

**Liftoff: A guidebook for setting up
a technology business in Australia**



This publication is intended to provide general information and highlight issues relevant to starting a technology business in Australia. It does not take into account specific circumstances and does not constitute legal advice.

Starting a business in Australia can present a range of challenges, particularly for technology start-ups seeking to turn an idea into a viable and financially stable business. This guide provides an overview of the typical legal issues that may arise and is intended for general guidance only.

For further information, please contact your usual Holding Redlich adviser or one of the specialists listed at the back of this guide.



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Methods of doing business in Australia

Under Australian law, there are several ways in which a business may conduct operations in Australia, including incorporating a local company, registering as a foreign company, or engaging in activities that constitute "carrying on business" in Australia. Much of the relevant legal framework applies to companies governed by the *Corporations Act 2001* (Cth), as supplemented by common law principles.

A company can operate in Australia either by being incorporated domestically or by registering as a foreign company under the *Corporations Act*. Incorporation is often preferred due to the benefits of limited liability and taxation treatment. Foreign companies may also conduct business through agents or representatives depending on the nature and extent of their activities.

Whether a business is considered to be "carrying on business" in Australia depends on the nature, continuity and purpose of its activities, assessed by reference to both statutory provisions and common law principles.



Proprietary Limited Company

In Australia, the most common business structure for small to medium-sized enterprises is the proprietary limited company (**Pty Ltd**). Proprietary companies are subject to a lower regulatory burden and generally incur fewer compliance costs than public companies.

The key advantages of a proprietary limited company include:

Limited liability	Reduced regulatory requirements	Control over share transfers	Flexible capital raising	No requirement for public disclosure
Shareholders benefit from limited liability, meaning their personal assets are generally protected from the company's debts and obligations to third parties.	Proprietary companies are subject to fewer regulatory and disclosure requirements than public companies. For example, small proprietary companies are generally exempt from preparing and lodging annual financial reports unless required by shareholders or the Australian Securities and Investments Commission (ASIC).	Proprietary companies typically restrict the transfer of shares, allowing greater control over ownership. This can be particularly attractive for closely held or family-owned businesses.	While proprietary companies are restricted from raising funds from the public, they may raise capital through private placements, subject to legislative requirements. In certain circumstances, proprietary companies may also access crowd-sourced funding regimes, which allow fundraising from the public with reduced disclosure obligations.	Unlike public companies, proprietary companies are not generally required to disclose financial information publicly. This helps maintain confidentiality and is often an important consideration for private and family-owned businesses.

Joint Ventures

Another common form of structuring business activities in Australia is through a joint venture, which may be either incorporated and unincorporated. Joint ventures allow organisations to combine strengths, share financial risk and pursue new business opportunities. Whether expanding into new markets, pooling capital for large-scale projects or gaining access to new resources and expertise, a well-structured joint venture allows parties to achieve synergy that might not be possible individually.

Seed Investment

Equity

Equity refers to all forms of shareholding investment in a company. Equity investment has the following characteristics:

- **Ownership interest:** An equity holder acquires an ownership stake in the business.
- **Subordination on insolvency:** Equity is unsecured. On a liquidation or winding-up, shareholders will only receive a return after all creditors and the costs of winding up have been paid in full.
- **Limited liability:** Where a company is limited by shares, a shareholder's liability is limited to the amount unpaid (if any) on their shares and cannot exceed the amount invested.
- **Shareholder rights:** Shareholders have rights conferred by statute and common law, which may or supplemented by agreement, including through the company's constitution and any shareholders' or investor agreement.



Seed Investment

Debt

Debt refers to borrowings by a company and has the following characteristics:

- **Priority on insolvency:** Debt ranks ahead of equity if the company becomes insolvent. Secured debt ranks ahead of unsecured debt.
- **Security over assets:** Where debt is secured, the company grants a charge or other security interest over specified assets in favour of the lender.
- **Operational restrictions:** From the company's perspective, secured debt may restrict its ability to deal with the charged assets without lender consent.
- **Personal security:** Early-stage companies with limited trading history or tangible assets may be required to provide personal guarantees or security from shareholders or directors.
- **No dilution:** The key advantage of debt for shareholders is that it allows capital to be raised without diluting existing shareholdings.



Convertible Loan notes

Convertible loan notes are often used as a hybrid between equity and debt and can provide a flexible seed-funding option.

- **Debt with conversion rights:** A lender advances funds to the company, with the loan convertible into shares at a future date or on specified events (such as future funding round), often at a pre-agreed price or discount.
- **Valuation deferral:** Convertible instruments are commonly used where the company's valuation is difficult to determine at an early stage.
- **Interest and repayment:** Convertible loan notes typically accrue interest and may be secured against company assets. They may also be repayable if conversion does not occur within a specified timeframe or upon certain trigger events.

We also regularly see SAFE notes used. This is a document form that allows a way for investors to put money into an early-stage company now, with the expectation of receiving equity later, usually when the company raises a priced funding round.



Statutory restrictions on raising capital



Companies seeking finance from investors are, in effect, promoting investment opportunities and must therefore comply with Australia's legal and regulatory framework governing fundraising. The requirements are designed to promote transparency, protect investors and maintain the integrity of capital markets.

In Australia, statutory restrictions on raising funds are primarily governed by the *Corporations Act 2001* (Cth), particularly Chapter 6D, which regulates offers of securities. The key provisions and restrictions include the following:

1 Disclosure requirements

Offers of securities generally require disclosure to investors in accordance with Part 6D.2 of the *Corporations Act*, unless an exemption applies.

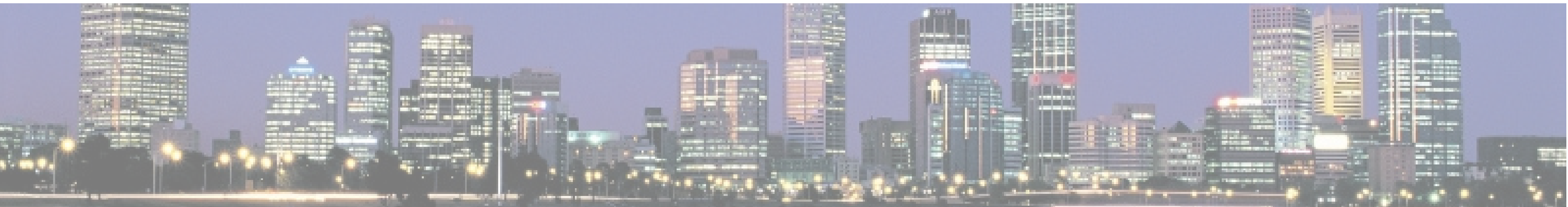
3 Lodgement of disclosure documents

Where disclosure is required, a disclosure document (such as a prospectus) must be lodged with ASIC before an offer of securities is made. This ensures that relevant information is publicly available to investors.

2 Exemptions from disclosure

Section 708 of the *Corporations Act* provides several exemptions from the disclosure requirements including:

- Small-scale offerings: personal offers made to no more than 20 investors and raising no more than AU\$2 million in any 12-month period
- Sophisticated investors: investors who invest at least AU\$500,000, or who meet prescribed asset or income thresholds certified by a qualified accountant
- Professional investors: as defined in section 9 of the *Corporations Act*, including persons controlling gross assets of at least AU\$10 million
- Associated persons: such as senior managers and their close relatives; and
- Certain regulated offers: including dividend reinvestment plans, bonus share plans and takeover-related offers.



Statutory restrictions on raising capital (cont.)



4 Prohibition on misleading or deceptive conduct

The *Corporations Act* prohibits misleading or deceptive conduct in connection with fundraising activities, reinforcing the importance of accuracy and completeness in communications with investors.

5 ASIC's role and powers

ASIC has broad discretionary powers under Chapter 6D of the *Corporations Act* to regulate fundraising activities. These powers include granting exemptions or modifications, and issuing stop orders to prevent non-compliant fundraising activities.

6 Crowd-sourced funding (CSF)

The CSF regime provides an alternative fundraising mechanism for eligible early-stage companies. Under this framework, companies may raise up to AU\$5 million in any 12-month period through an online platform operated by a licensed CSF intermediary, subject to specific eligibility and disclosure requirements.

7 Proprietary companies

Proprietary companies are generally prohibited from engaging in fundraising activities that require disclosure under Chapter 6D. As a result, they are typically limited to raising capital through private means, such as from family, friends, or professional investors, and cannot issue shares to the public.





Key Issues and Terms of Seed Investment

Key documentation

1 Heads of terms

At the initial stages of the investment process, the investor and company founders will typically agree heads of terms (also referred to as a term sheet). This document sets out the key commercial terms of the proposed investment and usually reflects a non-binding, indicative offer from the investor. Key matters addressed include the agreed valuation of the company, the amount of the investment, the price of the shares issued and the resulting ownership percentage. Investors may also require exclusivity for a limited period to complete due diligence and negotiate transaction documents. A well-prepared set of heads of terms can significantly streamline negotiation of the binding documentation.

2 Due diligence and confidentiality

As part of the investment process, the investor will typically conduct due diligence on the company, often by issuing a due diligence questionnaire. This usually involves financial, commercial and legal investigations, as well as a detailed review of the business plans and financial forecasts. The parties will generally enter into a confidentiality agreement to protect sensitive information disclosed during this process.

3 Binding investment documents

The principal binding documents for a seed investment are:

- the investment agreement (often combined with or referred to as a subscription and shareholders' agreement), which sets out the contractual terms of the investment; and
- the company's constitution, which governs the rights attaching to different classes of shares.

4 Scope of investor rights

In the context of a seed investment, it is not uncommon for the full suite of investor rights typically seen in later-stage investments to be limited or scaled back. However, these rights are explained in full in this guide so that founders can understand the types of terms that investors may seek as the business grows.

Key terms of the Investment Agreement



Parties

Existing shareholders and the company	Investors	Future shareholders
All existing shareholders, particularly the founders, together with the company, should be parties to the investment agreement. Where there is a large number of minority shareholders, it may not be practical for all of them to be parties.	As the investment agreement governs the subscription for shares in return for the investment funds, it should bind all participating investors, including any separate funds or investment vehicles.	Investment agreements typically require any transferee or new allottee of shares to enter into a deed of adherence, under which the new shareholder is treated as if they were an original party to, and bound by, the investment agreement.

Completion conditions

The investor will usually require certain conditions be satisfied before the investment can complete. These conditions may include:

- completion of any satisfactory due diligence on the company
- delivery of an agreed business plan and management accounts
- obtaining all necessary board and shareholder approvals to issue new shares and adopt a new constitution
- the founders and key management being issued shares or options; and
- confirmation that all relevant intellectual property is owned by the company; and that appropriate insurance (including key person and directors' and officers' liability insurance) is in place.

Key terms of the Investment Agreement (cont.)

Completion mechanics

These provisions set out the actions required at completion of the investment, which typically include:

- approval and execution of the investment agreement and, where applicable, any disclosure letter;
- issue of the subscription shares to the investor
- appointment of any investor-appointed director(s) to the board
- payment of the subscription monies into the company's nominated bank account
- approval and execution of service agreements for founders who will act as executive directors; and
- adoption of, or commitment to adopt, an employee share or option plan.

Tranche payments

Many investors, particularly in early stage companies, may seek to advance funds in tranches rather than in a single upfront payment. The timing of tranche payments and any conditions attached to future instalments (such as performance or milestone achievements) are commonly negotiated.

Where milestone-based funding is used, milestones should be drafted as clearly and objectively as possible to avoid disputes.

Warranties

Warranties are contractual assurances given by the warrantors (usually the founders and the company) that certain statements about the company are true and accurate as at the completion. If a warranty is untrue, investors may have a right to claim for breach of contract.

Warranties are commonly qualified by a disclosure letter, and subject to agreed limitations, such as time limits, materiality threshold and financial caps (often linked, for founders, to a multiple of salary or proceeds received).





Key terms of the Investment Agreement (cont.)

Investor consent regime

Investors will usually hold a minority interest (less than 50%) in the company. Under Australian law, many shareholder resolutions can be passed by a simple majority, or in some cases, a 75% majority.

Investors therefore commonly seek contractual consent rights to prevent certain key decisions being made without their approval. These may apply to both board-level and shareholder-level matters.

Where there is a single investor, it is common for all reserved matters to require that investor's consent. In consortium investments, consent is more typically required from investors holding a specified percentage of the investor shares, , to avoid impractical decision-making processes.

Financial information

Investors often require the company to provide regular management accounts, annual financial statements and forward-looking budgets or financial models.

Investors may also require inspection and access rights in relation to the company's financial records, subject to reasonable notice and confidentiality obligations.

Board representation

Investors commonly seek an entrenched right to appoint a director to the board, often coupled with a quorum requirement that the investor-appointed director be present for board meetings to proceed.

Founders may also retain entrenched board appointment rights, typically subject to maintaining a minimum shareholding.

In some cases, investors may seek 'observer rights', allowing a non-director representative to attend board meetings and receive board papers, without voting rights.

Restrictive covenants

Restrictive covenants (including non-compete) are intended to prevent founders from competing with the company during, and for a period after, their involvement with the business.

These covenants are commonly included in both founder service agreements and the investment agreement.

Restrictive covenants contained in the investment agreement are often more enforceable, as they are given by the founders in their capacity as shareholders and as part of the consideration for the investment.

Key terms of the Company Constitution



Classes of shares

All companies are incorporated with ordinary shares. Where there is only one class of shares, those shares will carry full voting rights, dividend rights and rights to participate in surplus assets on a winding-up or other return of capital.

A company may issue multiple classes of shares with different rights. Investors may require the issue of preference shares. Where a company has more than one class of shares, separate class consent may be required to vary or abrogate the rights attaching to a particular class.

Liquidation and sale preference

If the constitution is silent, net proceeds on a liquidation or sale of the company are distributed to shareholders pro rata to their shareholdings.

Investors commonly seek a 'liquidation preference', entitling them to receive an amount equal to (and less commonly a multiple of) their subscription price before any distributions are made to other shareholders. This preference may also apply on a listing.

A liquid preference may be:

- Non-participating - the investor receives its priority amount, with remaining proceeds distributed to the other shareholders; or
- Participating – after receiving its priority amount, the investor also participates in remaining proceeds pro rata with other shareholders.





Key terms of the Company Constitution (cont.)

Dividends

Holders of preference shares may be entitled to dividends in priority to ordinary shareholders. Dividends may be payable periodically, on an exit or on conversion, and may be cumulative or non-cumulative.

Dividends can only be paid from distributable profits, meaning there is no guarantee that dividends will be declared or paid.

The dividend may become payable on a quarterly or annual basis, at the time of an exit or conversion and can be cumulative or non-cumulative.

Voting

Ordinary and preference shares typically carry one vote for each share held, although in some circumstances a preference share will be non-voting.

Conversion

Preference shares usually carry a right to convert into ordinary shares at the holder's election.

Automatic conversion is commonly triggered on certain events, such as a listing. Investors may require that conversion on a listing only occurs if the listing price is at least equal to the subscription price paid.

Anti-dilution

If the company issues shares at a lower price in a future funding round, investors may seek anti-dilution protection to preserve their economic position. Anti-dilution adjustments may be calculated on a:

- Full ratchet basis
- Weighted average basis, taking into account the number of new shares issued and the capital raised.

“Pay-to-play” provisions may apply, under which an investor loses anti-dilution protection if it does not participate in the relevant funding round.

Founder shares

Investors may require founder shares to be subject to a ‘vesting schedule’, under which ownership vests progressively over time and is conditional on continued employment.

Vesting typically occurs monthly or quarterly over a defined period. The treatment of unvested shares may depend on the circumstances of departure (for example, good leaver versus bad leaver).

Unvested shares of a departing founder may:

- convert into deferred shares with minimal rights;
- be bought back by the company (subject to distributable profits);
- be offered to employees, employee trusts or other shareholders; or
- become non-voting until transferred or on a listing.



Key terms of the Company Constitution (cont.)

Pre-emption rights on new issues

Unless disapplied by special resolution, the constitution typically requires new shares to be offered first to existing shareholders pro rata to their holdings.

Common carve-outs include issues under employee share or option plans and shares issued as consideration for acquisitions.

Pre-emption rights on transfers

- Subject to permitted transfers, shares proposed to be sold must generally be offered to existing shareholders in accordance with pre-emption rights.
- Investors may require a first right of refusal over any proposed transfer, regardless of share class.
- Permitted transfers often include transfers to family members, trusts and intra-group transfers.
- Investor consent may be required before founders transfer shares, particularly unvested shares.

Compulsory transfers

Certain events may trigger a mandatory sale of shares, including insolvency, bankruptcy or a change of control of a shareholder.

Where a shareholder is also an employee, compulsory transfer provisions often apply on cessation of employment, with pricing dependent on good leaver or bad leaver status.





Key terms of the Company Constitution (cont.)

Drag along rights

“Drag along” rights compel minority shareholders to sell their shares if shareholders holding a specified percentage (commonly 75%) agree to sell the company. These provisions facilitate a full exit and typically extend to options exercised in connection with the sale.

Tag along rights

Tag-along (or co-sale) rights allow minority shareholders to participate in a sale where a controlling stake is being sold, on the same terms and price. These rights protect minority shareholders and may also require founders to procure equivalent offers for investor shares.

Additional issues

The constitution will also typically address: director appointment rights and board procedures, conduct of shareholder meetings, conflicts of interest and insurance and indemnity for officers and directors.





Intellectual Property

Understanding intellectual property (**IP**) rights is critical for any technology company. A company's brand is often one of its most valuable assets, and for many digital businesses, intellectual property is what differentiates them from competitors. Ongoing commercial success will depend, in part, on how effectively IP is identified, protected and enforced in the jurisdictions in which the business operates.

This guide includes a high-level overview of the types of intellectual property rights that are commonly relevant to digital and technology businesses, and outlines key considerations for protecting those rights.

In Australia, intellectual property is protected through a range of legal rights, broadly consistent with those available in the UK, the United States and Europe. In practice, businesses typically rely on a combination of IP, as no single form of protection covers all the intangible assets.

Australia is a party to a number of international intellectual property conventions, including the Berne Convention for the Protection of Literary and Artistic Works, the Rome Convention, the Universal Copyright Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. These treaties establish minimum international standards for IP protection and provide reciprocal protection for works originating in member countries.



Confidential Information and Patents

Technology businesses frequently develop new products, services and business models. The most effective initial way to protect innovation is to keep it confidential. Once an idea is disclosed publicly, including to anyone who is not bound by confidentiality obligation, the available options for legal protection can be significantly reduced. For this reason, ideas should be disclosed only on a need-to-know basis and, where possible, subject to confidentiality arrangements.

As a business grows, it will often be necessary to disclose innovations more broadly, for example to investors, partners or customers. At that stage, some protection may still be available if the innovation is capable of being protected by a patent and an application has been made before public disclosure.

In Australia the protection of confidential information and patents is governed by a combination of statutory law, common law, and equitable principles.

Confidential information in Australia is primarily protected under the equitable doctrine (non-legislative) of breach of confidence. For information to be protected as confidential, the following elements must generally be established:

- the information has the "necessary quality of confidence", meaning it is not publicly available
- the information was disclosed in circumstances giving rise to an obligation of confidence (for example, under a confidentiality agreement or within an employment or commercial relationship)
- the information has been misused or disclosed without authorisation, resulting in detriment to the owner.

A patent grants the patent holder exclusive rights to exploit an invention, and authorise others to do so, within the relevant patent area, which includes Australia.

To qualify for patent protection in Australia, an invention must meet requirements including:

- novelty
- an inventive or innovative step
- industrial applicability.

Patent protection in Australia is governed by the *Patents Act 1990* (Cth).



Trade Marks

Protecting a company's brand can be one of the most valuable investments a technology business makes. Registering and enforcing trade marks in the jurisdictions where a business operates, and ensuring those trade marks are used consistently and correctly in marketing and corporate materials, can significantly enhance and preserve brand value.

A trade mark is a sign used to distinguish the goods or services of one trader from those of another.

In Australia, trade marks are regulated by the *Trade Marks Act 1995* (Cth). This legislation governs the registration, protection, and enforcement of trade marks. It defines a trade mark as a sign used, or intended to be used, to distinguish goods or services dealt with or provided in the course of trade by one person from those of another. Significantly the Act also grants the registered owner of a trade mark exclusive rights to use the trade mark and to authorise others to use it in relation to the goods or services for which it is registered.

Copyright

Copyright is an important component of a technology company's intellectual property portfolio. Significant time and resources are often invested in how a website, platform or app looks and presents content to users.

Due to the functional nature of many digital products, copyright does not generally protect how a website or app works. However, copyright protection may apply to the overall look and feel of a website, its visual design element, and the original content it contains. This includes images, videos, music, text, and graphic elements. Copyright may also subsist in certain aspects of computer software, such as source code, although it offers only limited protection for underlying functionality or technical concepts.

Copyright is a legal right that grants the creator of a original work exclusive rights to use, reproduce and distribute the work, for a limited time, enabling commercial exploitation and preventing unauthorised copying or use by others. In Australia, copyright arises automatically when an eligible work is created. No registration or formal steps are required. This makes copyright a powerful and cost-effective form of protection, although it is most commonly relied upon once an infringement has occurred. Copyright protection generally continues for many years after the death of the creator.

In Australia, copyright is governed by the the *Copyright Act 1968* (Cth). This legislation provides protection for a wide range of works including, artistic works, original literary, dramatic and musical work as well as other subject matter such as sound recordings and film.





Data Protection

Data can be one of the most valuable assets of a digital business, whether because the services offered are data-rich or data-enabled, or because of the commercial value derived from data that customers are willing to share. Despite this importance, IP protection of data is complex, as data itself is often not protectable.

The primary form of IP protection relating to data is typically protection of the database as a whole, rather than of the underlying data it contains. This distinction can appear artificial, as the protection focuses on the investment of time, effort and resources involved in obtaining, verifying and presenting the data, rather than the individual data points themselves.

From a regulatory perspective, data protection in Australia is primarily governed by the *Privacy Act 1988* (Cth). This legislation establishes a framework for the handling of personal information and includes 13 Australian Privacy Principles (APPs), which regulate matters such as the collection, use, disclosure, storage and security of personal information.

The Privacy Act applies to Australian Government agencies and to private sector organisations with an annual turnover of more than AU\$3 million, as well as to certain smaller entities that handle sensitive information. Compliance with these obligations is critical for digital businesses that collect, use or store personal data as part of their operations.

Domain Names

Domain name protection and use in Australia is governed by a combination of contractual arrangements, regulatory frameworks, and legal principles, including aspects of Australian consumer and intellectual property law.

Australian domain names, including those ending in ".au", are administered by .au Domain Administration Limited (**auDA**), a non-profit organisation. From a legal perspective, domain names are not personal property. Instead they are licensed to registrants under contractual arrangements with auDA-accredited registrars. These contracts incorporate standard terms prescribed by auDA, including eligibility requirements and dispute resolution mechanisms.

To be eligible to register and use a ".au" domain name, a business must demonstrate an Australian presence. This requirement may be satisfied for example, by operating through an Australian-registered company. Alternatively, eligibility may be established through ownership of, or an application for, an Australian trade mark, provided the domain name is an exact match to the trade mark in which rights are held.



Australian Employment Law

Hiring staff is a key step in growing a business. In doing so, it is important for employers to understand not only their own rights and obligations, but also the rights of their employees. Common questions include whether a written contract is required, what minimum leave entitlements apply, whether work rights or visas are needed, and how employment can be lawfully terminated. Below we highlight some of the key issues relevant to employing staff in Australia. It is intended as general guidance only, and specific advice should be obtained from employment law specialists, having regard to the particular circumstances.

Employment law in Australia is a complex and evolving area, comprising a combination of statutory regimes and common law principles that regulate the employer-employee relationship.

The primary legislative framework is the *Fair Work Act 2009* (Cth). The Fair Work Act establishes a comprehensive system of workplace relations and sets out the National Employment Standards (**NES**), which apply to all national system employees. These NES prescribe minimum terms and conditions of employment, including:

- maximum weekly working hours
- annual leave, personal/carer's leave, parental leave and long service leave
- flexible working arrangements
- employer superannuation obligations.

In addition to statute, Australian common law plays an important role in employment relationships. In particular, court decisions (including those of the High Court) have clarified the distinction between an employee and an independent contractor, which has significant implications for the application of the *Fair Work Act* and related obligations.

The *Fair Work Act* also operates alongside other legislative regimes, including workers' compensation, workplace health and safety and anti-discrimination laws.

Share Options



Incentives

Australia has long been a jurisdiction in which share option plans are commonly used by technology companies, particularly in the early stages of growth where attracting and retaining talent is critical.

These plans are often implemented through employee share schemes (**ESS**). ESS are regulated under the *Income Tax Assessment Act 1997* (Cth), and broadly involve the provision of equity interests to employees or their associates in connection with their employment. An ESS interest is defined as a beneficial interest in a share, or a right to acquire a beneficial interest in a share, in a company.

Typically, the schemes involve granting senior employees or executives options to acquire shares at a nominated exercised price, often subject to vesting conditions linked to time, performance or exit events.

Comparison of advantages and disadvantages – share issue v share options

Share Issue Advantages	Share Issue Disadvantages	Share Options Advantages	Share Options Disadvantages
Employees have an immediate ownership interest and may feel more invested in the business.	More complex to deal with leavers and recover shares. Vesting and performance conditions are harder to enforce once shares are issued.	Simple and no initial cost to individual.	Initial setup and administration costs. Tax treatment still requires careful consideration.
Shares may carry voting rights and limited influence over company affairs.	Requires constitutional provisions to restrict voting or impose leaver provisions and still subject to ESS and taxation law considerations.	Highly flexible (vesting, leaver treatment, performance conditions). Options can be structured to be exercisable on an exit event.	Administrative burden as difficult to register share issues and record interests with company register and ASIC.



Direct issue of shares

A company may choose to incentivise employees, directors, consultants or freelancers by issuing shares directly. Where shares are issued, key matters to consider include:

- the class of shares (e.g. voting or non-voting)
- good/bad leaver provisions (typically included in the company's constitution)
- obtaining appropriate corporate approvals and complying with ASIC requirements; and
- reverse vesting arrangements (time-based and/or performance-based), usually documented in a separate agreement with the individual.

Options over shares

Share options are often a preferred incentive mechanism due to their flexibility, simplicity and ease of management. Options may be granted:

- under an employee share option plan, typically for employees and full-time executive directors
- under a separate option deed, commonly used for consultants, non-executive directors or freelancers.



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About Holding Redlich

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