



US Law Essentials for Australian Businesses

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DRYSDALE LEGAL

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About This Guide

If you're an Australian business owner selling to US customers, launching on Amazon US, raising American capital, or simply wondering whether you need a US company, this guide is for you.

I wrote this guide because I kept having the same conversations. Smart Australian founders, running solid businesses, asking the same five questions: Do I need a US entity? LLC or C-Corp? How do I protect my trademark? What about US privacy law? What should I watch for in American contracts?

Good questions, all of them. The answers scattered across Reddit threads, law firm blogs, and forum posts are incomplete at best and dangerously wrong at worst. No single resource existed that gave Australian business owners a practical, plain-English guide covering entity selection, trademarks, contracts, and compliance for the US market.

So I wrote one.

This guide covers the seven things every Australian business needs to understand before (or shortly after) entering the US market. Each chapter stands alone, so feel free to skip to whatever's most relevant. You'll find actual costs, real timelines, and specific thresholds rather than vague "consult a lawyer" hedging.

Here's what you'll learn:

- **Chapter 1:** Whether you actually need a US legal entity (many businesses don't, at least not yet)
- **Chapter 2:** LLC vs C-Corp, the right choice for Australian owners, including the ATO tax trap nobody warns you about
- **Chapter 3:** How to protect your brand with a US trademark (your Australian trademark doesn't cover you)
- **Chapter 4:** Critical differences in US contracts that catch Australian businesses off guard
- **Chapter 5:** US privacy compliance, when it applies to you and what to do about it
- **Chapter 6:** US sales tax, what Australian businesses need to know about collecting and remitting sales tax across US states
- **Chapter 7:** A complete checklist with costs, timelines, and the order to do everything

One caveat: this is general legal information, not legal advice tailored to your situation. Laws change, thresholds shift, and your circumstances are unique. Use this guide to get informed, then get proper advice before making decisions.

Let's get into it.

About the Author

Stephen Drysdale is a US attorney (California State Bar #354071) based in Sydney, Australia. He's also admitted to practise in New South Wales and New Zealand, making him one of a handful of lawyers in the Southern Hemisphere who can advise across all three jurisdictions.

Stephen spent years as in-house counsel at ZURU Group, one of the fastest-growing consumer products companies in the world, where he handled cross-border commercial matters spanning the US, Australia, and New Zealand daily. He's seen firsthand what goes wrong when Australian businesses expand to the US without proper legal foundations, and what goes right when they get the basics sorted early.

Through Drysdale Legal, Stephen helps Australian and New Zealand businesses navigate US law without the US price tag. His core services, including US company formation, trademark registration, contract drafting and review, and privacy compliance, are the exact topics covered in this guide.

"I set up Drysdale Legal because I saw the same problem over and over: talented Australian founders making avoidable legal mistakes when entering the US market. Not because they were careless, but because the information simply wasn't available in one place, written for Australian business owners rather than American ones. This guide is my attempt to fix that."

Do You Actually Need a US Legal Entity?

This is the question I get asked more than any other, and the honest answer is: maybe not. Plenty of Australian businesses sell successfully to US customers through their existing Australian entity, but there are clear trigger points where operating without a US entity becomes risky, expensive, or both.

When You Can Operate from Your Australian Entity

If you're selling digital products or services to US customers from Australia, and you have no employees, no physical presence, and no inventory in the United States, you can generally operate through your existing Australian company or sole trader structure. You invoice in USD, collect payments through Stripe or PayPal, and life is relatively simple.

This works for freelancers, consultants, small e-commerce brands shipping direct from Australia, and SaaS companies with modest US customer bases.

When a US Entity Becomes Necessary

Several triggers change the equation:

Physical Presence: A warehouse, office, employee, or retail location in the US creates what's called a 'nexus', a taxable connection to that state. It is always best to avoid having such a nexus with your Australian entity, and so a US entity is recommended to keep things separate.

Significant US revenue: Once you cross certain state-level thresholds, typically US\$100,000 in sales or 200 transactions in a state, you trigger economic nexus for sales tax purposes. While you can technically register for sales tax collection without a US entity, it's always better to keep your Australian business out of the US tax system. (See Chapter 6 for a detailed look at how US sales tax works and when it applies to your business.)

US investment: American venture capital firms and angel investors almost universally require you to incorporate a US C-Corp (usually in Delaware) before they'll invest. However, this comes with a word of warning. Once you set up your parent company in the US, it can be almost impossible to unwind. We don't recommend setting up a US holding company until you have a definitive and legally binding investment commitment.

US employees: Hiring locally is much easier through a US entity, and resolves a number of cross-border tax considerations. However, for new and expanding businesses we often recommend using an employer-of-record service (like Deel or Remote) to take care of employing your staff because of the varying federal and state compliance obligations. It may also simplify your business registration and tax reporting requirements.

Contracts that require it: Some US customers and government agencies require their vendors to be US-incorporated entities. If you're doing B2B sales to large American companies, this comes up.

TIP

The quick test: If you have offices, products or boots on the ground, or you're turning over US\$100,000 in a particular state, then you should be strongly considering a US entity. If none of those apply, you can likely continue operating from Australia for now.

WARNING

Don't incorporate your holding company in the US 'to prepare for investors': I see this mistake regularly, where someone reads that US investors only ever invest in Delaware companies and so want to proactively set up their structure for this. While it's great to think ahead, not all investors take this hardline approach, and the US has a complicated body of tax rules that makes it almost impossible to unwind this structure if you don't get investors. Instead, consider a business restructuring once you have a signed and legally-binding investment commitment. This can take the form of a post-raise condition. It'll achieve the same outcome but save you years of headache if things don't go quite to plan.

Real-World Scenarios

EXAMPLE

Scenario 1: Mel runs an Australian skincare brand. She sells through her Shopify store, shipping from a warehouse in Melbourne to customers across Australia and the US. US sales hit US\$80K last year. She has no US employees, no US warehouse, and no US investors.

Verdict: Mel probably doesn't need a US entity yet. She can continue invoicing from her Australian company. She should monitor her US sales though, because once she crosses US\$100K in any single US state, she'll trigger economic nexus and should reconsider.

EXAMPLE

Scenario 2: James built a SaaS platform in Brisbane. He's been accepted into a US accelerator and they want him to incorporate a Delaware C-Corp to receive their US\$150K investment. **Verdict:** James needs to consider whether this amount is worth tying up his business structure with the US for the long run. At the very least, James should get both Australian and US tax advice on the company's potential tax liability (particularly if James plans to continue living in Australia, as there may be double taxation issues to consider). Ultimately, if the ongoing operating and tax costs of having his business headquartered in the US is going to outweigh the amount paid by the accelerator, he should strongly consider not taking the investment.

EXAMPLE

Scenario 3: Priya runs a consulting firm in Sydney and has been asked by a US enterprise client to sign an MSA. The client wants to contract with a US entity. **Verdict:** Priya should consider setting up a US entity to service this and future US enterprise clients. Some companies will contract with Australian entities, so it's worth asking, but if the client insists, she'll need to incorporate.

Not sure whether your situation warrants a US entity? This is exactly the kind of question I answer in a 15-minute call. Every business is different, and the right answer depends on your specific revenue, operations, and growth plans. [Book a free US Law Check at drysdale.legal/contact]

LLC vs C-Corp, Which US Entity Is Right for You?

So you've decided you need a US entity. Now comes the choice that trips up more Australian founders than any other: LLC or C-Corp?

I'll be direct: **for most Australian businesses, the answer is a Delaware C-Corp.** I actively discourage Australian founders from forming US LLCs, and in this chapter I'll explain exactly why.

The C-Corp (C Corporation), the Recommended Structure

A C-Corp is the standard American corporation, the structure used by every company listed on the NYSE or NASDAQ. It has shareholders, a board of directors, and officers. For Australian business owners, it's the closest thing to the private company structure (Pty Ltd) you're already familiar with.

Why I recommend C-Corps for Australian businesses:

- **Familiar structure.** Directors, shareholders, shares, it works like the Australian companies you already know.
- **No pass-through taxation headaches.** A C-Corp is taxed as its own entity in the US, which means it doesn't drag Australian shareholders into the US tax system the way an LLC does (more on this below).
- **Can issue stock.** You can issue shares to co-founders, employees (via stock options), and investors. LLCs don't have shares, only membership interests, which are far less flexible.
- **Required by US investors.** VCs, angels, and accelerators almost universally require a Delaware C-Corp. If there's any chance you'll raise US capital, this is the only realistic option.
- **Clean ATO treatment.** The ATO treats C-Corps as foreign companies, which is exactly what they are. There's no mismatch between how the US and Australia classify the entity, making foreign tax credits more straightforward.

Formation costs:

- Delaware C-Corp filing fee: **starting from US\$89** for standard processing
- Delaware annual franchise tax: **US\$175/year** for C-Corp subsidiaries (calculated by the authorized share method)
- Delaware annual renewal fee: **US\$50/year** for C-Corp subsidiaries
- Registered agent: **US\$30–300/year** (required by state law to receive government and legal documents, and something we arrange as part of our formation package)
- US mailing address: **US\$50–100/year** (to receive other correspondence and business matters since the registered agent's address cannot be used for this purpose, and something we arrange as part of our formation package)

- EIN (Employer Identification Number) application: **US\$200–400** one-time and required for federal tax purposes (while C-Corps owned by non-US residents can apply for free via fax or mail, it is preferred to work through a service provider as you generally receive your EIN faster and more reliably)

Formation timeline:

- Entity formation: **approximately 1 week**
- EIN (Employer Identification Number): **2–4 weeks** by mail for non-US applicants (this is typically the bottleneck, since US residents can get one online in minutes, but non-US applicants must apply by mail or fax)

Disadvantages:

- "Double taxation" in the US sense: the corporation pays corporate tax (21% federal), and dividends to shareholders are taxed again
- More compliance: annual meetings, board resolutions, formal minutes

Practical Steps for Incorporating a Delaware C-Corp

If you've decided a Delaware C-Corp is the right structure (and for most Australian businesses, it is), here's a step-by-step overview of what the process actually looks like:

Step 1: Choose and reserve your company name. Your corporate name must be unique in Delaware and include a corporate designator such as "Inc.," "Corp.," or "Corporation." You can check name availability through the Delaware Division of Corporations website and reserve a name for 120 days if needed.

Step 2: Appoint a registered agent. Delaware law requires every corporation to maintain a registered agent with a physical address in the state. This agent receives official legal correspondence and government notices on your behalf. Services typically cost US\$50–US\$300 per year, and many formation packages include the first year.

Step 3: File your Certificate of Incorporation. This is the foundational document filed with the Delaware Division of Corporations. It sets out your company name, registered agent details, the number and type of authorised shares, and the name and address of the incorporator. Keep your authorised share count reasonable (see the common mistakes section below) and specify a low par value to minimise franchise tax.

Step 4: Adopt bylaws, appoint directors, and hold an organisational meeting. Once incorporated, you need to adopt corporate bylaws (the internal rules governing how your company operates), appoint your initial directors, elect officers, and authorise the issuance of shares. Document everything in formal written resolutions, as proper corporate governance protects you from personal liability.

Step 5: Apply for an EIN and open a US bank account. Your EIN (Employer Identification Number) is essentially the US equivalent of an ABN for tax purposes. Non-US applicants must apply by mail or fax using IRS Form SS-4, which typically takes 2–4 weeks. Once you have your EIN, you can open a US business bank account. Many Australian founders use Mercury, Relay, or Brex, which offer remote-friendly onboarding for foreign founders.

The LLC, and Why I Don't Recommend It for Australian Businesses

A limited liability company (LLC) is a structure relatively unique to the United States. The best way to explain it is as a hybrid of a partnership and company. This is because although it is a separate legal entity with limited liability, unlike a company, it does not have shareholders. Instead, an LLC has members who each own an interest in the business but do not hold stocks or shares. LLCs are not suitable for raising investment.

WARNING

 **The LLC Tax Trap for Australian Owners, Read This Carefully.**

LLCs have pass-through taxation, which is great when a US tax resident is the member. However, if an Australian individual or company is the member of an LLC, then it is required to file tax returns with the IRS on all LLC-derived income. The last thing you want is to have your Australian income subject to the US tax system.

Why Delaware?

Delaware is the standard for US C-Corp incorporation. Its Court of Chancery specialises in corporate law, investors and lawyers are familiar with Delaware law, and most US startup legal templates are written for Delaware entities. Virtually all of our clients form a Delaware entity unless there is a very specific reason not to (which is rare).

Your operating state matters too. If you have employees or an office in California, for example, you'll need to register as a "foreign" entity in California regardless of where you incorporate, and you'll pay California's US\$800 minimum franchise tax on top of Delaware's fees. When your operations are limited to a single state, this can be a good consideration for incorporating somewhere other than Delaware.

Common Formation Mistakes I See

- 1. Choosing an LLC without understanding the tax implications.** As explained above, this is the most common and most expensive mistake. The LLC's passthrough structure creates US tax exposure for your Australian business income.
- 2. Incorporating in Delaware when they only operate in one state.** Delaware is the gold standard for C-Corps, thanks to its well-developed and investor-friendly corporate law. However, if you're setting up a simple entity to service clients in a single state, consider incorporating in the state where you actually operate to avoid paying fees to two states.
- 3. Authorising too many shares in a Delaware C-Corp.** Delaware's franchise tax is calculated in relation to the number of shares, and there is more than one way to calculate franchise tax. Authorising too many shares, or using the wrong method, can lead to a large tax bill. For example, a subsidiary with 10 million shares using the wrong calculation could face a franchise tax bill of over US\$85,000, versus a correctly-established subsidiary with only 1500 no par value shares would only have a franchise tax bill of US\$175 (plus the US\$50 annual renewal fee).

4. Forgetting the EIN timeline. US residents can get an EIN online in minutes. Non-US applicants must apply by mail or fax, and the process takes 2–4 weeks. The entity itself forms in about a week, but the EIN is the bottleneck. Plan accordingly, because you can't open a US bank account or do much else without an EIN.

5. Not getting a US mailing address. Many US services, banks, and government agencies require a US mailing address. Our formation package includes a US mailing address for the first year, which solves this problem from day one.

6. Skipping proper corporate governance. Once you've filed your Certificate of Incorporation, you still need to adopt bylaws, appoint directors, elect officers, and issue shares. Skipping these steps, or documenting them improperly, can undermine the liability protection your corporation is supposed to provide and create problems during due diligence if you later seek investment.

LLC vs C-Corp: The Decision Matrix for Australians

Factor	LLC	C-Corp
US investors	✗ Generally won't invest	✓ Required structure
Has shares	✗ Membership interests only	✓ Can issue common, preferred, options
Stock options	Not suitable	Suitable
Governance complexity	Minimal	Board, minutes, resolutions
Recommendation	✗ Not recommended for AU businesses	✓ Clear choice for AU businesses

Need help setting up your Delaware C-Corp, and avoiding the LLC tax trap? I've set up dozens of US entities for Australian founders and can walk you through the process in a quick call. [Book a free US Law Check at drysdale.legal/contact]

Protecting Your Brand, US Trademark Registration

Here's a fact that surprises many Australian business owners: **your Australian trademark gives you zero protection in the United States.** Trademarks are territorial. Your IP Australia registration protects your brand in Australia and nowhere else.

If you're selling to US customers, even from Australia, someone in the US could register your brand name as their trademark and potentially force you out of the American market. It happens more often than you'd think.

Why US Trademark Registration Matters

The United States operates on a "first to use" system (unlike Australia's "first to file"), but in practice, having a federal registration with the USPTO (United States Patent and Trademark Office) gives you enormous advantages:

- **Nationwide protection**, since without registration, your rights are limited to the geographic areas where you've actually used the mark
- **Legal presumption of ownership**, as registration creates a legal presumption that you own the mark nationwide
- **The ® symbol**, which you can only use after federal registration (using it before registration is illegal in the US)
- **Customs enforcement**, allowing you to record your registration with US Customs to stop counterfeit imports
- **Basis for international filings**, as your US registration can serve as a basis for trademark applications in other countries

WARNING

Don't use the ® symbol in the US until your trademark is actually registered with the USPTO. An Australian trademark registration does not entitle you to use ® in America. You can use ™ (which requires no registration) to indicate you're claiming trademark rights, but ® is reserved exclusively for federally registered marks. Misuse can undermine your legal position.

Before You File: The Trademark Search

Before spending a cent on filing fees, invest in a comprehensive trademark search. The USPTO's free Trademark Electronic Search System (TESS) database lets you search existing registrations and pending applications yourself. TESS only catches exact and near-exact matches though. A professional search also checks:

- Domain names
- Social media handles
- Search engines and marketplaces

A thorough search typically costs US\$500–US\$1,500 through a US attorney. That might seem steep until you consider that a trademark application costs US\$350 per class in non-refundable government fees, takes 12–18 months, and if it's refused due to a conflict you could have found beforehand, you've wasted all of it.

TIP

At minimum, search TESS yourself before engaging an attorney. Go to tmsearch.uspto.gov and run your brand name. If an identical or very similar mark is already registered in your class of goods/services, that's a strong signal to get professional advice before proceeding.

Filing a US Trademark Application

Since August 2019, foreign applicants must use a US-licensed attorney to file a trademark application with the USPTO, so you cannot file on your own from Australia.

Filing costs and timeline:

- **Filing fee: US\$350 per class** of goods/services using USPTO pre-approved categories, otherwise additional fees apply
- **Attorney fees:** Typically US\$1,000–US\$2,500 on top of filing fees (varies by complexity)
- **Timeline:** Currently averaging **12–18 months** from application to registration, assuming no opposition

Some attorneys also offer Madrid Protocol filings for multi-country trademark protection through a single international application. While this might reduce some upfront costs, you'll still usually need a local representative to help get the mark through registration and deal with any examination issues, and you certainly almost always need one at the US local level as well.

Trademark Classes: What to File For

Trademarks are registered by class. There are 45 classes covering different types of goods and services. You must file in each class relevant to your business, and each class incurs a separate filing fee.

Common classes for Australian businesses entering the US:

- **Class 9:** Software, mobile apps, downloadable digital content
- **Class 25:** Clothing, footwear, headwear
- **Class 35:** Retail services, advertising, business management
- **Class 41:** Education, entertainment, training services
- **Class 42:** SaaS, web development, IT services

KEY STAT

Approximately 67% of US trademark applications ultimately register successfully (USPTO data). The main reasons for refusal: likelihood of confusion with an existing mark (someone got there first), or the mark is descriptive/generic. A proper trademark search before filing dramatically improves your odds.

Common Mistakes Australian Businesses Make

1. **Not searching before filing.** A comprehensive trademark search costs US\$500–US\$1,500 but can save you thousands in wasted filing fees and legal disputes. The USPTO's free TESS database is a starting point, but it won't catch everything.
1. **Filing too narrowly.** Registering your brand name for "software" in Class 9 doesn't protect you if a competitor uses it for "consulting services" in Class 35. Ensure you cover all classes your business operates in, or speak to an attorney about filing strategies to cover future offerings.
1. **Waiting too long.** The longer you sell in the US without filing, the greater the risk that someone else registers your brand. This can cost you a lot of time and money to challenge.
1. **Ignoring maintenance requirements.** US trademarks require ongoing maintenance filings. You must file a Declaration of Use between the 5th and 6th year after registration, and then renew every 10 years. Miss these deadlines and your registration is cancelled.
1. **Assuming their Australian trademark is enough.** It's not. Full stop.

The Registration Process: What to Expect

1. **Trademark search** (1–2 weeks), to identify conflicts before filing.
2. **Application filing**, submitting to USPTO with specimens showing use (or intent to use).
3. **Examination** (4–6 months), where a USPTO examining attorney reviews your application.
4. **Office action** (if applicable, 2–3 months additional), where you respond to examiner's objections within 3 months.
5. **Publication for opposition** (30 days), where your mark is published and third parties can oppose.
6. **Registration** (approximately 2–3 months after publication), where if no opposition is filed, your mark proceeds to registration (or you receive a Notice of Allowance if filed on intent-to-use basis).

Total timeline: **12–18 months** in a straightforward case. Contested cases can take 2–3 years.

Maintaining Your US Trademark

Registration is not the end, it's the beginning. US trademarks require active maintenance or they'll be cancelled:

- **Years 5–6:** File a Section 8 Declaration of Continued Use, often combined with a Section 15 Declaration of Incontestability. Filing fee: approximately US\$575/class. Miss this window and your registration is cancelled, with no extensions and no excuses.
- **Year 10 (and every 10 years after):** File a combined Section 8 and Section 9 renewal. Filing fee: approximately US\$650/class.
- **Ongoing monitoring:** Watch for potentially infringing applications through the USPTO's Trademark Status and Document Retrieval (TSDR) system or a commercial monitoring service. If someone files a confusingly similar mark and you don't oppose it within 30 days of publication, your job gets much harder.

TIP

Set calendar reminders now. I've seen Australian businesses lose US trademarks they spent 18 months and thousands of dollars obtaining, simply because no one diarised the maintenance deadlines. Your US attorney should track these for you, so make sure they do.

Want to protect your brand in the US? I handle US trademark searches, applications, and registrations for Australian businesses every week. Fixed-fee packages available, with no hourly billing surprises. [Learn more at drysdale.legal/us-trademark-registration]

US Contracts, Key Differences Australian Businesses Must Know

If you've ever received a contract from a US company, you've probably noticed it's longer, more aggressive, and more laden with legal jargon than what you're used to in Australia. That's not an accident. American contract culture is fundamentally different, and if you don't understand those differences, you'll either sign something dangerous or lose deals by pushing back on the wrong things.

Choice of Law and Jurisdiction

Every US contract should specify two things: which state's laws govern the agreement (choice of law) and where disputes will be resolved (jurisdiction).

This matters enormously. A contract governed by California law operates very differently from one governed by Texas law, particularly around employment, non-competes, and consumer protection. Agreeing to jurisdiction in a US court means you could be dragged into litigation thousands of kilometres from home.

TIP

When negotiating with a US company, pay close attention to the governing law and jurisdiction clauses. If you have roughly equal bargaining power, try to negotiate for a neutral or mutually convenient jurisdiction. At minimum, understand what you're agreeing to.

American vs Australian Contract Law

In Australia, contracts for goods and services are generally governed by the Australian Consumer Law, as well as common law principles developed through the courts. By comparison, contract law in the US generally occurs at a state-level, with most contracts for goods being governed by the Uniformed Commercial Code, and contracts for services being governed by common law.

Some contracts and transactions are regulated at a federal level where Congress has elected to pass laws in areas of interstate commerce. For example, matters relating to company securities, or minimum employment standards.

Indemnification, the Big One

US contracts contain indemnification clauses that would make most Australian lawyers blink.

Indemnification in US agreements is broader, more aggressive, and more heavily negotiated than in Australian commercial contracts.

A typical US indemnification clause might require you to:

- Defend the other party against third-party claims
- Pay their legal fees (which in the US can be astronomical)
- Cover damages, settlements, and judgments
- Do all of the above even if the claim is only partially related to your performance

WARNING

Read every indemnification clause carefully. US litigation costs can easily reach over US\$1 million. An uncapped indemnification obligation could expose your business to catastrophic liability. Always negotiate for caps (typically 1–2x the annual contract value for SaaS agreements) and carve-outs for the other party's negligence or willful misconduct. You should also include a positive obligation on the other party to mitigate their losses.

Non-Competes and Non-Solicitation

This is an area of enormous state-by-state variation in the US:

California has effectively banned non-compete agreements entirely (Business & Professions Code §16600). If your contract is governed by California law, any non-compete clause is almost certainly unenforceable.

Most other states enforce "reasonable" non-competes, but what's "reasonable" varies wildly. Duration (1–2 years is typical), geographic scope, and the scope of restricted activities all matter.

The federal picture is evolving. The FTC attempted a nationwide ban on non-competes in 2024, which was struck down by a federal court. The direction of travel is toward restricting non-competes across the board.

TIP

For Australian businesses hiring US contractors or employees: Be cautious about including non-compete clauses in agreements governed by US law. They may be unenforceable (California) or create obligations you didn't intend. Non-solicitation agreements (preventing poaching of specific clients or employees) are generally more enforceable and often achieve what you actually need.

Key US Contract Types You'll Encounter

MSA (Master Service Agreement), the overarching agreement that governs your commercial relationship. It covers liability, IP ownership, confidentiality, and dispute resolution. Individual projects are then covered by SOWs (Statements of Work) under the MSA.

SOW (Statement of Work), which defines the specific scope, deliverables, timeline, and payment for a particular project. Always tied to an MSA.

NDA (Non-Disclosure Agreement), functionally similar to Australian confidentiality agreements, but US NDAs tend to be more detailed about what constitutes "confidential information" and often include non-solicitation provisions.

SaaS Agreement / Terms of Service, which if you're an Australian SaaS company selling to US customers, needs to account for US-specific issues: US privacy compliance, US consumer protection laws, US-appropriate limitation of liability provisions, and appropriate governing law clauses.

Limitation of Liability

US contracts typically include limitation of liability clauses that cap the total amount one party can recover from the other. Standard caps in US SaaS agreements are **1-2x the annual contract value** for general liability, with carve-outs for IP infringement, confidentiality breaches, and indemnification obligations (which may be uncapped or capped at a higher amount).

Australian businesses are often surprised by how heavily these provisions are negotiated in US deals. In Australia, limitation of liability clauses exist but tend to receive less forensic attention. In the US, they're often the most negotiated section of the entire agreement.

KEY STAT

Average US commercial litigation costs regularly exceed US\$1 million. This is the single biggest reason to get your contracts right before you start doing significant business in the US. The cost of proper contract drafting is a fraction of a single dispute.

Five Things to Check Before Signing Any US Contract

1. **Governing law and jurisdiction.** Know which state's laws apply and where disputes will be heard.
1. **Indemnification scope and caps.** Is the indemnification proportionate to your role in the contract? For example, if you are customer then generally you shouldn't be providing an indemnity except in limited circumstances.
1. **Limitation of liability.** Check the overall liability cap, and note the carve-outs. IP infringement and confidentiality breaches are commonly carved out from the general cap, meaning your exposure could be unlimited for those categories.
1. **Termination provisions.** How can each party exit? What's the notice period? Is there a termination-for-convenience clause (allowing either party to walk away without cause)? What happens to your data and IP upon termination?
1. **IP ownership.** Who owns what's created during the engagement? In US contracts, the default "work for hire" doctrine is narrower than many Australian businesses expect. If you're commissioning work, make sure the contract explicitly assigns IP ownership to you.

Need US contracts reviewed or drafted? I review and draft US commercial agreements for Australian businesses at fixed fees, covering MSAs, SaaS agreements, NDAs, and service contracts. No billable-hour surprises. [Learn more at drysdale.legal/us-commercial-contracts]

US Privacy Compliance, What Australian Businesses Need to Know

Privacy law is where Australia and the United States diverge most sharply. Australia has a single, national Privacy Act. The US has no comprehensive federal privacy law. Instead, it relies on a patchwork of state-level consumer privacy laws, sector-specific federal statutes, and Federal Trade Commission (FTC) enforcement actions. For Australian businesses with US customers, this creates a compliance landscape that's genuinely confusing.

Let me simplify it.

Does US Privacy Law Apply to Your Australian Business?

The California Consumer Privacy Act (CCPA), as amended by the California Privacy Rights Act (CPRA), is the most significant US state privacy law. It can absolutely apply to Australian businesses.

The CCPA applies to any for-profit entity that collects personal information from California residents and meets any one of these thresholds:

KEY STAT

CCPA applies if you meet ANY ONE of these:

- Annual gross revenue exceeding **US\$25 million**, OR
- Buy, sell, or share the personal information of **100,000 or more** California residents, households, or devices per year, OR
- Derive **50% or more** of annual revenue from selling or sharing California residents' personal information

There's no requirement that your business be physically located in, or incorporated in, California or even the United States. If you're an Australian e-commerce business shipping to California and you meet any threshold above, the CCPA applies to you.

Beyond California: The State Privacy Patchwork

California isn't alone. As of 2026, 20 US states have enacted comprehensive privacy laws, with more on the way.

CAN-SPAM Act, which regulates commercial email communications. If you send marketing emails to US recipients, you must clearly identify yourself, provide a working opt-out mechanism, and honour unsubscribe requests promptly. Violations can result in penalties of up to US\$53,088 per non-compliant email (as of 2026).

COPPA (Children's Online Privacy Protection Act), which applies if your product or service is directed at children under 13, or you have actual knowledge that you're collecting data from under-13s. COPPA applies regardless of your location, and penalties are severe: the FTC has obtained penalties against non-compliant businesses of up to US\$275 million.

HIPAA (Health Insurance Portability and Accountability Act), which applies if you handle protected health information, whether as a healthcare provider, health plan, or a "business associate" that processes data on their behalf. If you're an Australian health-tech company working with US healthcare clients, HIPAA compliance is mandatory, including entering into formal Business Associate Agreements with your partners.

Gramm-Leach-Bliley Act, which applies to financial services businesses and requires them to protect the privacy and security of customers' non-public personal information.

The Enforcement Reality

How seriously should you take US privacy compliance? Very seriously. Enforcement is accelerating:

- CalPrivacy (formerly known as the California Privacy Protection Agency) is actively investigating and fining businesses, including those outside the US.
- The FTC has levied massive fines and settlements across multiple industries, and multiple eight-figure settlements for privacy violations are now common.
- State attorneys general in Virginia, Colorado, and Connecticut are ramping up enforcement of their respective privacy laws.
- Perhaps most significantly, CCPA's private right of action means individual consumers can sue you for data breaches involving their unencrypted or unredacted personal information. Class action lawsuits under CCPA are now common.

WARNING

"We're too small for anyone to notice" is not a compliance strategy. Enforcement agencies increasingly target mid-market companies, not just tech giants.

What You Actually Need to Do

If you're an Australian business with US customers, here's your practical compliance checklist:

1. Determine which laws apply. Map your US customer base by state. Check revenue and data processing thresholds for each state with a privacy law. Don't guess, actually count.

2. Update your privacy policy. Your Australian privacy policy almost certainly doesn't meet US requirements. You likely need a US-specific privacy policy (or a comprehensive one that covers all relevant jurisdictions) that includes:

- Categories of personal information collected
- Purposes of collection and processing
- Consumer rights by state (right to know, delete, opt out)
- A "Do Not Sell or Share My Personal Information" link (CCPA requirement)
- Contact information for privacy requests
- Details about the categories of third parties with whom you share data

3. Implement opt-out mechanisms. CCPA requires a prominent "Do Not Sell or Share My Personal Information" link on your website. Several other state laws have similar requirements.

4. Set up a data subject request process. You need a system to handle consumer requests to access, delete, or correct their personal information. You generally have 45 days to respond under CCPA.

5. Map your data flows. Know what personal information you collect, where it's stored, who you share it with, and why. This is the foundation of everything else.

6. Review your vendor agreements. If you use US-based processors (analytics tools, CRMs, email marketing platforms), ensure your agreements include appropriate data processing terms.

7. Ensure your privacy policy is accurate. Under the FTC Act, making false or misleading statements in your privacy policy is itself a violation, regardless of whether you meet any state-level threshold. If your privacy policy says you don't share data but you use Meta Pixel or Google Analytics, that's a potential enforcement issue.

TIP

Start with a US-compliant privacy policy and basic opt-out mechanisms. That covers the most common enforcement triggers. Full data mapping and vendor audits can follow as your US operations grow. Perfect compliance from day one is unrealistic for most SMBs, but having nothing in place is indefensible.

KEY STAT

Estimated cost of basic US privacy compliance for an Australian SMB: AU\$500–AU\$5,000.

This includes a compliant privacy policy, opt-out mechanism, and data subject request process. Enterprise-level compliance with data mapping, vendor audits, and ongoing monitoring costs significantly more.

Need to get your US privacy compliance sorted? I help Australian businesses navigate CCPA and state privacy laws with practical, right-sized compliance solutions, not over-engineered frameworks designed for Fortune 500 companies. [Learn more at drysdale.legal/us-privacy-compliance]

US Sales Tax, What Australian Businesses Need to Know

If you've sold products or services to US customers, you've probably wondered whether you need to be collecting sales tax. The answer depends on where and how much you're selling, and getting it wrong can result in penalties, back-taxes, and a compliance headache that's entirely avoidable with a bit of upfront planning.

How US Sales Tax Differs from Australian GST

The first thing to understand is that US sales tax works nothing like Australia's GST. In Australia, you have one national goods and services tax at a flat 10%, administered by the ATO, with one registration and one return. Simple.

In the US, there is **no federal sales tax**. Instead, sales tax is imposed at the state level, and sometimes at the county and city level as well. Each state sets its own rules, rates, exemptions, and filing requirements. This means that there are over 11,000 tax jurisdictions within the US. Getting the right tax advice, along with using a tax automation tool like Stripe Tax or Avalara, will make a world of difference.

Feature	US Sales Tax	Australian GST
Taxing authority	State and local governments	Federal government (ATO)
Rate	Varies by state, county, and city (typically 4–10%)	Flat 10% nationwide
Collection point	Retail sale (end consumer)	Every stage of the supply chain (VAT-style)
Filing	Separate return per state (or local county in some cases)	Single national return (BAS)
Who administers	Mostly state tax authorities, but some local counties administer directly	ATO

When Sales Tax Applies to Australian Businesses

You only need to collect US sales tax in states where you have established "nexus," which is a taxable connection to that state. There are two types:

Physical nexus exists when your business has a tangible presence in a state, such as a warehouse, office, employees, or inventory stored at a fulfilment centre. If you're using Amazon FBA, for example, your inventory may be stored in warehouses across multiple states, creating physical nexus in each of those states. Not all states treat inventory as triggering a physical nexus, so getting tax advice is important.

Economic nexus is triggered when your sales into a state exceed certain thresholds, even if you have no physical presence there. Following the landmark US Supreme Court decision in *South Dakota v. Wayfair* (2018), states can require remote sellers to collect sales tax once they exceed economic thresholds. The most common thresholds are:

- **US\$100,000** in gross sales into the state in a calendar year, OR
- **200 or more** separate transactions into the state in a calendar year

Some states have adopted only the dollar threshold and dropped the transaction count, so you'll need to check the specific rules for each state where you have significant sales.

KEY STAT

46 US states (and the District of Columbia) have some form of sales tax. If you're selling to US customers at any meaningful volume, there's a good chance you've triggered obligations in at least one state.

Marketplace Facilitator Laws

If you sell through online marketplaces like Amazon, eBay, or Etsy, there's some good news: most US states have enacted marketplace facilitator laws that require the marketplace itself to collect and remit sales tax on your behalf for sales made through their platform. This means Amazon handles the sales tax calculation, collection, and remittance for your Amazon sales in most states.

However, you should still be aware of a few things:

- Marketplace facilitator laws don't cover sales made through your own website or other direct channels
- Not all states have adopted these laws, and the specifics vary
- You may still need to file returns in some states even if the marketplace collects the tax
- You're responsible for understanding your own nexus obligations outside of marketplace sales

How to Register and Comply

If you've determined that you have nexus in one or more US states, here's the practical process:

1. Identify your nexus states. Review your sales data to determine where you've exceeded economic nexus thresholds, and note any states where you have physical presence (warehouses, employees, inventory).

2. Register for a sales tax permit. You'll need to register with each state's tax authority before you begin collecting sales tax. Most states offer online registration. You'll typically need your EIN, business registration details, estimated sales volumes, and a description of what you sell.

3. Configure your systems. Set up your e-commerce platform (Shopify, WooCommerce, or similar) to calculate and collect the correct sales tax rates based on the buyer's location. Remember, rates vary not just by state but often by county and city. Tax automation tools like TaxJar, Avalara, or the built-in Shopify Tax features can handle this complexity for you.

4. File returns and remit tax. Each state assigns you a filing frequency (monthly, quarterly, or annually) based on your sales volume. You must file a return and remit the collected tax by the deadline, even if you collected zero tax in that period (known as a "zero return"). Late filings can incur penalties and interest.

5. Keep detailed records. Maintain records of all sales, tax collected, exemption certificates, and filings. US states can and do audit remote sellers, and having clean records makes the process far less painful.

Common Pitfalls for Australian Businesses

Assuming sales tax is like GST. It isn't. You can't file a single return, there's no input tax credit system, and the rates vary by location. Approach it as an entirely different system.

Ignoring nexus until it becomes a problem. States can (and do) assess back-taxes, penalties, and interest for periods where you should have been collecting but weren't. It's far cheaper to register proactively than to deal with a state tax authority after the fact.

Forgetting about Amazon FBA inventory. If you use Fulfilment by Amazon, your inventory may be distributed across warehouses in a dozen or more states, creating physical nexus in each one. This is one of the most common ways Australian e-commerce businesses unknowingly trigger multi-state obligations.

Not accounting for product exemptions. Some states exempt certain categories of goods from sales tax, such as groceries, clothing, or digital products. The exemptions vary by state, so what's taxable in Texas might be exempt in New York.

TIP

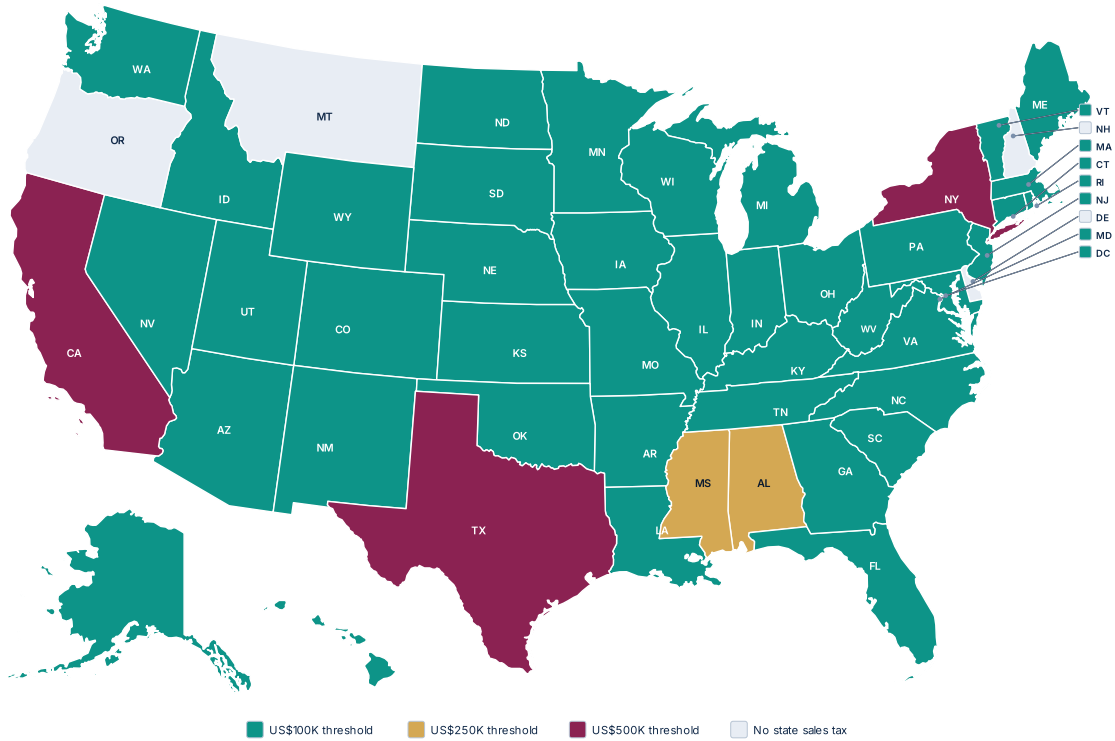
Budget for a sales tax automation tool. Services like TaxJar or Avalara cost US\$50–US\$500 per month depending on your volume, but they handle rate calculations, nexus tracking, and return filing across all states. For most Australian businesses selling into the US, the cost of automation is far less than the cost of manual compliance or the risk of getting it wrong.

EXAMPLE

An Australian fashion brand sells through both their Shopify store and Amazon US. Amazon handles sales tax collection for marketplace orders, but the brand's direct Shopify sales have reached US\$200K in California and US\$200K in Utah. Utah's economic nexus threshold is US\$100,000, so they've triggered obligations there. California's threshold is US\$500,000, so they haven't triggered economic nexus in California yet. They need to register for a sales tax permit in Utah (at minimum), configure Shopify to collect the appropriate rates, and file returns on the required schedule. Estimated annual compliance cost with a tax automation tool: US\$500–US\$2,000.

Sales Tax Economic Nexus Thresholds by State

Most common threshold: US\$100,000 in annual sales into a state



Not sure about your US sales tax obligations? I can help you understand where you have nexus and what you need to do about it, or connect you with a US tax specialist for complex multi-state situations. [Book a free US Law Check at drysdale.legal/contact]

Your US Expansion Legal Checklist

You've read the details. Now here's the practical summary: what to do, when to do it, and what it will cost.

KEY STAT

Minimum viable US setup (C-Corp + single trademark + main contract): approximately AU\$6,000–AU\$10,000.

Timeline: What to Do When

6 Months Before US Launch:

- Conduct a US trademark search for your brand name
- Decide on entity structure (C-Corp recommended for Australian businesses) with tax and legal advice
- Begin trademark application (12–18 month process)
- Research state-level requirements for your target markets

3 Months Before:

- Incorporate your Delaware C-Corp
- Apply for an EIN (allow 2–4 weeks)
- Open a US business bank account (we can recommend providers)
- Engage a registered agent
- Draft or review US-compliant contracts (Terms of Service, privacy policy, MSA)

At Launch:

- Ensure US privacy policy is live on your website
- Implement CCPA opt-out mechanisms (if applicable)
- Begin using US-compliant contracts with US customers
- Register for sales tax in nexus states (if applicable)

Ongoing:

- File US entity annual reports and pay franchise taxes
- Maintain your trademark (Declaration of Use at years 5–6, renewal at year 10)
- Monitor US privacy law changes (new state laws take effect regularly)
- Review and update contracts annually

- File required US tax returns (even if no US tax is owed)
- Monitor sales tax nexus thresholds and register in new states as needed
- File sales tax returns on schedule in all registered states

What You Can DIY vs What Needs a Lawyer

You can handle yourself:

- EIN application (IRS Form SS-4, straightforward but slow by mail)
- Sales tax registration (once you know which states require it)
- Setting up sales tax automation tools (TaxJar, Avalara, Shopify Tax)

Get professional help for:

- Entity structure decisions (the tax implications are too significant to guess)
- Trademark searches and applications (USPTO requires a US attorney for foreign applicants)
- Contract drafting and review (especially indemnification and liability provisions)
- Privacy compliance (the state-by-state patchwork is genuinely complex)
- Any situation involving US litigation or disputes

TIP

The cost of getting it right upfront is always less than the cost of fixing it later. A trademark application done wrong wastes US\$350 in non-refundable fees and 12+ months. A contract signed without review can create six-figure liability. A privacy violation can trigger fines of US\$2,500–US\$7,500 per incident. Invest in the foundations.

Frequently Asked Questions

"Can I just use Stripe Atlas and skip the lawyer?"

Stripe Atlas takes a one-size fits all approach to company formation. They're not providing legal or tax advice on whether their standard company structure is right for your business. For most companies, incorporating a subsidiary with Stripe Atlas will result in an excessive tax bill, as they issue millions of shares unnecessarily.

"My accountant says I don't need a US entity. Are they wrong?"

Maybe not, it depends on your situation. However, make sure your accountant understands the US-side implications, not just the Australian tax treatment. I've seen cases where an accountant correctly advised that no Australian tax benefit came from a US entity, but the client actually needed one for US regulatory compliance reasons the accountant wasn't across.

"I'm only doing US\$50K in US sales. Is it too early to worry about this?"

It's never too early to protect your trademark (before someone else registers it), and it's never too early to have proper contracts. Entity formation, privacy compliance, and sales tax registration can wait until you hit the relevant thresholds, but the trademark clock is ticking from the moment you

enter the market.

"How much should I budget for US legal setup in total?"

For a typical Australian SMB entering the US market: budget AU\$5,000–AU\$15,000 for the initial legal setup (entity formation, trademark filing, core contracts, and basic privacy compliance). Annual ongoing costs (registered agent, state fees, trademark maintenance, sales tax compliance) run approximately AU\$1,000–AU\$3,000. These costs are tax-deductible business expenses.

"Do I need a US lawyer, or can my Australian lawyer handle this?"

For US trademark applications, you're required to use a US-licensed attorney, as that's a USPTO rule, not a suggestion. Very few professional advisors will assist with US legal work, and while they might be able to draft you a generic agreement, it won't factor in the nuances of the US market.

Key Resources

- **USPTO (United States Patent and Trademark Office):** uspto.gov, for trademark search (TESS), filing (TEAS), and status checking (TSDR)
- **IRS (Internal Revenue Service):** irs.gov, for EIN application, tax forms, and foreign entity guidance
- **Delaware Division of Corporations:** corp.delaware.gov, for incorporation and annual report filing
- **California Attorney General (CCPA):** oag.ca.gov/privacy/ccpa, for official CCPA guidance and regulations
- **Sales Tax Automation:** taxjar.com, avalara.com, for multi-state sales tax compliance

What's Next?

If you've read this far, you're already ahead of 90% of Australian businesses expanding to the US. Most founders figure this out through expensive mistakes, from wrong entity structure, to unprotected trademarks, to contracts that expose them to unnecessary risk, to privacy obligations they didn't know existed.

You don't have to be one of them.

Here's what I'd suggest: Book a free 15-minute US Law Check with me. Tell me about your business, your US plans, and your timeline. I'll tell you exactly what you need to do and in what order, with no obligation and no sales pitch.

I'm a US attorney based right here in Sydney. I'm admitted in California, New South Wales, and New Zealand. I work with Australian and New Zealand businesses navigating US law every day, and I do it without the US price tag.

Whether you need a US entity formed, a trademark filed, contracts drafted, or privacy compliance sorted, I can help. Fixed fees where possible, transparent pricing always.

Book your free 15-minute US Law Check:

→ drysdale.legal/contact

Or email me directly: stephen@drysdale.legal

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Ready to expand into the US market?

Book a free 15-minute US Law Check with Stephen. No obligation, no sales pitch — just practical advice for your situation.

[Book Your Free US Law Check](#)

TRADEMARKS

USPTO filing from AU\$1,499

COMPANY FORMATION

LLC or C-Corp from AU\$1,299

CONTRACTS

US commercial contracts from AU\$499

PRIVACY

CCPA compliance from AU\$499

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