

AUSTRALIA¹

I. Overview of Country

Australia is the 52nd most populous country in the world. It is comprised of six states and two territories: (i) the Australian Capital Territory, which includes Canberra, the political capital of Australia; (ii) New South Wales in which Australia's largest city Sydney is located; (iii) Northern Territory; (iv) Queensland; (v) South Australia; (vi) Tasmania; (vii) Victoria; and (viii) Western Australia. All of the states and territories of Australia that are self-governing are separate jurisdictions, and have their own system of courts and parliaments. The systems of laws in each state are influential on each other, but not binding. Laws passed by the Parliament of the Commonwealth apply to the whole of Australia.

The Australian Government, sometimes referred to as the Commonwealth Government or the federal government, passes laws which affect the whole country. Although the six states joined together to form the Commonwealth of Australia and the Australian Government, they still each retain the power to make their own laws over matters not controlled by the Commonwealth. Territories are areas within Australia's borders that are not claimed by one of the six states. Territories can be administered by the Australian Government, or they can be granted a right of self-government.

Globally, Australia stands at 7th in the ranking of 189 economies on the ease of starting a business.² It is considered one of the world's most transparent and well-regulated business environments, and is a globally competitive location for business, backed by political stability, robust economic performance (especially resilient during the recent global financial downturn), sound infrastructure, innovation, and a highly educated, skilled and multicultural workforce.

There is no Commonwealth legislation that enshrines the right to freedom of assembly and association in all circumstances. The Fair Work Act 2009 protects freedom of association in the workplace by ensuring that persons are free to become, or not become, members of industrial associations, are free to be represented, or not represented, by industrial associations, and are free to participate, or not participate, in lawful industrial activities. "Trade union activity" is prescribed in the Australian Human Rights Commission Regulations 1989 as a ground for discrimination in employment that engages the power of the Australian Human Rights Commission under the Australian Human Rights Commission Act 1986. This means that the Commission may investigate complaints about discrimination in employment based on trade union activity.

¹ The following memorandum was prepared by pro bono counsel for the ABA Center for Human Rights. It is intended as background information only and should not be relied upon as legal advice on a particular case. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and, accordingly, should not be construed as representing the policy of the American Bar Association.

² See *Doing Business 2015: Economy Profile 2015 Australia*, The International Bank for Reconstruction and The following memorandum was prepared by pro bono counsel for the ABA Center for Human Rights. It is intended as background information only and should not be relied upon as legal advice on a particular case. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and, accordingly, should not be construed as representing the policy of the American Bar Association. Development / The World Bank, available at <http://www.doingbusiness.org/~media/giawb/doing%20business/documents/profiles/country/AUS.pdf> (last visited March 24, 2015).

Australia is a party to seven core international human rights treaties. The right to freedom of assembly and association is contained in Articles 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR) and Article 8(1)(a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

II. Registration Procedures

A. For-Profit Organizations

a. Laws

The Corporations Act 2001 (Cth) (the “Corporations Act”) governs the formation of corporate entities. The Australian Securities and Investments Commission (ASIC) is the independent Commonwealth Government body responsible for (among other things) registering companies, administering the Corporations Act and ensuring that companies operating in Australia (and their employees) comply with requirements under the Corporations Act.

There are many ways to structure a business, and each way carries with it different rights and obligations of which the business owners should be aware before choosing the business structure. The four main business structures commonly used by businesses in Australia are:

- i. sole trader, which is an individual trading on its own;
- ii. partnership (or an “unlimited liability company”), which is an association of people or entities running a business together, but not as a company;
- iii. trust, which is an entity that holds property or income for the benefit of others; and
- iv. company, which is a legal entity separate from its shareholders.

The most common form of structure is a company (and for purposes of this research, we will focus on the company structure), formed in accordance with the Corporations Act. Under the Corporations Act, a company may be:

- a. unlimited with share capital;
- b. limited by shares;
- c. limited by guarantee; and
- d. no liability (although this only applies if the company’s sole objects are mining or mining related objects).

Most companies fall into two of the above categories, depending on the type of liability that can be imposed on the shareholders. They are either: (a) companies limited by shares, which are a type of company that limits the liability of shareholders to the value of their shares; and (b) companies limited by guarantee, which are companies that are most often used by non-trading organizations such as sporting clubs and charitable organizations because members can place a guarantee on the company which may only be enforced on the winding up of the company and is not considered to be an asset of the company which may be charged during its life (further discussed in Section II.B.a).

To be registered as an Australian company by ASIC, the company must have: at least one member; at least one director who ordinarily resides in Australia; and a registered office in Australia. Australian companies are generally governed by a constitution; in the absence of a constitution, the company will be governed by a set of common rules provided in the Corporations Act. To register a new Australian company you must complete a Form 201 (application for registration of an Australian company) and lodge it with ASIC (Australian Securities & Investment Commission). All companies registered under the Corporations Act are entitled to an Australian Business Number (ABN), which a company will need to register for the purposes of the Goods and Services Tax (GST). An ABN is a unique eleven digit number that identifies a business to the government and community – it does not replace a tax file number, but it is used for various tax and other business purposes. With an ABN, a business can: (i) confirm its identity to others when ordering and invoicing; (ii) avoid Pay as You Go (PAYG) tax on payments received; (iii) claim goods and services tax (GST) credits; (iv) claim energy grants credits; and (v) obtain an Australian domain name (i.e., in the “.au” space). These requirements are further described in the table below.

**SUMMARY OF TIME, COST AND PROCEDURES
FOR STARTING A BUSINESS (COMPANY) IN AUSTRALIA:³**

NO.	PROCEDURE	TIME TO COMPLETE	COST TO COMPLETE
1	<p><u>Complete and lodge ASIC Form 201 “Application for Registration as an Australian Company”; Obtain a certificate of incorporation and an Australian company number (ACN)</u></p> <p>To register a company, the applicant must complete and submit an ASIC Form 201 ("Application for Registration as an Australian Company") and pay the prescribed fee of AUD 457.</p> <p>Any person to be appointed as a director or secretary of the company must have consented in writing to that appointment. Similarly, each shareholder of the company must have consented to become a shareholder.</p> <p>At least 1 director (and, if the company has appointed secretaries, at least 1 secretary) must ordinarily reside in Australia. The registered office of the company must be an address in Australia.</p> <p>The company may adopt its own constitution or rely upon the Replaceable Rules in the Corporations Act.</p> <p>Prior to lodging the application for registration, the applicant should confirm the availability of the proposed company name. If no name is specified, the company will simply be referred to by its CAN.</p> <p>Upon incorporation, ASIC will issue to the company a certificate of incorporation, which evidenced that the company has been</p>	1 day	AUD 457

³ *Id.*

	<p>incorporated on and from the date of issue.</p> <p>The process takes approximately 20 minutes and can be completed online.</p>		
2	<p><u>Register for ABN with the Australian Taxation Office (ATO)</u></p> <p>This procedure is required under the Income Tax Assessment Act 1936 and a new tax system (Goods and Services Tax) Act of 1999.</p> <p>Depending on the company circumstances and location, it must comply with different taxation requirements:</p> <p>If the annual company turnover is AUD\$75,000 or more, the company must register for Goods and Services Tax (GST) by obtaining an 11-digit Australian Business Number (ABN). The annual company turnover represents its gross business income (not its profit). Companies with lower annual turnover may also choose to register for the Goods and Services Tax.</p> <p>The application to ABN can be submitted electronically at the Business Entry Point, www.abr.business.gov.au. Otherwise, the application may be submitted by hard copy to the ATO. If the electronic submission is successful, the applicant will be provided with an ABN at the end of the Internet session. The ATO will also mail the ABN within 28 days of receipt of the application.</p> <p>The company must deduct tax from employee pay, provide payment summaries, contribute to employee superannuation and report and issue payments to the ATO. Companies may also register for Pay As You Go (PAYG) at www.abr.gov.au. Otherwise, they may register with the ATO by postal mail or phone or through a tax agent. State and territory taxes (e.g., stamp duty, payroll tax, and land tax) may also be imposed, with requirements differing according to company location.</p> <p>Companies with annual turnover of AUD\$75,000 or more must register for an ABN. Failure to do so will result in GST being levied on all company sales since the required date of registration even if the sale price of any goods or services has not been grossed up to include the tax. Furthermore, the company may incur penalties and interest charges for any overdue payments.</p>	Less than one day (online procedure)	None.
3	<p><u>Sign up for Worker Compensation Insurance at an insurance Agency</u></p> <p>The Workers Compensation Act of 1987 and the Workplace Injury Management and Workers Compensation Act of 1998 state that the worker compensation insurance is a compulsory requirement for employers in Australia. The premium rate is based on description of the company's main business.</p>	1 day	no charge

B. Not-For Profit Organizations

a. Laws

In Australia, there are many ways to structure a non-profit organization, and each way will affect the manner in which the organization conducts its business, including holding meetings, appointing a certain number of members, reporting obligations, tax obligations, cost and other considerations. As mentioned above, the Corporations Act governs the formation of corporate entities. The three main legal structures used by non-profit organizations are: (i) unincorporated associations; (ii) incorporated associations; and (iii) company limited by guarantee.

An unincorporated association is not recognized as a separate legal entity to the members associated with it – rather, it is a group of people who agree to act together as an organization and form an association. The group can remain informal and its members make their own rules on how the group is managed. The rules may also be referred to as a constitution. The advantages of unincorporated associations are that the structure is very flexible and the least costly and time consuming of any form of organizational structure. The disadvantages of such associations are: (i) the liability of members is unlimited; (ii) there is no perpetual succession -- all property acquired by the association belongs to the individual members; (iii) similarly, gifts or trusts in wills cannot generally be made to an unincorporated association; (iv) the association cannot (generally) sue or be sued in its own name; and (v) members of the association may not have clear contractual or proprietary rights in relation to the association.

An incorporated association is a legal entity separate from its individual members. Associations are incorporated under the state or territory legislation in which they operate. It can hold property, sue and be sued. They are restricted to operating within that state or territory. An incorporated association can continue regardless of changes to membership. It also provides financial protection by usually limiting personal liability to outstanding membership and subscription fees. As legislation varies from state to state, it is important to visit the website of the relevant state or territory authority to learn more about the requirements in that state or territory. As legislation differs in each state or territory, it is difficult to outline detailed requirements for incorporated associations, but basically an incorporated association may need to: (i) have a committee, responsible for managing the association; (ii) have a public officer and notify any changes in that position; (iii) have a registered office in its state of incorporation; (iv) act in accordance with its objects and rules; (v) hold an annual general meeting once every calendar year; (vi) lodge an annual statement every year; (vii) keep proper accounting records and, in some states, prepare, have audited and lodge financial statements; (viii) keep minutes of all committee and general meetings; (ix) keep registers of members and all committee members; and (x) have a common seal.

As discussed in Section II.A. above, under a company structure, charitable or not-for profit organizations will generally be registered as public companies that are limited by guarantee. A company limited by guarantee is a public company incorporated under the Corporations Act. It has a separate legal entity separate from its members and can operate anywhere in Australia. A company limited by guarantee can continue regardless of changes to membership. The liability of company members is limited to the amount the members undertake to contribute to the property of the company if it ceases operation. The company can hold property and can sue and be sued.

At the very least, a public company (the process for registration is the same as described in the table above) under the Corporations Act must:⁴

- 1) have at least three directors and one secretary;
- 2) have at least one member;
- 3) have a registered office address and principal place of business located in Australia;
- 4) have its registered office open and accessible to the public;
- 5) be internally managed by a constitution or replaceable rules;
- 6) maintain a register of its members;
- 7) keep a record of all directors' and members; meeting minutes and resolutions;
- 8) appoint a registered company auditor within one month of its registration;
- 9) keep proper financial records;
- 10) prepare, have audited and lodge financial statements and reports after the end of every financial year (this requirement does not apply to some companies that are limited by guarantee);
- 11) send to its members a copy of its financial statements and reports, unless the member has a standing arrangement with the company not to receive them (this requirement does not apply to some companies that are limited by guarantee);
- 12) hold an annual general meeting once every calendar year within five months after the end of its financial year;
- 13) receive and review an annual company statement and pay an annual review fee (a charitable or not-for-profit company may be eligible for a reduced annual review fee if it meets the criteria under the definition of 'special purpose company'); and
- 14) lodge notices whenever changes to its officeholders, office addresses, constitution and its name occur within specified timeframes as determined by the Corporations Act.

A company limited by guarantee may also be registered without the word 'Limited' in its name. This is only possible if its constitution:

- 1) requires the company to pursue charitable purposes only and to apply its income promoting those purposes;

⁴ See Registering Not For Profit or Charitable Organizations, Australia Securities & Investments Commission, available at <http://www.asic.gov.au/for-business/starting-a-company/how-to-start-a-company/registering-not-for-profit-or-charitable-organisations/> (last visited March 24, 2015).

- 2) prohibits the company making distributions to its members and paying fees to its directors; and
- 3) requires the directors to approve all other payments the company makes to directors.

C. Analytical comparison of the legal process of registration

Non-profit organizations can be organized under the same legal regimes as for-profit organizations leading to both types of organizations being treated fairly similarly when it comes to registration requirements. However, it should be noted that not-for-profit organizations have the option of existing as an unincorporated association, which allows them to retain an informal organizational structure. For-profit organizations do not have the same ability.

III. Tax Laws

A. For-Profit Organizations

a. Laws

Income tax laws are integral in selecting the appropriate structure for a business. There are two principal Commonwealth Acts governing income tax in Australia: (i) the Income Tax Assessment Act 1936 (Cth)⁵; and (ii) the Income Tax Assessment Act 1997 (Cth)⁶. Taxes in Australia are administered and collected by the Australian Taxation Office (ATO), and in some cases state government revenue offices.

The key taxes affecting businesses are (i) Company (income) Tax; (ii) Capital Gains Tax (CGT); and (iii) Goods and Services Tax (GST). These taxes are all set by the Australian Government. Businesses can elect to make tax payments monthly, quarterly or annually.

An Australian resident company is subject to company tax, at a rate set by the Australian Government. A non-resident company is taxed on its Australian source income at the same rate as a resident company (based on Australian sourced income). Taxable income and the tax rate may vary under limited circumstances, such as industry or business structure. Companies (including corporate limited partnerships, strata title bodies corporate [dealing with real estate], trustees of corporate unit trusts and public trading trusts) are taxed at a rate of 30%.⁷

A broad based GST has applied in Australia since July 1, 2000. Generally, businesses registered for GST will include GST in the price of sales to their customers, and claim credits for the GST included in the price of their business purchases. Its effect is a tax of 10% on the consumption of most goods, services and property in Australia (including imports). Generally does not apply to exports of goods or services consumed outside Australia.⁸ No information about tax-free or other free trade zones in Australia applicable to companies was located.

⁵ Available at http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1936240/.

⁶ *Id.*

⁷ See Company Tax Rate 2014-2015, Australia Taxation Office, available at <https://www.ato.gov.au/rates/company-tax/> (last visited March 24, 2015).

⁸ See GST, Australia Taxation Office, available at <https://www.ato.gov.au/business/gst/> (last visited March 24, 2015).

EXAMPLE OF STANDARD TAX PAYMENTS FOR A COMPANY:⁹

TAX	PAYMENTS	NOTES ON PAYMENTS	TAX RATE	TAX BASE
Corporate Income Tax	1	Online	30%	Taxable profits
Superannuation Guarantee	1	Online	9%	Gross salaries
Payroll Tax	1	Online	5.45%	Total payroll
Worker's Compensation	1	N/A	3.9%	Gross salaries
Fringe Benefits Tax	1	Online	46.5%	Grossed up taxable value of fringe benefits
Land Tax	1	No Filing	100 plus 1.6 cents for each \$A exceeding \$396,000	Unimproved land value
Municipal Tax	1	No filing	A\$4,500	N/A
Tax on Insurance Contracts	1	N/A	9%	Insurance premium
Vehicle Tax	1	N/A	\$A718 per vehicle	N/A
Fuel Tax	1	N/A	\$A0.231	Liters of fuel
Value Added Tax (GST)	1	Online	10%	Value Added

B. Not-For Profit Organizations

a. Laws

See Item III.A.a above for an overview on the types of taxes collected by the ATO.

Whether a non-profit organization has to pay income tax will depend on whether or not the organization is exempt from income tax. Australian non-profit organizations have a range of concessions available to them. Few concessions, however, apply to all organizations - they generally apply to particular types of non-profit organization. In order to access tax concessions and comply with an organization's tax obligations, the organization may need to: (i) register for an ABN, GST, fringe benefits tax (FBT) and pay as you go (PAYG) withholding; and (ii) obtain endorsement to access tax

⁹ See Doing Business 2015: Economy Profile 2015 Australia, The International Bank for Reconstruction and Development / The World Bank, available at <http://www.doingbusiness.org/~media/giawb/doing%20business/documents/profiles/country/AUS.pdf> (last visited March 24, 2015).

concessions. The types of organizations that need to be endorsed are charities and income tax exempt funds. If an organization is exempt from income tax it will not be assessed on its receipts and does not need to lodge an income tax return (unless specifically asked to). Only certain categories of organization are exempt from income tax. They come from these broad groups: (i) registered charities; (ii) community service organizations; (iii) cultural organizations; (iv) educational organizations; (v) employment organizations; (vi) health organizations; (vii) resource development organizations; (viii) scientific organizations; and (ix) sporting organizations.

Non-profit companies with a taxable income of between \$417 and \$915 are taxed on their taxable income above \$416; and non-profit companies with a taxable income above \$915 are taxed on all of their taxable income.¹⁰

Non-profit organizations must register for GST if their GST turnover is \$150,000 or more and they may choose to register if their GST annual turnover is lower. If an organization is registered for GST, it must include 10% GST on most, or all, of its sales. In most circumstances, an organization can also claim a credit for the GST included in the price of goods and services it buys in carrying on its activities. Non-profit organizations have access to a range of GST concessions (charities must be endorsed by the Australia Tax Office in order to access GST charity concessions).

Taxes and duties that may be levied by state and territory governments include: (i) stamp duty (or duty in the Australian Capital Territory, New South Wales, Queensland, Tasmania, Victoria and Western Australia); (ii) payroll tax; and (iii) land tax. As the requirements for these taxes and duties vary between states and territories, organizations should seek clarification from their local state/territory revenue office (as opposed to from the ATO).¹¹ In Australia, persons can only make tax deductible gifts or donations to organizations that have the status of deductible gift recipients (DGRs). Deductions for gifts are claimed by the person that makes the gift (the donor). To claim a tax deduction for a gift, a person must meet four conditions: (i) the gift must be made to a deductible gift recipient (i.e., a DGR); (ii) the gift must truly be a gift (a voluntary transfer of money or property in exchange for which no material benefit or advantage is provided); (iii) the gift must be covered by one of the gift types; and (iv) the gift must comply with any relevant gift conditions (for some DGRs, the income tax law adds extra conditions affecting the types of deductible gifts can be received).

C. Analytical comparison

The Government recognizes the special status of almost all non-profit associations by exempting them from income tax. The non-profit sector is an important part of Australia's economy, society and political system.

IV. Financial Transaction Laws

A. For-Profit Organizations

a. Laws

i. Foreign Investment/Foreign Funding Laws

¹⁰ See Company Tax Rate 2014-2015, Australia Taxation Office, *available at* <https://www.ato.gov.au/rates/company-tax/> (last visited March 24, 2015).

¹¹ See Getting Started for Non-Profit Organizations, Australia Taxation Office, *available at* <https://www.ato.gov.au/Non-profit/Getting-started-for-non-profit-organisations/> (last visited March 24, 2015).

The Australian Government encourages foreign investment in Australia. Foreign investment is governed by the Foreign Investment Review Board (FIRB), a non-statutory body that examines proposals by foreign persons to undertake direct investment in Australia and makes recommendations to the Government on whether those proposals are suitable for approval and in compliance with the Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA)¹².

Whether or not foreign investment approval is required depends upon the type of investment and whether the investment is above a monetary threshold. The following acquisitions must be notified, irrespective of the value or the nationality of the investor:

- 1) all vacant non-residential land;
- 2) all residential real estate (some exemptions apply);
- 3) all shares or units in Australian urban land corporations or trust estates (some exemptions apply);
- 4) all investments of 5% or more in the media sector; and
- 5) all direct investments by foreign government investors, and proposals by them to establish new businesses in Australia or acquire interests in land (if an “Authorized Deposit-taking Institution”, as discussed in footnote 2 of Australia’s Foreign Investment Policy)

All other acquisitions (including shares or assets of an Australian business) should be notified if the target is valued at or above the applicable monetary threshold set by the Australia’s Foreign Investment Policy or the Foreign Acquisitions and Takeovers Act 1975. Acquisitions of shares in or assets of businesses valued at more than the applicable monetary threshold (which as of January 1, 2013 is A\$252 million for non-US investors) require FIRB approval.¹³

According to the Australian Government Department of Foreign Affairs and Trade¹⁴, the following free-trade agreements (which are agreements countries where the countries agree on certain preferential obligations that affect trade in goods and services, and protections for investors and intellectual property rights, among other things) (each a “FTA”) are currently in force: (i) ASEAN-Australia-New Zealand; (ii) Australia-Chile; (iii) Australia-New Zealand Closer Economic Relations; (iv) Australia-United States¹⁵; (v) Japan-Australia Economic Partnership Agreement; (vi) Korea-Australia; (vii) Malaysia-Australia; (viii) Singapore-Australia; and (ix) Thailand-Australia. The China-Australia FTA has concluded. The following FTAs are under negotiation: (a) Australia-Gulf Cooperation Council (GCC) FTA; (b) Australia-India Comprehensive Economic Cooperation Agreement; (c) Environmental Goods Negotiations; (d) Indonesia-Australia Comprehensive Economic Partnership Agreement; (e)

¹² See Foreign Investment Review Board, Australian Government, *available at* <http://www.australia.gov.au/directories/australia/firb> (last visited March 24, 2015).

¹³ See FIRB: Monetary Thresholds, *available at* http://www.firb.gov.au/content/monetary_thresholds/monetary_thresholds.asp (last visited March 24, 2015).

¹⁴ See Free Trade Agreements, Australian Government Department of Foreign Affairs and Trade, *available at* <http://www.dfat.gov.au/trade/agreements/pages/trade-agreements.aspx> (last visited March 24, 2015).

¹⁵ See Free Trade Agreements Australia, *available at* <https://ustr.gov/trade-agreements/free-trade-agreements/australian-fta> (last visited March 24, 2015). The United States-Australia Free Trade Agreement was entered into force on January 1, 2005.

Pacific Agreement on Closer Economic Relations (PACER) Plus; (f) Regional Comprehensive Economic Partnership; (g) Trade in Services Agreement; and (h) Trans-Pacific Partnership Agreement. Certain industries limit the degree of permissible FDI (e.g., foreign investment in the banking sector must be consistent with the Banking Act 1959 and the Financial Sector (Shareholdings) Act 1998 and banking policy; total foreign investment in Australian international airlines (including Qantas) is limited to 49 per cent; the Airports Act 1996 limits foreign ownership of airports offered for sale by the Commonwealth to 49 per cent, with a 5 per cent airline ownership limit and cross ownership limits between Sydney airport (together with Sydney West) and Melbourne, Brisbane and Perth airports; the Shipping Registration Act 1981 requires a ship to be majority Australian-owned if it is to be registered in Australia; and aggregate foreign ownership of Telstra is limited to 35 per cent of the privatized equity and individual foreign investors are only allowed to own up to 5 per cent.)

ii. Political Contribution Laws

Political contributions are regulated by the *Commonwealth Electoral Act 1918*. Disclosure of certain information (e.g., details of gifts and donations) is subject to a minimum threshold below which disclosure is not required. Australian law currently requires all donations to a political party totaling \$12,800 from July 1, 2014 to June 30, 2015 or more to be declared by both the donor and the recipient.¹⁶ The donations must be disclosed in an annual return lodged with the Australian Electoral Commission within twenty weeks of the financial year ending. There are no restrictions on who can contribute.

B. Not-For Profit Organizations

a. Laws

i. Foreign Investment/Foreign Funding Laws

See above. No additional restrictions relating to foreign investment as to non-profits or corporations limited by guarantee were located.

ii. Political Contribution Laws

See above. No additional restrictions were located.

b. Case Law

Did not locate applicable case law.

C. Analytical Comparison

No difference observed. See above.

V. Auditing/Reporting Requirements

A. For-Profit Organizations

a. Laws

¹⁶ See generally Disclosure Threshold, Australian Electoral Commission, available at http://www.aec.gov.au/Parties_and_Representatives/public_funding/threshold.htm (last visited March 24, 2015).

Businesses in Australia may be required to report to ATO, ASIC and/or the Australian Securities Exchange (ASX).

Businesses operating in Australia are required to lodge a Business Activity Statement (**BAS**) to the ATO to make payments and report their tax obligations. Certain individuals may also be required to lodge a BAS. The BAS is personalized to each business (or individual). It can be lodged electronically, by mail or in person. A BAS needs to be lodged monthly, quarterly or annually depending on when instalments are due.

ASIC is Australia's corporate, financial markets and financial services regulator. Section 319 of the Corporations Act requires a disclosing entity or registered scheme to lodge the complete financial reports in accordance with the Corporations Act within three months after the end of the financial year. All other companies must lodge their financial reports within four months after the end of the financial year. Annual financial reports are required to be audited.¹⁷ Section 292 of the Corporations Act requires the following entities to prepare financial reports: (i) all disclosing entities; (ii) public companies (iii) companies limited by guarantee (except small companies limited by guarantee); (iv) all large proprietary companies; (v) all registered schemes; (vi) small proprietary companies that are foreign-controlled; (vii) small proprietary companies or small companies limited by guarantee that ASIC directs to prepare financial reports; (viii) small proprietary companies subject to a shareholder direction under Section 293 of the Corporations Act; and (ix) small companies limited by guarantee subject to a shareholder direction under Section 294a of the Corporations Act.

The table below lists the components of the annual financial report:¹⁸

DOCUMENT	SECTION OF THE CORPORATIONS ACT
Statement of financial position as at the end of the year (if consolidated accounts are not required by Accounting Standards)	295(2) & 296(1)
Statement of comprehensive income for the year (if consolidated accounts are not required by Accounting Standards)	295(2) & 296(1)
Statement of cash flows for the year (if consolidated accounts are not required by Accounting Standards)	295(2) & 296(1)
Statement of changes in equity if consolidated accounts are not required by Accounting Standards)	295(2) & 296(1)

¹⁷ Financial reports prepared in accordance with the Corporations Act generally must comply with accounting standards. Australian Accounting Standards meet the requirements of International Financial Reporting Standards (IFRS) as Australia adopted IFRS in 2005, with application for financial periods beginning on or after January 1, 2005.

¹⁸ See generally Financial reports, Australian Securities & Investments Commission, available at <http://www.asic.gov.au/regulatory-resources/financial-reporting-and-audit/preparers-of-financial-reports/financial-reports/> (last visited March 24, 2015).

Consolidated financial statements, if required by accounting standards– which may include parent entity financial information where [CO10/654] conditions are met.	295(2) & 296(1)
Notes to financial statements (disclosure required by the regulations, notes required by the accounting standards, and any other information necessary to give a true and fair view)	295(3)
Directors' declaration that the financial statements comply with accounting standards, give a true and fair view, there are reasonable grounds to believe the company/scheme/entity will be able to pay its debts, the financial statements have been made in accordance with the Corporations Act	295(4)
Directors' report, including the auditor's independence declaration	298-300A
Auditor's report	301 & 308

In some circumstances, companies may be exempt from financial reporting.¹⁹ Registered foreign companies are required to lodge financial statements with ASIC at least once every calendar year and at intervals of not more than 15 months. Financial statements comprise:

- i. a copy of the company's balance sheet, profit and loss statement and cash flow statement (all made up to the end of the last financial year); and
- ii. any other documents the company is required to prepare by the law that applies in the company's place of origin.

Also, a registered foreign company must appoint a local agent, who is 'answerable for the doing of all acts, matters and things that the foreign company is required by or under the Corporations Act 2001 to do'. The local agent may also be personally liable to a penalty imposed on the foreign company for a contravention of the Corporations Act. Registered foreign companies must also notify ASIC of certain changes, including amendments to: its constitution or any other lodged documents; its directors (including changes to the powers of Australian resident directors); and/or its local agent.

ASIC is responsible for administering the requirements of the Corporations Act as it relates to auditor independence (Divisions 3, 4 and 5 of Part 2M.4) and audit quality (Division 3 of Part 2M.3).

¹⁹ See generally Financial reports, Australian Securities & Investments Commission, available at <http://www.asic.gov.au/regulatory-resources/financial-reporting-and-audit/preparers-of-financial-reports/financial-reports/> (last visited March 24, 2015). Examples when a company may be exempt from the requirement to file financial statements include: (i) if the company has already lodged financial reports with the Stock Exchange and the conditions in class order [Class Order 98/104] are met; (ii) if the company is foreign-controlled but the foreign company that is in control is registered with ASIC as a foreign company and lodges consolidated financial reports that include the activities of the Australian company if the small proprietary company is controlled by foreign companies which are not part of a large group, then it is not required to appoint auditors or prepare or lodge financial reports if the directors resolve to apply relief provided by [Class Order 98/0098] and lodge notice of that resolution within the time requirements under that class order. The directors must resolve to apply the relief and lodge Form 384 within the deadlines set out in [Class Order 98/0098].

ASIC's audit inspection program commenced after the passing of the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004 (CLERP 9). The objective of audit inspection program is to promote high quality external audits of financial reports under Chapter 2M of the Corporations Act and raise the standard of conduct in the auditing profession. This helps to ensure that users can have a greater confidence in financial reports. A strong audit profession helps maintain and promote confidence and integrity in Australia's capital markets. While these activities have an educational and compliance focus, enforcement action can be taken where significant non-compliance is identified. An audit of an Australian company, disclosing entity, registered scheme or financial services licensees for the purposes of the Corporations Act may only be performed by a registered company auditor (RCA) or an authorized audit company (AAC).

B. Not-For Profit Organizations

a. Laws

In December 2012, the Government issued the Australian Charities and Not-for-profits Commission Act 2012 which formally established the Australian Charities and Not-for-profits Commission (ACNC) to regulate the operations of charities and not-for profit entities. Many aspects of these reporting requirements are similar to those in the Corporations Act. An Annual Information Statement (AIS) must be lodged with the ACNC within six months of the end of the financial year. The financial information required to be disclosed depends on the size of the organization.

As discussed above, charitable or not-for profit organizations will generally be registered as public companies that are limited by guarantee. A company limited by guarantee must appoint an auditor (as noted above, an audit of an Australian company, disclosing entity, registered scheme or financial services licensees for the purposes of the Corporations Act may only be performed by a RAC or AAC). Further, companies limited by guarantee have a three-tier reporting framework, as shown in the following table:²⁰

TIER	TYPE OF COMPANY	OBLIGATIONS
1	Small company limited by guarantee ²¹ .	Unless directed by a member or ASIC, does not have to: <ul style="list-style-type: none"> • prepare a financial report or have it audited • prepare a directors' report, or • notify members of annual reports.
2	Company limited by guarantee with annual (or consolidated) revenue of less than \$1	Must prepare a financial report.

²⁰ See generally Companies limited by guarantee, Australian Securities & Investments Commission, available at <http://asic.gov.au/regulatory-resources/financial-reporting-and-audit/preparers-of-financial-reports/companies-limited-by-guarantee/> (last visited March 24, 2015).

²¹ A company is a small company limited by guarantee in a particular financial year if: (i) it is a company limited by guarantee for the whole of the financial year; (ii) it is not a deductible gift recipient at any time during the financial year, and (iii) its revenue (or consolidated revenue if that applies) for the financial year is less than \$250,000. Commonwealth companies or subsidiary, or a subsidiary of a Commonwealth authority, transferring financial institutions, building and credit societies and credit unions are excluded.

	million.	<p>Can elect to have its financial report reviewed, rather than audited.</p> <p>Must prepare a directors' report, although with less detail than that required of other companies.</p> <p>Must give annual reports to any member who elects to receive them.</p>
3	Company limited by guarantee with annual (or consolidated) revenue of \$1 million or more.	<p>Must prepare a financial report.</p> <p>Must have the financial report audited.</p> <p>Must prepare a directors' report, although with less detail than that required of other companies.</p> <p>Must give annual reports to any member who elects to receive them.</p>

C. Analytical Comparison

No difference observed. See above.

VI. Penalties for Non-Compliance

A. For-Profit Organizations

a. Laws

Corporations Act

i. Civil

Under the Corporations Act, directors are required to: (i) act in good faith and for a proper purpose; (ii) act with care and diligence; (iii) avoid improper use of information; (iv) avoid improper use of position; and (v) disclose certain interests. Additionally, under the Business Judgment Rule, directors must make business judgments that are made on rational, good faith grounds. In order to receive the protection of the business judgment rule, the director must not have a material personal interest in the subject matter and must have made a rational assessment of the decision and believed it was in the best interests of the company. This rule is reflected in Section 180 of the Corporations Act.

Certain penalties, such as the failure by a director of a company to take all reasonable steps to ensure that their company keeps proper accounting records and directors failing to prevent their company trading whilst insolvent, constitute civil contraventions for which a court may impose a pecuniary penalty of up to \$200,000, prohibit the person from managing a corporation and order he person to pay compensation.

ii. Criminal

There are many offences under the Corporations Act. The following is a list of the most common types of offences:

- a) failure by companies to file the appropriate returns ASIC;
- b) failure by directors to disclose any conflict of interest they may have involving transactions of the company;
- c) improper use of position by a director or officer of the corporation (for example, the secretary) to gain an advantage for her or himself or to a person other than the corporation;
- d) dishonest conduct on the part of a director or officer of the corporation with respect to the discharge of her or his duties;
- e) managing a corporation whilst disqualified from doing so under the Corporations Act;
- f) misleading or false statements by promoters of companies to potential investors or failure to disclose information in accordance with the Corporations Act requirements;
- g) share hawking by an unlicensed person;
- h) failure of a securities or investment adviser to act honestly and in the best interests of the client;
- i) market manipulation in relation to securities traded on the Australian Stock Exchange; and
- j) insider trading, that is dealing in securities whilst in possession of price sensitive information that is not generally available.

Most of these breaches attract significant penalties under the Corporations Act. The primary penalties for criminal offences in relation to directors' duties arise from Section 184 of the Corporations Act. The criminal offences under Section 184 include the following:

- a) a director commits an offence if they are reckless or intentionally dishonest, and fail to exercise their powers and discharge their duties in good faith in the best interests of the corporation or for a proper purpose;
- b) a director commits an offence if they use their position with intentional dishonesty or recklessly in order to directly or indirectly gain an advantage for themselves, or someone else, or cause detriment to the corporation; or
- c) a person who obtains information because they are, or have been, a director of a corporation commits an offence if they use the information with intentional dishonesty or recklessly in order to directly or indirectly gain an advantage for themselves, or someone else, or causing detriment to the corporation.

A director may also commit a criminal offence for failure to prevent the company trading while insolvent in a dishonest manner. The directors' duty to avoid insolvent trading, related defenses and consequences of breach are contained in Part 5.7B Division 3.A of the Corporations Act. A person breaches this duty under Sections 588G(1) and 588G(2) where:

- a) he or she was a director of the company at the time when it incurs a debt;
- b) the company is insolvent at that time or becomes insolvent by incurring that debt;
- c) at that time there were reasonable grounds for suspecting that the company was insolvent or would become insolvent and either: (1) he or she was aware at that time that there were such grounds; (2) a reasonable person in a like position in a company in the company's circumstances would be so aware; and
- d) he or she failed to prevent the company incurring the debt.

The director commits a criminal offence if the failure to prevent the company incurring the debt was dishonest. The duty intends to increase a director's responsibility and protect the welfare of stakeholders in the company.

A breach of Section 184 of the Corporations Act or Section 588G(3) may result in a maximum penalty fine amount of A\$200,000 or five years imprisonment, or both (Schedule 3 of the Corporations Act). Further, Section 206B of the Corporations Act provides for automatic disqualification from managing a corporation for criminal convictions.

It is important to note that auditors are required to report to ASIC contraventions and suspected contraventions of the Corporations Act during the conduct of an audit.

B. Not-For Profit Organizations

a. Laws

i. Civil

See above. No additional law located.

ii. Criminal

See above. No additional law located.

C. Analytical comparison

No difference observed. See above.

D. Statistics on actual penalties for each group (if, available)

See above. Penalties will depend on the type of offense committed.

OVERVIEW CHART

Although not exhaustive of all the similarities and differences discussed in the above sections, this is to help highlight some of the biggest differences or similarities.

Issue	For-Profit Organizations	Not-For Profit Organizations	Similarities
Registration Procedures	<ul style="list-style-type: none"> i. sole trader; ii. partnership; iii. trust; and iv. company. 	<ul style="list-style-type: none"> i. Unincorporated association ii. incorporated association; and iii. company limited by guarantee. 	Similar registration procedures.
Tax Laws	Must pay taxes. (mainly, income tax; capital gains tax, and goods and services tax).	Exempt, in some cases. To access tax concessions, may need to: (i) register for an ABN, GST, FBT and PAYG withholding; and (ii) obtain endorsement to access concessions.	Whether a non-profit organization has to pay <u>income tax</u> will depend on whether or not the organization is exempt from income tax
Financial Transaction Laws	Governed by the Foreign Investment Review Board	Governed by the Foreign Investment Review Board	None.
Auditing/Reporting Requirements	Annual financial report to ASIC	Three-tier reporting framework to ACNC	Similar substance in reporting documents, but reports to be made at different times and to different governmental agencies.
Penalties	Criminal and civil penalties, ranging from monetary fines to incarceration.	Criminal and civil penalties, ranging from monetary fines to incarceration.	Penalties will depend on the type of offense committed. In some cases, depending on the applicable law, this may be different between a for-profit and non-profit entity.