

Australia

Legal Provisions

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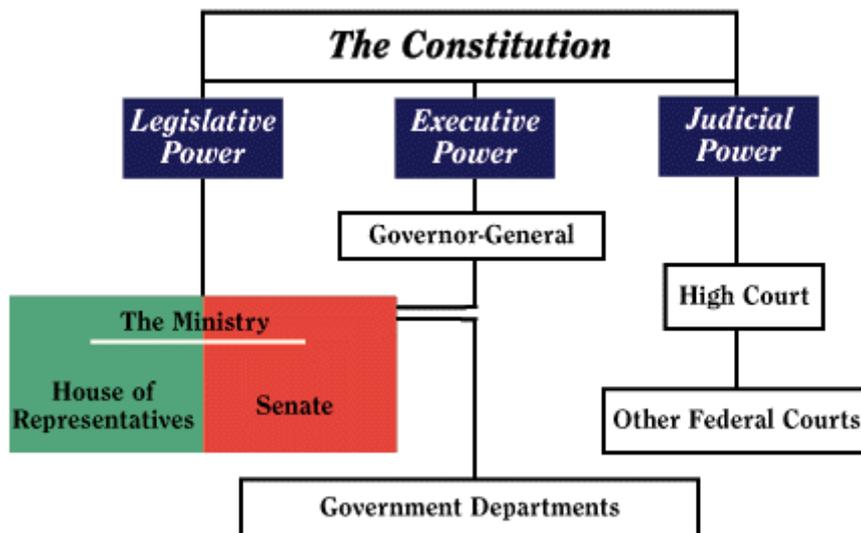
Consulate General of Switzerland

Sydney, August 2015

GENERAL REMARKS

The [Australian Constitution of 1901](#) established a federal system of government. Under this system, powers are distributed between a national government (the Commonwealth) and the six States (three Territories - the Australian Capital Territory, the Northern Territory, and Norfolk Island have self-government arrangements). The Constitution defines the boundaries of law-making powers between the Commonwealth and the States/Territories.¹

For more information regarding the Australian Government click [here](#).



¹ http://www.aph.gov.au/About_Parliament/Work_of_the_Parliament/Forming_and_Governing_a_Nation/parl
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The power to make laws in Australia is divided between the executive, the parliament and the judiciary. This is known as the separation of powers doctrine and is an essential feature of the Australian system of government.

Under Australia's Constitution, the judiciary is independent from the other arms of government. The separation of powers doctrine means that in interpreting and applying the law, judicial officers act independently and without interference from the parliament or the executive. The constitutional guarantees of tenure and remuneration assist in securing judicial independence.²

Chapter III of the Constitution establishes the High Court of Australia and empowers parliament to create other federal courts and to vest federal judicial power in state and territory courts.

The High Court is the highest court and the final court of appeal in Australia. It hears matters involving a dispute about the meaning of the Constitution, as well as final appeals in civil and criminal matters from all courts in Australia.

There are four principal federal courts, each of which has their own website for further information:

High Court: www.hcourt.gov.au

Federal Court: www.fedcourt.gov.au

Family Court www.familycourt.gov.au

Federal Circuit Court: www.federalcircuitcourt.gov.au

Each state and territory has their own laws and court system. State and territory courts fall within the responsibilities of the relevant state or territory Attorney-General or Minister for Justice.

TRADE AGREEMENTS

Australia was a founding member of the [Australia and Asian Pacific Economic Cooperation](#) (APEC), established in 1989. APEC has 21 member economies: Australia, Brunei Darussalam, Canada, Chile, People's Republic of China, Hong Kong (China), Indonesia, Japan, Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, The Republic of the Philippines, The Russian Federation, Singapore, Chinese Taipei, Thailand, United States of America and Vietnam. Its primary purpose is to facilitate economic growth and prosperity in the region, with the vision of creating a seamless regional economy. APEC pursues these objectives through trade and investment liberalisation, business facilitation, and economic and technical cooperation.³

² <http://www.ag.gov.au/LegalSystem/Courts/Pages/default.aspx>

³ <http://dfat.gov.au/international-relations/regional-architecture/apec/pages/asia-pacific-economic-cooperation-apec.aspx>

Australia's FTA's (Free Trade Agreement):⁴

- ASEAN-Australia-New Zealand Free Trade Agreement (since 2010) - AANZFTA
- Chile-Australia Free Trade Agreement (since 2009) - ACIFTA
- Japan-Australia Economic Partnership Agreement (since 2015) - JAEPA
- Korea-Australia Free Trade Agreement (since 2014) – KAFTA
- Malaysia-Australia Free Trade Agreement (since 2013) – MAFTA
- The Australia – New Zealand Closer Economic Relations Trade Agreement (since 1983) - known as ANZCERTA or the CER Agreement
- Singapore-Australia Free Trade Agreement (since 2003) - SAFTA
- Thailand-Australia FTA (since 2005 with some exceptions/tariffs until 2025) - TAFTA
- Australia-United States Free Trade Agreement (since 2005) – AUSFTA

FTA's under negotiations:

- China-Australia (signed 17.6.15*) – ChAFTA *Both sides will now commence domestic processes to bring the FTA into force as soon as possible
- Environmental Goods Agreement (Australia joined the negotiations in 2014) - EGA
- Australia-Gulf Cooperation Council FTA (negotiations commenced in 2007) - GCC
- India-Australia Free Trade Agreement (negotiations commenced in 2011) – CECA
- Indonesia-Australia Comprehensive Economic Partnership Agreement (negotiations commenced in September 2012) - IA-CEPA
- Pacific Agreement on Closer Economic Relations Plus (negotiations started in 2009) – PACER
- Regional Comprehensive Economic Partnership (negotiations commenced in 2012) – RCEP
- Trade in Services Agreement (negotiations commenced in 2013) – TiSA
- Trans-Pacific Partnership Agreement (Australia joined negotiations in 2008) – TPP

Australia is also a member of the UN (founding member), the Commonwealth of Nations (since inception), IMF (since 1947), WTO (since 1995 and a member of GATT since 1967), OECD (since 1971), ASEAN (dialogue partner since 1974, strategic partnership since 2014), the G20 (since 1999).

⁴ <http://dfat.gov.au/trade/agreements/Pages/trade-agreements.aspx>

CUSTOMS

Customs determines the value of the goods imported into Australia based on the World Trade Organization (WTO) Valuation Agreement. This valuation system is used by most trading nations.

On 1 July 2015 the new Department of Immigration and Border Protection was established. This brings together functions of the existing Department and the disestablished Australian Customs and Border Protection Service into [one department](#). The new Department delivers immigration, citizenship, trade, customs, border protection and maritime security functions. The [Australian Border Force](#) is the operational and enforcement arm of the new Department. The Australian Border Force is highly visible at airports, seaports and undertaking maritime and compliance activities.

Due to its unique biodiversity, Australia has very strict laws in relation to the items you can bring into the country. For a complete list of items which are prohibited or restricted please consult the Department of Immigration and Border Protection website [here](#) or the Department of Agriculture regarding biosecurity [here](#). Non-compliance will attract criminal or administrative sanctions.

IMPORT AND EXPORT REGULATIONS

Customs regulations

Most imported goods are subject to Australian Customs duties and 10% Goods and Services Tax ([GST](#)). GST on a taxable importation is payable by businesses, organisations and private individuals, whether they are registered for GST or not. However, if you are a GST-registered business or organisation and you import goods as part of your activities, you may be able to claim a GST credit for any GST you pay on those goods.⁵ There are many different regulations and sometimes complex duty rates applicable to imported cargo.

Goods you import into Australia require classification under the [Customs Tariff Act 1995](#).

- Importers need to self-assess the correct tariff classification of goods they import. Penalties may apply for incorrect or misleading information.
- The Department of Immigration and Border Protection has a range of information and resources that will assist you to classify goods.
- The tariff advice service provides advice free of charge on goods you intend to import.
- Individuals who are importing goods on a one-off basis can get help from the Department.

⁵ <https://www.ato.gov.au/Business/GST/In-detail/Rules-for-specific-transactions/International-transactions/GST-and-imported-goods/#HowGSTappliesimportedgoods>

More information about the Working Tariff or the tariff changes resulting from the World Customs Organization review of the International Convention on the Harmonized Commodity Description and Coding System, commonly referred to as the Harmonized System, can be found [here](#).

The Department of Immigration and Border Protection manages a range of programs to support local industry. One in particular, the **Tariff Concession System (TCS)**, might affect you if you plan to import in to Australia or you are a manufacturer. The TCS is designed to help industry become more internationally competitive. The system reduces costs to the general community by allowing duty-free entry for certain goods where there is no local industry that produces those goods. Certain classes of goods including foodstuffs, clothing and passenger motor vehicles are ineligible ('excluded goods').

A Tariff Concession Order (TCO) will be granted on imported goods if substitutable goods are not produced in Australia. Substitutable goods are Australian-made goods which have a use corresponding to a use of the imported goods. In determining whether substitutable goods are available, the assessment does not consider whether the Australian goods compete with the imported goods in any market. A local manufacturer may object to the making of a TCO and can request an existing TCO be revoked.⁶

More information about the TCS is available [here](#) or also look at the [Tariff Concession System Validations Act 1999](#).

It's important to note that a Free Trade Agreement (FTA) between two (or more) countries does not mean unconditional duty free importations between the parties. It follows the eligibility criteria for some FTAs. Additionally, for supply chains that rely on alternating or multiple sources of supply, TCOs may be preferred over FTAs for consistent duty mitigation of a particular product, irrespective of its origin.

Quarantine regulations

As an island country with an important agricultural base, Australian quarantine regulations are very strict. It is recommended that you check the latest regulations before attempting to bring goods into Australia. The Department of Agriculture has an [Import Conditions Database](#) (ICON) which currently provides the requirements for more than 20 000 foreign plant, animal, mineral and human commodities. For alerts click [here](#).

Generally rules of origin are the rules applied to determine from which country a good originates for international trade purposes. Rules of origin are necessary for both preferential reasons such as determining eligibility for benefits such as reduced rates of duty as well as for non-preferential reasons such as the imposition of anti-dumping and countervailing duties (anti-subsidy duties), determining the country of origin and marking purposes.

⁶ <http://www.border.gov.au/Factsheets/Documents/TariffConcessionSystemWEBNov2011.pdf#search=TCO>

Customs procedures for importing and exporting

First-time or infrequent importers are strongly encouraged to use the services of **an International Forwarding Agent and Licensed Customs Broker** to clear their goods through customs. See S-GE website Basic Addresses for details or contact the [Consulate General of Switzerland in Sydney](#) to put you in touch with a specialised service in Australia.

CURRENCY REGULATIONS

You can choose to carry currency out of Australia, or into Australia, but you must declare it if it is \$10,000 or more in Australian dollars, or a foreign currency equivalent.⁷ Failure to report movements of physical currency is an offence under sections 53 and 55 of the AML/CTF Act. Penalties upon conviction include imprisonment and/or a fine imposed by the court.

More information can also be found on the Australian Payments Clearing Association website [here](#).

REGISTRATION PROCEDURE FOR PRODUCTS

The registration of products depends entirely on the kinds of products you are planning on importing in to Australia i.e. the industry you are in. For example importation of medicine: This is overseen by the Department of Health, [Therapeutic Goods Administration \(TGA\)](#). Another example are agvet chemicals for farming, food production or the chemical industry where registration means that the product can be supplied or sold, and used safely according to the label directions. See the [Australian Pesticides and Veterinary Medicines Authority](#) for further information. Other authorities can be researched on request.

STANDARDS, TECHNICAL RULES, LABELLING REGULATIONS

When importing, you may need to label your imported goods in a certain way. This is in addition to the general labelling regulations set out by the *Competition and Consumer Act 2010* (CCA). There are two specific requirements for imported goods that need to be considered:

1. *The Commerce (Trade Descriptions) Act 1905* and the *Commerce (Imports) Regulations 1940 (CI Regulations)* which states that some goods can't be imported unless they are correctly labelled with the required trade description. To find out whether the goods you're importing need a trade description and the guidelines around them, see the Department of Immigration and Border Protection's information on [labelling requirements and commerce markings](#).

⁷ http://www.austrac.gov.au/travellers/travelling-or-out-australia/reporting-physical-currency#how_much

2. **The country of origin labelling (CCA)** prohibits you from making false or misleading claims about the place of origin of goods. After extensive consultation with industry and consumers, the Australian Government announced a proposed new [country of origin food labelling](#) (CoOL) system on Tuesday 21 July 2015. While Australia already had mandatory CoOL for food, consumers found current origin labels confusing or unhelpful. The Australian Government is now proposing a new system to deliver clearer and more consistent country of origin food labels without imposing excessive cost on industry.⁸ The [Australian Competition and Consumer Commission](#) (ACCC) webpage tells you how to use country of origin labelling and the regulations governing the 'Australian Made' logo.

[IP Australia](#) is the Australian Government agency that administers intellectual property (IP) rights and legislation relating to patents, trademarks, designs and plant breeder's rights. They are a listed entity within the [Department of Industry and Science](#).

Some further information in this area can be found at www.measurement.gov.au and also on the website www.standards.org.au.

TAXES

Australia has a Goods and Services Tax (GST), which is a broad-based tax of 10% on most goods, services and other items sold or consumed in Australia. If you run a business or other enterprise in Australia and have a GST turnover of \$75,000 or more (\$150,000 or more for non-profit organisations) your business will need to register for GST.

For more information regarding tax rates for individuals and companies the [Australian Taxation Office](#) (ATO) is the relevant government department.

COMMERCIAL LAW

The [Australian Consumer Law](#), ACL, is a single, national law covering consumer protection and fair trading. The ACL applies nationally and in all States and Territories, and to all Australian businesses. For transactions that occurred prior to 1 January 2011, the previous national, State and Territory consumer laws continue to apply. For the first time, Australian consumers have the same protections and expectations about business conduct wherever they are in Australia. Similarly, businesses have the same obligations and responsibilities wherever they operate in Australia.

⁸ <http://www.industry.gov.au/industry/IndustrySectors/FoodManufacturingIndustry/Pages/Proposed-reforms-to-country-of-origin-food-labels-overview.aspx>

SETTING UP COMPANIES

Companies need to comply with the [Corporations Act 2001 \(Corporations Act\)](#) . All companies must be registered. The registering of a business is regulated by the [Australian Securities and Investment Commission](#) (ASIC).

For a comprehensive list of solicitors and legal services which can assist with setting up a company for you please consult the website of the Consulate General of Switzerland [here](#).

JOINT VENTURE OPPORTUNITIES

The Australian Competition and Consumer Commission (ACCC) must approve joint ventures, mergers and takeovers. More information can be found on their website (www.accc.gov.au).

Anti-competitive mergers are regulated under the *Competition and Consumer Act 2010 (Cth)* (CCA). The CCA regulates anti-competitive practices as well as a range of fair-trading laws. The Australian Competition and Consumer Commission (ACCC) has jurisdiction over merger control and enforcement. The ACCC has issued *Merger Review Guidelines (Merger Guidelines)*, which explain the ACCC's approach to assessing mergers, including outlining voluntary merger notification thresholds and setting out processes and timeframes.

PROMOTION OF INVESTMENT

Foreign investment in Australia is governed by a complex combination of law and policy. Inbound investments by foreign persons in Australian businesses and assets over stipulated thresholds will be reviewed on a case-by-case basis to determine whether the transaction is contrary to the national interest. Foreign investment in most land assets and by foreign government investors will be subject to notification and review, irrespective of the value of the investment.

The key sources of regulation for inbound foreign investment in Australia are the [Foreign Acquisitions and Takeovers Act 1975](#) (Cth) and [Australia's Foreign Investment Policy](#). The regime under these instruments requires that notification be given to the Australian Treasurer of certain foreign investment transactions. The Treasurer then must determine whether or not the transaction would be contrary to the national interest. In practical terms, investors (or their advisors) correspond with the Foreign Investment Review Board (FIRB) and FIRB will make recommendations to the Treasurer on submitted proposals. Separate, industry specific legislation may impose other limitation on inbound foreign investment in particular instances.

The [Australian Department of Industry and Science](#) has a strategic plan in place, an Industry Innovation and Competitiveness Agenda, for 2015-2019 with a vision for an agile economy. The Australian Department of Industry and Science wants to capitalise on Australia's commercial and scientific strengths. Central to this is the vision for strong and self-reliant and innovative business, global competitive industries and jobs for the future. With this Australia is trying to promote growth of internationally competitive industries by facilitating nationwide action on deregulation, skills and collaboration. The plan aims also to facilitate a competitive marketplace and reduce business costs.⁹

The aim is to:

- work with industry to support businesses to build the capability necessary to achieve profitable and sustainable futures
- encourage innovation and investment in growth sectors to underpin industry transformation and drive new and innovative opportunities for growth
- work collaboratively across government to open up international export markets
- work nationally and internationally to attract private sector investment
- improve the efficiency and business experience of the programme delivery.

Some of the challenges include:

- adjusting to decreasing world prices for Australian major export commodities
- ensuring Australia works with other agencies and the private sector to facilitate an environment which supports economic growth and jobs.¹⁰

ENTRY CONDITIONS, WORK PERMITS, RESIDENCE PERMITS, LABOUR LAW

Information regarding entry into Australia and work permit information can be found on the website of the [Department of Immigration and Border Protection](#). To enter Australia as a tourist, business traveller or otherwise, a valid visa & valid passport is required (six months beyond the period of your intended return date). To migrate or set up a business in Australia, a valid visa is required. Special visas are available for innovation and investment in Australia. Check the visa finder on the department's website. For more information on this please also consult the [S-GE Business Guide](#) for Australia.

The [Fair Work Act 2009](#) and the [Fair Work Regulations 2009](#) is the main legislation that governs the employee / employer relationship in Australia. There have been amendments to the Act since it was first published. The Act provides a safety net of minimum entitlements enables flexible working arrangements and fairness at work and prevents discrimination against employees. The [Fair Work Ombudsman](#) administers a number of laws and regulations that govern Australia's workplaces.

⁹ <http://www.industry.gov.au/AboutUs/CorporatePublications/Pages/StrategicPlan.aspx>

¹⁰ <http://www.industry.gov.au/industry/Documents/Industry-Innovation-and-Competitiveness-Agenda.pdf>

For Further Information please also consult the [Fair Work Commission](#) – Australia’s national workplace relations tribunal.

PROCEDURES FOR COLLECTING PAYMENT

There are collection companies that specialise in the Australian market. The Australian legal system can be complex and costly; therefore collection agencies are a way of receiving help through legal channels to recover debts.

SOURCES OF INFORMATION AND LINKS

All links and sources as quoted in the document. Here a summary of the major ones only:

- Department of Immigration and Border Protection – www.border.gov.au
- Department of Foreign Affairs and Trade – www.dfat.gov.au
- Australian Consumer and Competition Commission – www.asic.gov.au
- Australian Taxation Office – www.ato.gov.au
- Australian Department of Industry and Science - www.industry.gov.au
- Australian Trade Commission (Austrade) – www.austrade.gov.au
- National Measurement Institute – www.measurement.gov.au
- Standards Australia – www.standards.org.au

DISCLAIMER

While every care has been taken to make sure this legal provisions document is up-to-date and contains the latest links to various areas of law, acts and regulations, please note it is intended as a guide only and for all detailed and binding legal information, a specialist in the area should be consulted. For a list of specialists click [here](#).

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