Bartier Perry
LAWYERS

DOING BUSINESS IN AUSTRALIA

2018 Guide

Why do business in Australia

The Australian economy is characterised by stability, competition and flexibility, making us an ideal location for foreign investment. Its proximity to Asia attracts multinational companies and sees many businesses setting up their regional headquarters here.

The Australian legal system is a mixture of common law and statute, similar to legal systems in the UK, other Commonwealth countries and some European countries.

This brochure provides an overview of what you need to know about doing business in Australia from corporate, commercial, property, taxation and employment perspectives. It is designed to support you in making the most of the opportunity of investing in Australia.

Starting up in Australia

Structuring your business

The main ways foreigners do business in Australia are to:

- Trade directly (with the public) through a registered branch office.
- Have a legal entity or presence in Australia, either by establishing or acquiring a subsidiary company or trust structure.
- Collaborate with a local Australian business via a joint venture or partnership.

Here are the main points of each structure:

Registered Branch Office	
In summary	A foreign company can carry on business through a registered branch office.
Decision making	The head office is responsible for decision-making.
Stakeholder liability	The branch office is not separate from its foreign company, meaning they are responsible for any debt or liability owed by the branch.
Requirements	The branch must have a registered office in Australia and appoint a local agent.
Other	The branch office cannot sign contracts as it is not a separate legal entity. Only the foreign company can sign contracts.

Subsidiary Company	
In summary	A foreign entity wishing to trade in Australia can establish an Australian subsidiary. A company is a separate legal entity from its shareholders. A company can, in its own right, own assets, owe liabilities and be sued.
Decision making	Although shareholders can make decisions regarding the company, directors have primary management responsibility.
Stakeholder liability	The liability of shareholders in respect of the company is generally limited to the unpaid amount on the shares issued to the shareholder.
Requirements	Typically, there must be at least one director, who resides in Australia.
Other	A subsidiary cannot contractually bind the head office as it is a separate legal entity.

Trust Structure	
In summary	A trust is a relationship where a trustee (an individual or a company) carries on business for the benefit of the beneficiaries (individuals or companies).
Decision making	The trustee manages the trust assets and business for the benefit of the beneficiaries. The nature and extent of the trustee's powers are set out by the trust deed.
Stakeholder liability	Beneficiaries of a trust are generally not liable for the trust debts.
Requirements	There must be a trust deed which sets out the trust's purpose and the rights and obligations of the trustee and beneficiaries.
Other	The trustee is normally indemnified out of trust assets for liabilities incurred on behalf of the trust. Beneficiaries are not normally entitled to trust assets until they are distributed by the trustee.

Joint Venture	
In summary	Two or more parties carrying on business jointly while remaining separate parties.
Decision making	Decision making will depend on the nature of the joint venture agreement.
Stakeholder liability	The extent of liability will usually be set out in a joint venture agreement. Generally, the agreement will provide for liability to be several and separate, rather than joint.
Requirements	There must be an agreement between the joint venture participants. The agreement will typically cover decision making, responsibilities, the liabilities of the parties, the distribution of profits or product of the joint venture and the terms of exit.
Other	Assets are normally owned by participants individually, and obligations are usually assumed severally.

Partnership	
In summary	A partnership is a relationship between persons carrying on a business together with a view to profit.
Decision making	Each partner may make contracts, undertake obligations and dispose of partnership property in the ordinary course of the business. If there is a partnership agreement, the rights and obligations of the partners may be limited by the terms of the agreement.
Stakeholder liability	Normally, a partner is liable for the debts and liabilities incurred by other partners in the course of the partnership. The liability of each partner is unlimited, and is both joint and several. The partnership agreement may provide for liability to be limited to some extent. A limited partnership consists of at least one partner with limited liability, and at least one with unlimited liability.
Requirements	The partnership must be established by a valid agreement. Partnerships are usually limited to 20 partners.
Other	The branch office cannot sign contracts as it is not a separate legal entity. Only the foreign company can sign contracts.

There are variations and subcategories, with each quite unique in terms of characteristics and practical involvement, as well as how they are regulated. Most businesses would consult experts to advise when looking at what type of structure would be most suitable.

Regulations

Key regulatory issues to consider when entering the Australian market include:

1. Foreign Investment Review Board (FIRB) approval

Approval from FIRB may be required before a foreign investor contracts to buy an asset in Australia. Foreign investors, include entities where a foreigner has a 20% or more interest, or a group of foreigners collectively have a 40% or more interest. Whether notification or approval will be required will depend on:

(a) Who the type of foreign investor is
(b) What is the asset being acquired
(c) The value of the asset being acquired
(d) Whether the acquisition involves a sensitive sector such as media or security technology.

If a foreign investor wants to invest in Australia, but has not identified the type of asset or business, it may be possible to obtain FIRB pre-approval.
Whilst the Australian Government FIRB website does provide some good guidelines, it is more than likely that lawyers will be required to assist businesses and property buyers with FIRB approvals as they are often complex.

2. Anti-money laundering and counter-terrorism financing (AML/CTF) and Know Your Customer (KYC) processes

Australian banks administer Know Your Customer controls stringently. In opening accounts, banks will confirm a client's identity by various means, including collecting and verifying information about its beneficial owners.

They will also perform ongoing customer due diligence and report certain types of transaction and suspicious activity to the Australian Transaction Reports and Analysis Centre (AUSTRAC).

3. Work visas

All foreign workers must have a valid working visa. Australian businesses meeting certain criteria may sponsor workers to fill their staffing needs.

Issues specific to a particular industry, such as licensing and approvals, may also need to be considered. Examples include Therapeutic Goods Administration (TGA) licensing to manufacture therapeutic goods, Australian Securities and Investments Commission (ASIC) licensing to provide financial services and conduct lending businesses, and Australian Prudential Regulation Authority (APRA) authority to be a bank.

4. Running a business in Australia

Ongoing operational matters to be considered include:

Funding

Most businesses require start-up capital, and may also need capital until they become self-sufficient. Depending on long term plans, injections may be made via equity (eg share placements and capital injections), debt (eg loans), or instruments with characteristics of both (eg convertible notes).

If debt funding is appropriate, consider whether it should be secured to protect against other creditors. This security may be subject to the Personal Property Securities (PPS) regime and require registration on the PPS Register to ensure you retain priority over other creditors.

Depending on how mature the business is, alternative sources of capital raising, such as crowd sourced funding or initial public offerings, may also be appropriate.

Intellectual Property (IP)

IP, including trade marks, patents, copyright, designs, domain names and trade secrets, is essential to many businesses and needs to be managed and protected. Ensure your IP is registered and maintained on the relevant registers, and take any enforcement action needed to ensure your rights do not lapse.

Competition Law and Unfair Business Practices

Anticompetitive behaviours are prohibited in Australia. They include cartel conduct, exclusive dealing, abuse of market power and other arrangements with the purpose or effect of substantially lessening competition. Approval to undertake certain activities however can be sought from the Australian Competition and Consumer Commission.

Australia also offers protection for small businesses against unfair business practices. In particular, activities such as misleading conduct and unconscionable conduct against businesses are normally prohibited. Any terms judged unfair in a standard form contract with a small business may be voided.

Consumer Law

Australian consumers have various rights and remedies when buying domestic goods and services. Protection includes implied warranties (such as that goods are of merchantable quality and are reasonably fit for the purpose intended), and the meeting of certain industry standards.


Bartier
Perry
LAWYERS

Commercial Disputes

Commercial and contractual disputes are a fact of life in business and can often be time consuming and complex.

Australian legal disputes are governed by a mix of statute and Common Law principles, and different courts and tribunals to handle cases, depending on whether the matter is Federal (or Commonwealth) related, and State or Territory related. Non-court matters may be resolved by various panels, ombudsmen and other bodies.

To minimise time and costs on legal issues, choose lawyers with a specialised understanding of the avenues available for resolving commercial disputes. That way, you can focus your time and energy where they should be – on the business.

In our experience, rushing to court is not always a good idea. If we are involved early, we can identify and deploy strategies, such as mediation and arbitration, to bring about early resolution.

If you find yourself facing a dispute, try first to negotiate a workable solution that minimises disruption, maintains relationships and lets you get on with business.

How to minimise commercial and contractual disputes

Commercial and contractual disputes can arise in all aspects of commercial activities including manufacturing, distribution, licensing, finance, property acquisition and leasing. Five steps you can take to minimise disputes are:

1. Manage contracts so that the other party keeps their end of the bargain.
2. Be aware of false, misleading or deceptive conduct and misrepresentation, both alone and in conjunction with a contract claim.
3. Terminate contracts when you need to or enforce a breach of contract if it is in your commercial interests to do so.
4. Enforce your property rights, such as establishing rights of access and easement, avoid or enforce mortgages or guarantees, maintain or remove caveats, and manage conflicts in commercial and retail leases.
5. Protect your confidential information, including client lists and company or trade secrets, and enforce restraints and non-competition clauses.

Shareholder, partnership and joint venture issues

Issues that can arise between co-shareholders/directors, partners and joint venture participants include:

- **Between shareholders:** if a stakeholder believes the company's direction and finances have been managed oppressively, they can apply to the courts for an oppression claim seeking that shares be purchased or the company wound up. Such claims often involve potential breaches of directors' duties that in some circumstances may impose a personal liability on a director.
- **Between partners:** on the basis that trust and confidence have been lost, and the partnership should be dissolved or one or more partners removed. Such claims are governed by State based Partnership Acts, and can result in orders for account of profits, or buying out of interests.
- **Between joint venture partners:** where the venture is not being managed or progressed in line with the agreement between the parties, causing loss to a party or failure of the venture itself.

Family-related business disputes

Many Australian businesses are run by families, or supported by family funding or other assistance. They often leverage personal assets and may be family members' primary source of funding for personal expenses and asset creation.

Disputes in this context are often highly emotional and difficult to navigate. Thanks to rising property and business values, significant assets may be at stake.

Our commercial disputes team has a discrete focus on this area, and is experienced at sensitively unravelling complex personal and business structures. This work requires deep knowledge of company and trust law, and options for dealing with family disputes effectively while also providing advice to protect assets and minimise risk.

Securities enforcement and finance issues

Businesses must have appropriate financial arrangements in place with banks and third party lenders. But satisfying lenders' covenants can be challenging, particularly in the early stages of new ventures or in changing market conditions.

Our lawyers are adept at navigating finance and security related issues, and can move quickly and effectively when disputes arise. Our experience extends to:

- Advising on and assisting restructuring, finance and security arrangements.
- Enforcing loan agreements, mortgages, guarantees and other finance-related obligations, and defending such claims.
- Recovering debts and managing personal and corporate insolvencies.

We are also experienced with disputes in which a business may hold an Australian Financial Services Licence, and may be subject to operating conditions as a result. We routinely represent clients when the Australian Securities and Investment Commission (the regulatory body for this type of licence) is gathering information about a business' activities, seeking to impose conditions on licences, or intending to suspend or ban licence holders and their directors in respect of financial services activities.

Intellectual Property (IP) disputes

It is important to develop IP protection strategies to protect your business if disputes arise. Our IP experience extends to:

- **Trade marks:** claims that a registered trade mark is being breached, possibly involving parallel importation or breaches of an exclusive licence arrangement, requiring factual investigations, cease and desist letters, and court action to enforce or defend, sometimes in very short time frames. Where a trade mark is unregistered, claims for passing off and misleading or deceptive conduct may also be available.
- **Patents:** claims that a registered patent is being breached, requiring factual investigations, cease and desist letters, and court action to enforce or defend, sometimes in very short time frames.
- **Copyright:** claims that copyright, and possibly also moral rights and authorship (all of which are unregistered rights in Australia) are being breached, requiring factual investigations, cease and desist letters, and court action to enforce or defend, sometimes in very short time frames.
- **Breach of confidence and trade secrets:** claims against a supplier, employee or other person to prevent misuse of inside knowledge of your business, whether protected by an agreement or simply by confidentiality conveyed at the time the information was supplied.

Consumer disputes

Competition and consumer law regulates and limits how businesses of all sizes can behave when selling products or services, whether in-store or online. It applies to every stage of a transaction – from drafting terms and conditions through to advertising of a product or service.

The Australian Competition and Consumer Commission (ACCC), which is the Federal regulatory body for these laws, investigates suspected anti-competitive practices including cartel behaviour. It is supplemented by State-based fair trading laws. The many laws that apply to engaging with consumers can give rise to disputes in such areas as:

- Product liability and safety, including product recalls
- Breach of consumer guarantees
- Misleading or deceptive conduct
- Restraint of trade
- Franchise arrangements.

Personal Property Securities Act

The Personal Property Securities Act 2009 (PPSA) has rewritten how businesses need to record their interest in personal property – other than land, fixtures and a handful of statutory rights – in many common transactions.

That leaves financial assets, goods and equipment, intellectual property and other property, which must be registered on the Personal Properties Security Register (PPSR). If they're not, a business may lose them in an insolvency to a liquidator, administrator or bank receiver.

Our commercial disputes team are experts in PPSA law, and routinely help businesses manage their PPSR registrations and exercise their rights in this area.

Debt recovery and insolvency

Insolvency and being owed money are facts of commercial life. How we deal with them can have a profound effect on both our business success and individual wealth.

Our commercial disputes team has developed a debt recovery process that leads the market in effectiveness and cost competitiveness. We pursue debts of all sizes, guiding clients through the recovery process, including enforcement of any judgments obtained.

A company facing financial distress in Australia has many processes and options available, as shown here.

Debt recovery	For multiple debt portfolios. There are both formal and informal processes, including a Letter of Demand; or enforcement of judgment in the Local Court, District Court, Supreme Court and Federal Court.
Voluntary administration	Restructuring a business' finances through an administrator. There is no court involvement in this process; the administrator will take control of the company's business, property and affairs. The objective is to investigate and maximise the chances of the company continuing to trade.
Liquidation	Involves the assets and property of the business being dissolved. The business may be wound up voluntarily or by a court order.
Receivership	A creditor or the court will put a business into receivership to take control of some or all of its assets.

Many duties are imposed on company directors in Australia by the Corporations Act and at Common Law. One of the most important is to prevent the company from trading while insolvent. If found to have done this, a director can be personally liable for relevant debts incurred.

Newly introduced 'safe harbour' provisions provide a mechanism to avoid this potential liability, provided a particular process is applied.

Our commercial disputes lawyers are experts in this area and can provide pragmatic and effective advice and guidance.

Building and Construction law

The Australian building and construction industry is subject to more laws and regulations than any other industry. As well as planning and environment law and workplace health and safety matters, a multitude of Acts and regulations dealing specifically with building and construction are constantly being developed and revised by local, state and federal government.

A business must manage contractors, developers, sub-contractors, joint venture partners and other parties involved with building and construction law. Issues may arise in front-end contract preparation and negotiation, risk allocation and administration of the contract during a project. Because claims often arise, negotiation and alternative dispute resolution techniques will minimise lost time and costs for your business.

When handling commercial buildings, public infrastructure and/or industrial buildings, a business must consider:

- Documentation for construction and development projects.
- The drafting and negotiating of a suite of consultant and builder construct only, and design and construct, contracts.
- The *Environmental Planning and Assessment Act 1979,* the *Local Government Act 1993,* the *Home Building Act 1989* and related legislation.
- Its rights under construction contracts and construction-related insurance policies.
- Defending and prosecuting *Building and Construction Industry Security of Payment Act 1999* claims.

Property

Foreign investors typically look to either buy or lease property in Australia. Buying property confers all the rights of ownership, whereas leasing confers the right of exclusive possession for a specified period. Buying or leasing Australian property may require the approval of the federal government. This is the first issue to examine when looking at Australian property transactions.

Buying real estate

Property buyers must undertake due diligence to confirm they can use the land for its intended purpose and whether it is subject to any issues. Zoning is especially important: if you want to develop the property for residential purposes, for example, and the land is in a commercial or industrial zone, you may have a serious problem.

Likewise, if you are buying property in an industrial zone for a residential development, always find out if it is contaminated or subject to any environmental pollution. If so, the local council or Environment Protection Authority may require it to be remediated before development begins, the cost of which can be prohibitive.

Property purchase throughout Australia is governed by contract for sale. The contract usually contains standard terms governing the process of the sale and purchase. Vendors must disclose certain issues, such as whether the property is subject to any proposal for acquisition by the roads authority for road widening purposes. The contract also contains terms specific to the property.

Always review the contract and its terms carefully and negotiate any terms you require before entering into the contract. Ensure you are buying the property on terms acceptable to you, your finances and your goals.

Once signed counterpart contracts are exchanged, a binding contract is formed and the buyer and seller are bound to perform the contract and complete the sale and purchase according to the terms of the contract. Either party is free to end negotiations before this point.

Leasing

Leasing enables you to occupy a property for a particular purpose for a fixed period. The nature of the lease will vary depending on whether the property is commercial (such as an office space), retail (such as a shop) or residential (such as a house or apartment).

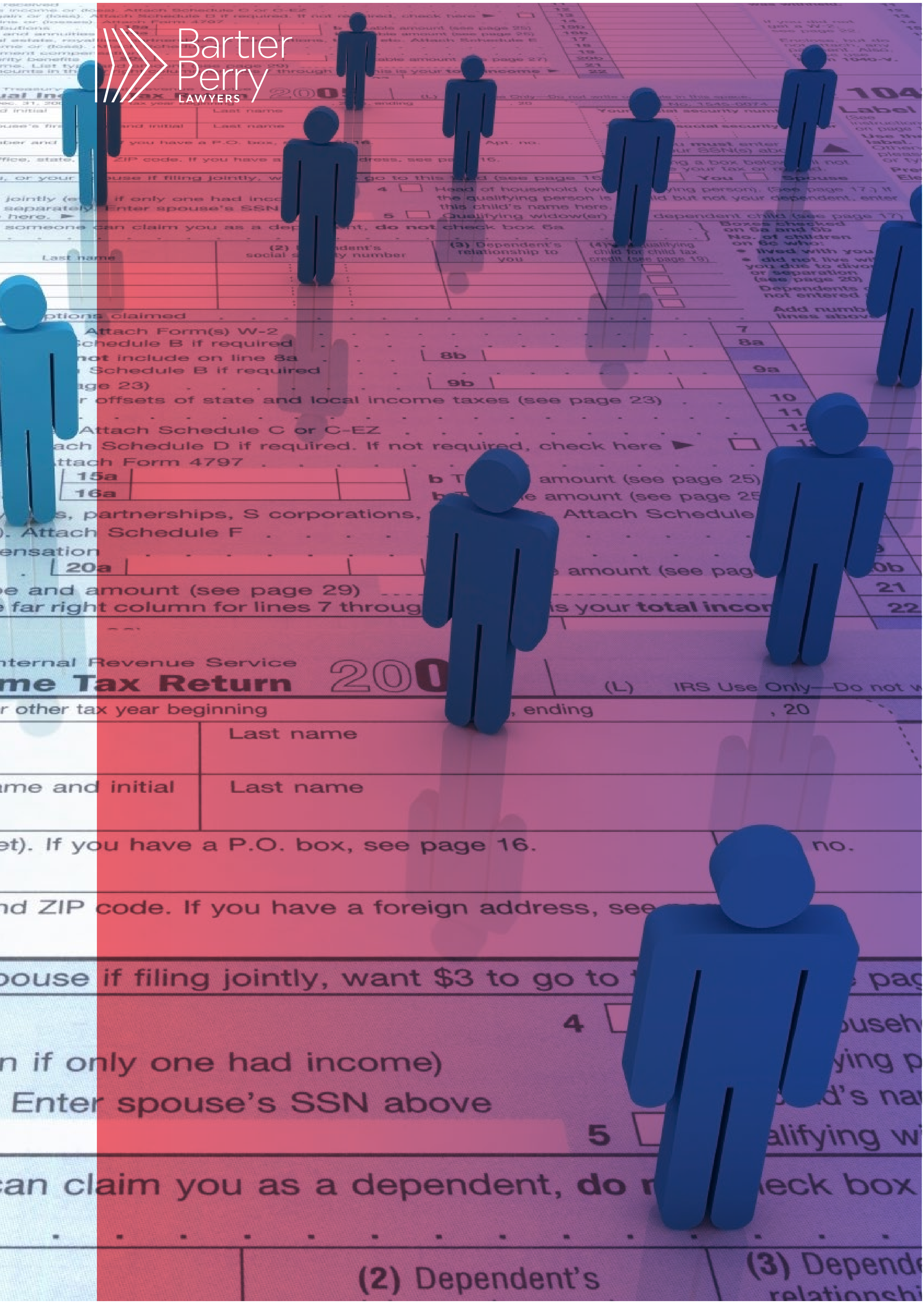
Retail and residential leases are highly regulated by statute and more tenant friendly than commercial leases. As with contracts for the sale and purchase of land, lease documents must be reviewed carefully to ensure the terms of the lease are acceptable to you. They may require negotiation to ensure you receive the lease incentive or fit-out that the landlord has promised, or that you can sublet or assign the property to another tenant, or that the obligations to make good the property at the end of the lease are not unduly onerous or expensive. The time to negotiate these and other important terms is before you enter into the lease.

Tax

Property ownership in Australia carries obligations to pay various local, state and federal government taxes, including council rates and state government levied stamp duty and land tax.

Property purchase may be subject to federal government-levied goods and services tax (GST) and capital gains tax (CGT). You should consider the taxation consequences of purchasing property carefully before entering into a contract.

Likewise, tenants typically accrue obligations to pay various taxes under the lease, and the lease itself may also attract GST. As these taxes significantly add to the transaction, it is critical to consider them in detail and negotiate your position with the landlord before entering the lease.


Bartier
Perry
LAWYERS

Taxation Law in Australia

Australia has a complex multi-layered system of taxation. Taxes levied at a Federal level include income tax, capital gains tax, goods and services tax, superannuation guarantee charge, excise and customs duties and fringe benefits tax. Federal legislation deals with the administration and collection of these taxes.

In addition, each State and Territory of Australia imposes a range of taxes including stamp duty, employee payroll tax, gambling taxes, motor vehicle taxes and land tax. Each State has its own legislation to implement and administer these taxes.

Here is an overview of the main taxes:

Federal Taxes

Income Tax

Application to Residents and Non-residents

Broadly, persons and entities considered Australian residents for tax purposes are subject to income tax on their worldwide income, irrespective of whether that income is sourced in Australia or overseas. An Australian resident who pays tax in a foreign country on income derived in that country may receive a foreign income tax offset, to prevent double taxation in Australia.

In contrast, the income of non-resident persons and entities, is generally only subject to income tax in Australia if it is sourced in Australia. (This may be modified by double taxation agreements). For example, withholding tax is collected on interest and royalties earned by non residents Australia. The rates are 10% for interest and 30% for royalties, unless an Australian tax treaty applies. Non residents do not pay any further tax on interest and royalties if withholding tax applies.

Determining Tax Residency

There are specific rules for determining whether a person, company or trust is a tax resident of Australia.

Tax Administration and the Taxation of Individuals and Entities

Australia's income tax system is based on self-assessment. This means that taxpayers are required to lodge income tax returns to the Australian Taxation Office to disclose their taxable income and determine their income tax liability. Generally, income is reported annually for each 'income year' (1 July to 30 June).

Individuals are subject to income tax on their taxable income at progressive marginal rates of up to 45% (being the highest marginal rate of taxation).

Companies and branch offices are generally subject to income tax on their taxable income at a rate of 30%.

Partnerships do not pay tax on their income but must lodge an income tax return with the Australian Taxation Office. Each partner must declare their share of the partnership's net income or loss in their individual tax return.

Trusts also do not pay tax on their income but must also lodge an income tax return with the Australian Taxation Office. Generally, the beneficiaries of the trust must declare and pay tax on the share of net income of the trust to which they are entitled, even if they do not physically receive the income. Any undistributed net income is generally taxed to the trustee at the highest marginal rate.
Joint venturers are taxed separately and do not need to file an income tax return in relation to the joint venture.

Repatriation of Profits of Branches and Australian Subsidiaries

No withholding tax is payable on profits remitted to a non resident from a branch office in Australia provided those profits have already been subject to income tax in Australia.

Profits from an Australian subsidiary paid to a non resident will be subject to withholding tax (at a rate specified in the relevant tax treaty or at 30% if none is specified) if the dividends are unfranked.

An unfranked divided is a dividend with no franking credit (representing tax at 30% paid by the company) attached to it. If a fully franked dividend (i.e. a dividend with the maximum possible amount of franking credits attached to it) is paid to a non resident, there is no withholding tax and no further income tax needs to be paid by the non resident.

What is Taxable Income?

Income tax is levied on taxable income. Taxable income is assessable income less allowable deductions. Assessable income consists of:

- Income according to ordinary principles, which includes income from property such as rent, income from personal exertion such as wages, and business income such as business profits.
- Statutory income (for example, capital gains).

Certain types of income are exempt from income tax and are not included in assessable income. Allowable deductions are expenses and outgoings:

- Incurred in gaining or producing assessable income; or
- Incurred in running a business for the purpose of gaining or producing assessable income.

Expenses and outgoings of a private or capital nature or which relate to the derivation of exempt income are not allowable deductions.

Capital Gains Tax

Capital gains tax (CGT) is a statutory regime for taxing gains from assets by including those gains in a taxpayer's assessable income. It is triggered when a 'CGT event' occurs in relation to an asset, with the most common event being the sale of an asset. Australian residents are generally liable to CGT if a CGT event occurs to any asset of theirs, regardless of whether it is located in Australia or overseas.

There are some exemptions from CGT for certain assets. Australian resident individuals get a 50% discount (or reduction) on a capital gain in relation to an asset which they have held the asset for more than 12 months.

Non-residents are subject to capital gains tax only in relation to taxable Australian real property (this can include certain interests in companies and trusts which hold land in Australia) and assets used in a business in Australia. There are CGT witholding provisions which apply to foreign persons.

Fringe Benefits Tax

Employers pay fringe benefits tax (FBT) on most non-cash benefits (that is, fringe benefits) they provide to employees, such as company cars and meals. Employers must report their fringe benefit to the Australian Taxation Office.

Goods and Services Tax

Goods and services tax (GST) is a tax of 10% on most goods and services in Australia. It is based on the value-added tax system operating in most other countries.

Registration for GST with the ATO is mandatory if business turnover is $75,000 or more. In this case, the business must charge GST on the taxable goods and services it sells, and may claim credits on the GST it pays (these are called input tax credits).

Businesses are not required to charge GST on:

- GST-free supplies such as basic foods, some education courses and medical products. They can receive input tax credits for GST on goods and services used in making GST-free supplies.
- Input taxed supplies such as lending money, or selling and renting out existing residential premises. Businesses do not receive input tax credits for GST they have paid on goods and services used to make the input taxed supplies.

Businesses and consumers both pay GST for goods and services. Broadly, because GST is refunded to all parties involved in the chain of production (through the input tax credit system) the burden for GST ultimately falls on the final consumer.

Superannuation guarantee charge

Superannuation is a system for funding the retirement of Australians. Businesses must pay superannuation to workers who earn $450 or more (before tax) each month. These payments (called contributions) are in addition to workers' normal wages and are paid into the workers' respective superannuation funds. The contributions are then invested by superannuation funds to provide retirement benefits for the workers. Superannuation funds are concessionally taxed and highly regulated.

Businesses must pay superannuation of at least 9.5%, also called the "superannuation guarantee", at least four times each year by certain due dates. A superannuation guarantee charge is imposed on late or unpaid superannuation. The Australian Taxation Office collects this charge, then pays the superannuation entitlements of the workers concerned. Failure to pay superannuation entitlements of workers can result in severe penalties and interest being imposed.

PAYG withholding

Generally, employers registered for Pay As You Go (PAYG) withholding must withhold amounts from payments they make to employees, some contractors and businesses which do not quote an Australian Business Number. PAYG withholding is not a tax: it is a way for the Federal Government to collect income tax from employees, contractors and businesses.

Customs and excise duty

Customs duty is paid on goods imported into Australia. Different rates apply, depending on the classes of goods imported. Similarly to income tax, customs duty is based on self-assessment: importers themselves must classify goods.

Excise duty is a tax on certain goods; mainly, alcohol, tobacco and fuel. Generally, businesses dealing in these goods must lodge an excise return and pay excise duty, which is calculated on the quantity of the goods.

State and Territory Taxes

Each State and Territory in Australia imposes its own taxes. Here are some imposed by most States:

Stamp Duty

Stamp duty is imposed on certain transactions (such as transfers and agreements for sale) in relation to certain 'dutiable property' (for example, real property). Stamp duty is calculated on the dutiable value (which is the greater of the market value or consideration paid for the dutiable property). It is paid by the transferee/purchaser of the property.

Stamp duty is charged at progressive rates based on the dutiable value of the particular dutiable transaction. Many States have imposed additional duty surcharges on the purchase of residential property by foreign people.

Land Tax

Broadly, land tax is an annual tax on the unimproved value of real property (usually calculated by the Valuer General in the particular State or Territory). Certain individuals and entities will qualify for a land tax threshold, meaning they will not have to pay land tax until a certain value is exceeded. Some individuals and entities do not qualify for a land tax threshold.

There are various land tax exemptions and concessions. Exemptions can apply to land used as an individual's principal place of residence, boarding houses, farms and primary production land, or land owned by charities.

Many States have imposed additional land tax surcharges on residential land owned by foreign people. Individuals and entities who own land in Australia must generally register for land tax with the relevant State or Territory revenue authority.

Payroll tax

Payroll tax is a self-assessed tax assessed on wages paid or payable by an employer to its employees, when the total wage bill exceeds a threshold amount.

Payroll tax rates and thresholds vary between states and territories. In New South Wales the threshold amount is $750,000.

Returns are lodged, and payment of liability made, at an agreed frequency (monthly, quarterly, or annually) to the relevant revenue office in the State or Territory.

Individual and Business Succession Planning

Individual Succession Planning

Every Australian State and Territory has complex succession laws. Therefore, anyone who owns real property or other substantial assets should consider preparing an Australian Will. The laws specify:

- Certain formal requirements for Wills to be recognised by the Court.
- The process by which a Will is proven before a Court and a grant of Probate/Administration is obtained. Generally, unless an estate is of little value, a grant of Probate or Administration must be obtained from the Court before an estate can be administered.
- Procedures for certain eligible persons to challenge a Will and make a claim for further provision from an estate.

Business Succession Planning

Business succession planning is crucial to ensure continuity and minimise the risk of disputes. Succession planning will mean different things to different businesses.

If a business is owned by people who are not related, it may mean putting in place a buy sell agreement. This ensures ownership is passed to the continuing owner if one owner retires, dies, becomes critically ill, or can no longer work. The agreement should fairly compensate the exiting owner and their family.

In a family business, it might mean transitioning ownership to the next generation through a Will or deed of family arrangement in a way that minimises conflict within the family.

For trust structures, it is critical to ensure that control is passed on to the right person and that the trust is structured to benefit the intended people if the controller of the trust dies.

If you have any questions about taxation, superannuation, deceased estates, trusts or personal and family business succession please contact the Private Clients team at Bartier Perry.

Details for this section are current as at 6 April 2018


Bartier
Perry
LAWYERS

Australian employment and labour law

Australia is a federation. Each jurisdiction has different laws. It is necessary to comply with a number of federal and State laws relevant to employment.

For corporations, the federal *Fair Work Act 2009* (a Federal law) is the overarching law of employment. Each State and Territory has legislation which can also apply. There are also federal anti-discrimination, superannuation (pension) and privacy laws.

The employment relationship and contract

There are recognised types of employment relationships in Australia:

- Permanent part-time or full-time
- Casual
- Temporary or fixed term.

Employment relationships are governed by an employment contract (written or oral). It is prudent for the employment relationship to be carefully documented.

Awards, enterprise agreements and unions

Awards set minimum standards and conditions that apply across industry and occupational sectors. Awards cover certain classes of employees. They apply as a matter of law.

Enterprise agreements may apply to an employer and cover all its employees in certain categories. An employer collectively negotiates an enterprise agreement with its workforce.

Unions have rights to represent employees and may have a presence in certain workplaces. Employees covered by an Award or enterprise agreement are often members of a Union.

Leave

Permanent and temporary employees in Australia are entitled as a matter of law to certain types of leave, including:

- Annual leave (20 days a year).
- Public holidays (approximately 12 days a year).
- Personal/carer's leave (10 days a year).
- Long service leave (approximately two months after 7-10 years' service).
- Parental leave (one year unpaid).
- Compassionate leave (2 days per occasion).

Employment contracts and employer policies may provide for more generous leave. Casual employees are also entitled to certain leave benefits, some unpaid and some paid.

Workplace surveillance and privacy

Some States and Territories regulate employer surveillance of telecommunications, computers, internet, email use, GPS and video surveillance.

Privacy laws apply to prospective employees but an exception applies in relation to employee records.

Work safety

Each State and Territory has its own work health and safety laws; however, most have adopted harmonised laws.

These laws require that an employer, as far as is reasonably practicable, ensures the safety of its workers. They also impose other obligations, such as consulting with workers, on employers.

Workers are also obliged under work health and safety laws to take reasonable care and comply and cooperate with their employer.

Workers' compensation

Australian employers must have workers compensation insurance to cover employees for expenses in relation to work-related injuries (e.g. lost wages or medical).

Anti-discrimination laws

The Commonwealth and each State and Territory has its own laws prohibiting sexual harassment and discrimination in employment. Employers are required to comply with both laws.

Generally speaking, an employer will breach anti-discrimination laws where it treats an employee unfavourably because they have a protected attribute. Protected attributes include race, sex, disability, age, religion, family responsibilities, sexual orientation and pregnancy.

Victimisation is also prohibited, which occurs when an employer takes detrimental action against an employee because the employee has been involved in a complaint of discrimination or in proceedings alleging discrimination.

General Protections

The *Fair Work Act* also protects the workplace rights of employees in Australia. It prohibits an employer taking adverse action (that is, some detrimental treatment) against an employee due to that employee exercising (or not exercising) a workplace right.

Termination of employment

If an employee commits serious misconduct, an employer may dismiss them immediately without notice or payment in lieu of notice. The employment contract usually stipulates how much notice is required to be given for employers to terminate an employee's employment. Generally, an employment contract will provide for 4 weeks' notice.

At a minimum, the *Fair Work Act* prescribes notice of termination, on a scale with a maximum of 5 weeks. If a contract does not specify a notice length, the employer risks being obligated to give much longer than five weeks, if such longer notice is reasonable in the circumstances.

An employer may pay an employee in lieu of having them work out their notice period.
An employer may not terminate employment for a prohibited reason (e.g. a discriminatory reason).

Where an employee is employed for a fixed term or specified project, their employment may terminate automatically at that specified time or on completion of the project. Their employment may also be terminated early if provided in the employment contract or if they commit an act of serious misconduct.

Except in certain circumstances, casual employment can be terminated simply by not offering another shift to that employee (that is, by removing them from the roster).

Redundancy

If an employer no longer needs an employee's job to be done by anyone, the employment will terminate due to redundancy.

Reasonable redeployment within an employer's organisation may need to be considered.

Awards and enterprise agreements have consultation provisions which must also be followed in a redundancy process, if applicable.

In addition to notice of termination, redundant employees are entitled to additional payments on termination.

Employee claims after termination

If an employee believes their employment was terminated for a prohibited reason, they may make a claim under anti-discrimination legislation or in the general protection's jurisdiction. Compensation and other awards can be sought.

An employee may also be able to pursue an unfair dismissal claim if they are eligible.

When an employee lodges an unfair dismissal claim, the Fair Work Commission considers whether there was a valid reason and fair process followed in the termination of employment.
The main remedy for unfair dismissal is reinstatement or up to 6 months' pay.

Protecting your business after termination of employment

Australian businesses often include provisions in employment contracts to protect their interests after an employee leaves. Provisions typically cover:

- Restraints of trade and non-solicitation.
- Confidential information.
- Inventions, discoveries and intellectual property.

If an employee breaches any of their ongoing obligations, an employer may write to them or their new employer, or institute proceedings against them. The right approach will depend on the circumstances.

Termination of employment on business acquisitions

When a business changes owners, collective industrial instruments that covered the workforce may automatically transfer to the new owner.

In business acquisitions, the incoming employer usually has to recognise entitlements of the existing workforce, including sick and carer's leave, flexible working arrangements and parental leave.
In some circumstances, it is possible in the commercial terms of acquisition to exclude continuity of some entitlements, such as annual leave.

If the new owner is not able to offer the same or similar employment terms and conditions, redundancy may arise. Employees have a right not to accept employment with the new owner.

Why Bartier Perry?

Bartier Perry is a firm of 70 lawyers based in a single office in the heart of Sydney, Australia.

Bartier Perry has an impressive history as a well-respected law firm. Since 2007, it has operated as a modern incorporated legal practice. It delivers legal services as a friendly and professional commercial enterprise – not as a partnership. We act for clients across Australia.

Our clients fall into four broad categories:

- Businesses of all shapes and sizes
- Government (including all tiers, as well as agencies and public bodies)
- Insurance (including employers, self-insurers and specialised insurers)
- Private clients (such as entrepreneurs and investors).

Our practice groups include:

- Commercial Disputes
- Corporate and Commercial
- Property, Planning and Environment
- Superannuation
- Taxation
- Wills, Estates and Trusts
- Workers Compensation
- Workplace Relations.

With over 75 years of operations, we are proud of our pedigree as one of Sydney's best established and respected law firms. We are also proud of being a modern professional services firm.

We are collaborative in the way we work – not only with our clients, but with each other. Collaboration ensures our clients receive the highest-quality legal advice that the firm can offer.

Our culture of hiring people who demonstrate integrity and respect, and work well in teams, means we work in an environment that is high achieving and honest.

Most importantly, we grow and recruit lawyers who are the best and the brightest in their fields. Within our areas of focus, we encourage our lawyers to become specialists, and to collaborate whenever appropriate to obtain the best results for our clients.

For more information, or if you have a question not answered here, please don't hesitate to contact us.

GREG BLEWITT
Partner
Corporate & Commercial Law

P +61 2 8281 7914
gblewitt@bartier.com.au

GAVIN STUART
Partner
Commercial Disputes Law

P + 61 2 8281 7878
gstuart@bartier.com.au

MELISSA POTTER
Partner
Property Law

P +61 2 8281 7952
mpotter@bartier.com.au

CHRIS TSOVOLOS
Partner
Taxation Law

P + 61 2 8281 7821
ctsovolos@bartier.com.au

DARREN GARDNER
Partner
Employment Law

P +61 2 8281 7806
dgardner@bartier.com.au


Bartier Perry
LAWYERS
Bartier Perry Pty Ltd
Level 10 , 77 Castlereagh St
Sydney NSW 2000 Australia
DX 109 Sydney
PO Box 2631
Sydney NSW 2001
T +61 2 8281 7800
ABN 30 124 690 053
bartier.com.au