS, tax returns, accounts and financial affairs (who also have extensive experience in working with UK-based parent companies).
10. **Bank accounts.** Another item on the list that we simply draw to your attention because (for obvious reasons) we can't open a bank account for you. As in the UK, there are four main "high street" banks and they are heavily regulated (as are all financial institutions). They must therefore comply with proof-of-identity and anti-money laundering requirements that will require certified copies of passports (etc) to be provided by directors and shareholders. This can take some time to collate and the "red tape" can be frustrating. However, because this is a recurring issue for our clients, we have contacts within the London branches of the four major Australian banks and we can arrange introductions, but that's about all! The rest is up to you, sorry.

These are the usual items on the short/medium-term checklist. Of course, not all will be relevant for every company.

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## **Q2. What's the process and cost of setting up an Australian subsidiary company?**

In order to set up an Australian company, we'll need the following information:

### **The Directors**

1. The full names of the directors – minimum of 1 director.
2. The address of each director. NB at least 1 director must be "ordinarily resident" in Australia (with an address in Australia) even if he/she is very much a "silent" director.
3. The dates of birth and places of birth of each director.

### **The Shareholders**

4. Full names of the founding shareholder(s) - you have complete flexibility in relation to who the shareholders are (up to a maximum of 50). They can all be offshore. They can be companies or individuals, or a mixture.

5. If any shareholder(s) will be holding their shares on trust for a third party beneficiary, or under a trust deed, then we'll need the names of those trusts.
6. The number of shares to be allotted to each shareholder – we suggest a minimum of 100 x \$1.00 shares at the outset even if there's only one shareholder – this gives you flexibility later on.

#### **The Company**

7. Full name of the new company. We assume that you'd like the Australian company to be called something similar to your UK company name. However, we'll first need to do a very quick search just to check that your preferred name is available.
8. The registered office address of the company – which for present purposes could be our office address / the address of a serviced office / the address of a local director, or any other address where you know that correspondence will be held confidentially and responded to reliably.

#### **Timing and Costing**

The cost of incorporating an Australian company, including all charges, fees, costs, taxes (including our own charges) is AUD \$1,600.00 (about GBP £895.00). Once we have all the above information, it will take about 3 hours to have the company set up and registered with ASIC. (ASIC is the Australian equivalent of Companies House in Cardiff.)

#### **Company Secretarial services**

We offer a company secretarial service that includes the use of our office address (if that's useful - perhaps on an interim basis). The service includes all ASIC compliance and "red tape" management – the charge is AUD \$750.00 (about GBP £420.00) per quarter.

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#### **Q3. Private and public companies (Pty Ltd and Ltd). What do the letters mean and what's the difference?**

In Australia, we refer to private companies (i.e. companies that are not listed on the stock exchange) as "proprietary" companies and they have the letters **Pty Ltd** after their name (short for "proprietary limited").

In the UK, a private company is identified by the use of just the letters **Ltd** after its name. So, think of a **Pty Ltd** company in Australia as being the same as a **Ltd** company in the UK.

However, just to confuse things, public companies (i.e. listed companies) in Australia use the letters **Ltd** after their name – so we use **Ltd** whereas you use **PLC** or **plc** in the UK for listed/public companies. So, think of a **Ltd** company in Australia as being the same as a **PLC** in the UK.

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#### **Q4. Registering our trade marks in Australia – what's the cost and the process please?**

If you've been through the TM registration process in the UK then what follows will sound familiar because the process is almost identical.

For example, you'll already know that you have to specify the particular products and/or services that you want to protect, i.e. as in the UK, you can only register your TM for your company's specific products and/or services.

However, just in case you haven't been through this process in the UK, the cost of registering a trade mark depends on two variables:

1. how many trade marks / brands / logos you use and want to protect – obviously! Some of our clients have word-only names or brands and some have logos as well (i.e. graphic designs), and each constitutes a separate trade mark; and
2. the number of “classes” of products and/or services you want to protect. As we mentioned above, when you register a trade mark, you must nominate the specific products and/or services that you want to protect. For registration purposes, all products and services are divided into “classes” – there are 45 different classes – and (as in the UK), you pay on a “per mark and per class” basis.

**Worked Example. 1 mark in 1 class.**

For present purposes, let's assume that you want to register a single trade mark (perhaps your company name or company logo) in just 1 class of products/services. That's therefore 1 mark in 1 class and the costs/fees are payable in 3 stages as follows:

**Stage 1 – Initial Application Fee**

\$620.00 (about GBP £345.00) which is all inclusive of everything, i.e. all charges, costs, our fees and taxes. The Stage 1 application fee is payable immediately on filing.

**Stage 2 – Examination and Acceptance Fee**

\$350.00 (about GBP £195.00) which is also all inclusive of everything\*\*.

The Stage 2 fee is payable once your application has been examined by the Trade Mark Office (TMO) and is based on the assumption that the TMO does not raise any objections of any kind. Once examined and accepted by the TMO, the application then enters a 2-month opposition period during which, in theory, other companies have the right to oppose the registration of your trade mark if they have legal grounds for doing so.

\*\*If any objections are raised by the TMO, or if an opposition is filed, then we'll let you know and we'll need to discuss the additional costs of responding as necessary. We can't quote for objections/oppositions (if any) until we've had the opportunity to assess the basis and its merits. Some are just minor technicalities, whereas some may reveal a substantive issue that needs to be overcome (such as an alleged conflict with another trade mark).

**Stage 3 – Registration Fee**

\$350.00 (about GBP £195.00) which is also all inclusive of everything.

The Stage 3 registration fee is not payable for about 7½ months after lodging the application, i.e. only after the application has progressed successfully through both Stages 1 and 2. So that helps with cash flow and, importantly, the registration will be back-dated to the original date of the application – so you don't lose any benefits because of the 7½ month admin process.

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**Q5. How do we register our Australian domain name(s)?**

It's a similar process to that in the UK. First, we make sure that the name is available (of course). Assuming that the name is available, the regulator (known as “auDA”) requires that the owner of an Australian domain name must first: (a) incorporate a company in Australia (which we discussed in Question 2 above), or (b) apply to register a trade mark in Australia (which we discussed in Question 4 above). Either (a) or (b) will suffice. The reason for this is that auDA must be satisfied that the owner has a “genuine connection” with Australia.

The most common domain name extensions are [.com.au](#) and [.net.au](#). The cost of a domain name depends on whether you choose to register for 1 or more years. However, the cost is never significant and usually in the region of AUD \$45.00 per year per domain.

**Q6. Are there grants or other Government funds potentially available?**

Yes. However, they change from time-to-time, and they vary as between the Federal Government and the individual State Governments of Australia.

You'll need to do some homework on the options that are available and there are two websites that you should at least consider:

1. The private sector "GrantGuru" where you'll find a comprehensive database of corporate and government grants. The search itself is free, easy to use, and you can receive email alerts to keep you up-to-date with grants. Go to [www.grantguru.com.au](http://www.grantguru.com.au) for more information.
2. Another option is the Government's [Grants & Assistance tool](#) to search for grants that may be available for your business.

Some of the grants/funds are industry-specific or otherwise directed at particular types of assistance. For example, the Federal Government, as part of the Entrepreneurs' Infrastructure Programme, has introduced "**Accelerating Commercialisation**", an initiative designed to provide assistance for the commercialisation of intellectual property (IP). The focus is twofold:

- Financial assistance for IP-related expenditure including patenting and trade mark protection costs, searching costs, freedom to operate advice and licensing costs.
- Specific growth sectors: food and agribusiness; medical technologies and pharmaceuticals; advanced manufacturing; mining equipment technology and services; and oil, gas and energy resources.

To be eligible, applicants must have an annual turnover of less than AUD \$20 million for each of the three years prior to lodgment of the application.

The programme provides financial assistance as well as mentoring and advice, including access to an Expert Network that can assist with capital raising and access to new markets (for a maximum of two years). The financial assistance takes the form of matching grant funding of up to AUD \$1 million. The money received may be used towards a variety of expenses including legal fees relating to the protection of IP (but not the defence of IP), freedom to operate searching (or clearances), licensing costs, as well as travel, training and labour costs.

More details on Accelerating Commercialisation can be found at <http://www.business.gov.au/advice-and-support/EIP/Accelerating-Commercialisation>

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**Q7. Where can we find out about tendering for Government contracts – there must be a website?**

Yes there is. In fact, there are quite a number of them because the Federal Government and each State and Territory has its own public procurement and tendering process.

**Public sector procurement websites**

Commonwealth Government	<a href="http://www.australia.gov.au/topics/business-and-industry/government-contracts-and-tenders">http://www.australia.gov.au/topics/business-and-industry/government-contracts-and-tenders</a>
Victoria	<a href="http://www.tenders.vic.gov.au/">http://www.tenders.vic.gov.au/</a>
South Australia	<a href="http://www.tenders.sa.gov.au/">http://www.tenders.sa.gov.au/</a>
New South Wales	<a href="http://www.tenders.nsw.gov.au/">http://www.tenders.nsw.gov.au/</a>
Tasmania	<a href="http://www.tenders.tas.gov.au/">http://www.tenders.tas.gov.au/</a>
Western Australia	<a href="http://www.tenders.wa.gov.au/">http://www.tenders.wa.gov.au/</a>
Queensland	<a href="http://www.secure.publicworks.qld.gov.au/">http://www.secure.publicworks.qld.gov.au/</a> and <a href="http://www.hpw.qld.gov.au/bas/etender/">http://www.hpw.qld.gov.au/bas/etender/</a> (for building and construction – Dept of Housing and Public Works)
Australian Capital Territory (ACT)	<a href="http://www.procurement.act.gov.au/">http://www.procurement.act.gov.au/</a>
Northern Territory	<a href="http://www.nt.gov.au/tenders">http://www.nt.gov.au/tenders</a>

**Non-government tender websites (subscription based):**

- <http://www.australiantenders.com/>  
<http://www.estimateone.com/>  
<http://www.tenderlink.com/>

**Q8. What do some of the common Aussie acronyms mean and refer to?**

Acronym	Meaning / Reference	UK Equivalent
ABN	Australian Business Number Issued by the ATO on application by the company. All trading companies must have an ABN if their turnover exceeds \$75,000.00.	None
ACCC	Australian Competition and Consumer Commission	Competition and Markets Authority (CMA)
ACMA	Australian Communications and Media Authority	Ofcom
ACN	Australian Company Number Issued by ASIC automatically (and immediately) on registration. All companies must have an ACN.	Company registration number (issued by Companies House)
APRA	Australian Prudential Regulation Authority	Financial Conduct Authority (FCA)
ARBN	Australian Registered Body Number Issued to “foreign” companies trading in Australia by ASIC on application.	None
ASIC	Australian Securities and Investment Commission	Companies House
ASX	Australian Securities Exchange	London Stock Exchange (LSE)
ATO	Australian Tax Office	HMRC
auDA	.au Domain Administration	Nominet UK

BAS	Business Activity Statement	VAT statement
FIRB	Foreign Investment Review Board	DIT
FSANZ	Food Standards Australia New Zealand	Food Standards Agency (FSA)
GST	Goods & Services Tax	VAT
IP Australia	Intellectual Property Australia (which includes the TMO and Patent Office)	Intellectual Property Office (IPO)
Ltd	Limited - a public (listed) company	PLC or plc
Pty Ltd	Proprietary Limited - a private company	Ltd
RBA	Reserve Bank of Australia	Bank of England
TFN	Tax File Number - issued by the ATO to all companies and individuals.	None
TGA	Therapeutic Goods Administration	Food Standards Agency (FSA)
TMO	Trade Mark Office	Intellectual Property Office (IPO)

**Q9. How do we contact you?**

Julian Gyngell  
Principal, Kepdowrie Chambers  
MBL, LLB, Grad Dip IPL

T	+61 (0)2 9988 0067	<u>Address for Correspondence</u>
M	+61 (0)403 009 060 (AUS)	Kepdowrie Chambers
M	+44 (0)7414 006 584 (UK)	PO Box 881
E	<a href="mailto:julian@kepdowrie.com">julian@kepdowrie.com</a>	Wahroonga
W	<a href="http://www.kepdowrie.com">www.kepdowrie.com</a>	N.S.W. 2076
S	kepdowrie	Australia

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