

## ANNEX I

### SCHEDULE OF AUSTRALIA

#### INTRODUCTORY NOTES

1. For greater certainty, the **Description** element of each of Australia's entries in its Schedule is to be interpreted in accordance with the relevant cited sources of the non-conforming measures.
2. Commitments on measures with respect to or relating to trade in financial services are undertaken subject to the limitations and conditions set forth in Chapter 9 (Trade in Services), Chapter 10 (Financial Services), Chapter 14 (Investment), this Section and the Schedule below.
3. Australia reserves the right to adopt or maintain non-discriminatory limitations concerning admission to the market of new financial services where such measures are required to achieve prudential objectives. Australia may determine the institutional and juridical form through which a new financial service may be supplied and may require authorisation for the supply of the service. Where authorisation to supply a new financial service is required, the authorisation may only be refused for prudential reasons.

**1. Sector:** All Sectors

**Obligations Concerned:** National Treatment (Article 9.3 and Article 14.4)  
Most-Favoured-Nation Treatment (Article 9.4 and Article 14.5)  
Senior Management and Boards of Directors (Article 14.10)

**Level of Government:** Central

**Source of Measure:** Australia's Foreign Investment Framework, which comprises Australia's Foreign Investment Policy, the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (FATA); *Foreign Acquisitions and Takeovers Regulation 2015* (Cth); *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* (Cth); *Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015* (Cth); *Financial Sector (Shareholdings) Act 1998* (Cth); and Ministerial Statements.

**Description:** Trade in Services and Investment<sup>1</sup>

A. The following investments<sup>2</sup> are subject to approval by the Australian Government and may also require notification<sup>3</sup> to the Australian Government:

- (a) a proposed investment by a 'foreign person'\* in an entity or Australian business valued above \$A 266 million<sup>†</sup>;
- (b) a proposed direct investment by a 'foreign government investor'<sup>4</sup> of any interest regardless of value;
- (c) a proposed investment by a foreign person\* of 5 per cent or more in the media sector, regardless of the value of the investment;

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<sup>1</sup> For greater certainty, the terms in this entry should be interpreted in accordance with Australia's Foreign Investment Framework as at the date of entry into force of this Agreement.

<sup>2</sup> "Investment" means activities covered by Part II of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) or, where applicable, ministerial statements on foreign investment policy. Funding arrangements that include debt instruments having quasi-equity characteristics will be treated as direct foreign investment.

<sup>3</sup> The *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* (Cth) and the *Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015* (Cth) sets the fees for foreign investment applications and notices. Fees are indexed annually on 1 July.

<sup>4</sup> The term "foreign government investor" has the meaning set out in the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).

(d) a proposed acquisition by a foreign person\* of an interest in developed commercial land<sup>5</sup> where the value of the interest is more than \$A 266 million<sup>†</sup>, unless the land meets the conditions for the lower developed commercial land threshold of \$A 58 million<sup>†6</sup>.

Investments may be refused, subject to orders, or approved subject to conditions. Foreign persons\* that do not comply with the foreign investment framework may be subject to civil and criminal penalties.

For greater certainty, where an investment could qualify for the application of one or more of the above screening thresholds, approval or notification requirements apply from the lowest applicable threshold.

Separate or additional requirements may apply to measures subject to other Annex I entries and to sectors, sub-sectors or activities subject to Annex II.

B. The acquisition of a stake in an existing financial sector company by a foreign investor, or entry into an arrangement by a foreign investor, that would lead to an unacceptable shareholding situation or to practical control<sup>7</sup> of an existing financial sector company, may be refused, or be subject to certain conditions<sup>8</sup>.

\* The term “foreign person” has the meaning set out in the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).

† This is the figure as at 1 January 2019. To be indexed annually on 1 January.

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<sup>5</sup> The term “developed commercial land” means commercial land that is not vacant within the meaning of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).

<sup>6</sup> The conditions for the lower threshold are those set out in *Foreign Acquisitions and Takeovers Act 1975* (Cth) and *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).

<sup>7</sup> “Unacceptable shareholding situation” and “practical control” as defined in the *Financial Sector (Shareholdings) Act 1998* (Cth).

<sup>8</sup> Ministerial statements on foreign investment policy including the Treasurer’s Press Release No. 28 of 9 April 1997.

<b>2. Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	National Treatment (Article 9.3 and Article 14.4) Most-Favoured-Nation Treatment (Article 9.4 and Article 14.5) Local Presence (Article 9.6) Prohibition of Performance Requirements (Article 14.6) Senior Management and Boards of Directors (Article 14.10)
<b>Level of Government:</b>	Regional
<b>Source of Measure:</b>	All existing non-conforming measures at the regional level of government.
<b>Description:</b>	<u>Trade in Services and Investment</u>  All existing non-conforming measures at the regional level of government.

**3. Sector:** All Sectors

**Obligations Concerned:** National Treatment (Article 9.3 and Article 14.4)  
Senior Management and Boards of Directors (Article 14.10)

**Level of Government:** Central

**Source of Measure:** *Corporations Act 2001* (Cth)  
*Corporations Regulations 2001* (Cth)

**Description:** Trade in Services and Investment

At least one director of a private company must be ordinarily resident in Australia.

At least two directors of a public company must be ordinarily resident in Australia.

At least one secretary of a private company (if such a private company appoints one or more secretaries) must be ordinarily resident in Australia.

At least one secretary of a public company must be ordinarily resident in Australia.

**4. Sector:** Professional Services

**Obligations Concerned:** National Treatment (Article 9.3)  
Most-Favoured-Nation Treatment (Article 9.4)

**Level of Government:** Central

**Source of Measure:** *Patents Act 1990* (Cth)  
*Patents Regulations 1991* (Cth)

**Description:** Trade in Services

In order to register to practise in Australia, patent attorneys must have been employed for at least two continuous years, or a total of two years within five continuous years, in Australia or New Zealand, or in both countries, in a position or positions that provided the applicant with required experience in Australia's and New Zealand's patent attorney regime.

**5. Sector:** Professional Services

**Obligations Concerned:** National Treatment (Article 9.3)  
Most-Favoured-Nation Treatment (Article 9.4)

**Level of Government:** Central

**Source of Measure:** *Migration Act 1958* (Cth)

**Description:** Trade in Services

To practise as a migration agent in Australia a person must be an Australian citizen or permanent resident or a citizen of New Zealand with a special category visa.

<b>6. Sector:</b>	Professional Services
<b>Obligations Concerned:</b>	Local Presence (Article 9.6)
<b>Level of Government:</b>	Central
<b>Source of Measure:</b>	<i>Corporations Act 2001</i> (Cth)
<b>Description:</b>	<u>Trade in Services</u>

A person who is not ordinarily resident in Australia may be refused registration as a company auditor or liquidator.

At least one partner in a firm providing auditing services must be a registered company auditor who is ordinarily resident in Australia.



**7. Sector:** Professional Services

**Obligations Concerned:** Local Presence (Article 9.6)

**Level of Government:** Central

**Source of Measure:** *Customs Act 1901 (Cth)*

**Description:** Trade in Services

To act as a customs broker in Australia, service suppliers must supply the service in and from Australia.

**8. Sector:** Fishing and services incidental to fishing

**Obligations Concerned:** National Treatment (Article 9.3 and Article 14.4)

**Level of Government:** Central

**Source of Measure:** *Fisheries Management Act 1991* (Cth)  
*Foreign Fishing Licences Levy Act 1991* (Cth)

**Description:** Trade in Services and Investment

Foreign fishing vessels<sup>9</sup> seeking to undertake fishing activity, including any activity in support of or in preparation for any fishing activity or the processing, carrying or transshipment of fish, in the Australian Fishing Zone must be authorised.

Where foreign fishing vessels are authorised they may be subject to a levy<sup>10</sup>.

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<sup>9</sup> For the purposes of this entry, a “foreign fishing vessel” is one that does not meet the definition of an Australian boat under the *Fisheries Management Act 1991* (Cth).

<sup>10</sup> The levy charged will be in accordance with the *Foreign Fishing Licences Levy Act 1991* (Cth) or any amendments thereto.

**9. Sector:** Communication Services

**Obligations Concerned:** National Treatment (Article 9.3 and Article 14.4)  
Senior Management and Boards of Directors (Article 14.10)

**Level of Government:** Central

**Source of Measure:** *Telstra Corporation Act 1991 (Cth)*

**Description:** Trade in Services and Investment

Aggregate foreign equity is restricted to no more than 35 per cent of shares of Telstra. Individual or associated group foreign investment is restricted to no more than 5 per cent of shares.

The Chairperson and a majority of directors of Telstra must be Australian citizens and Telstra is required to maintain its head office, main base of operations and place of incorporation in Australia.

**10. Sector:** Health Services

**Obligations Concerned:** National Treatment (Article 9.3 and Article 14.4)  
Senior Management and Boards of Directors (Article 14.10)

**Level of Government:** Central

**Source of Measure:** *Commonwealth Serum Laboratories Act 1961* (Cth)

**Description:** Trade in Services and Investment

The votes attached to significant foreign shareholdings<sup>11</sup> may not be counted in respect of the appointment, replacement or removal of more than one third of the directors of Commonwealth Serum Laboratories (CSL) who hold office at a particular time.

The head office, principal facilities used by CSL and any CSL subsidiaries used to produce products derived from human plasma collected from blood or plasma donated by individuals in Australia must remain in Australia.

Two-thirds of the directors of the board of CSL and the chairperson of any meeting must be Australian citizens. CSL must not seek incorporation outside of Australia.

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<sup>11</sup> For the purposes of this entry, "significant foreign shareholding" means a holding of voting shares in CSL in which a foreign person has a relevant interest, if the foreign person has relevant interests in at least 5 per cent of the voting shares in CSL.

**11. Sector:** Transport Services

**Obligations Concerned:** National Treatment (Article 9.3 and Article 14.4)  
Local Presence (Article 9.6)

**Level of Government:** Central

**Source of Measure:** *Competition and Consumer Act 2010 (Cth)*

**Description:** Trade in Services and Investment

Every ocean carrier who provides international liner cargo shipping services to or from Australia must, at all times, be represented by a natural person who is resident in Australia.

Only a person<sup>12</sup> affected by a registered conference agreement or by a registered non-conference ocean carrier with substantial market power may apply to the Australian Competition and Consumer Commission (ACCC) to examine whether conference members, and non-conference operators with substantial market power, are hindering other shipping operators from engaging efficiently in the provision of outward liner cargo services to an extent that is reasonable. For greater certainty, matters which are relevant to the determination of “reasonable” include Australia’s national interest and the interests of Australian shippers.

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<sup>12</sup> For the purposes of this entry, section 10.48 and 10.58 of Part X of the *Competition and Consumer Act 2010 (Cth)* list the categories of persons to whom this entry will apply.

**12. Sector:** Transport Services

**Obligations** National Treatment (Article 14.4)

**Concerned:** Senior Management and Boards of Directors (Article 14.10)

**Level of  
Government:** Central

**Source of** *Air Navigation Act 1920* (Cth)

**Measure:** Ministerial Statements

**Description:** Investment

Total foreign ownership of individual Australian international airlines (other than Qantas) is restricted to a maximum of 49 per cent.

Furthermore, it is required that:

- at least two-thirds of the Board members must be Australian citizens;
- the Chairperson of the Board must be an Australian citizen;
- the airline's head office must be in Australia; and
- the airline's operational base must be in Australia.

**13. Sector:** Transport Services

**Obligations** National Treatment (Article 14.4)

**Concerned:** Senior Management and Boards of Directors (Article 14.10)

**Level of Government:** Central

**Source of Measure:** *Qantas Sale Act 1992 (Cth)*

**Description:** Investment

Total foreign ownership of Qantas Airways Ltd is restricted to a maximum of 49 per cent.

In addition:

- the head office of Qantas must always be located in Australia;
- the majority of Qantas' operational facilities must be located in Australia;
- at all times, at least two thirds of the directors of Qantas must be Australian citizens;
- at a meeting of the board of directors of Qantas, the director presiding at the meeting (however described) must be an Australian citizen; and
- Qantas is prohibited from taking any action to become incorporated outside Australia.

**14. Sector:** Financial Services

**Obligations Concerned:** National Treatment (Article 9.3 and Article 14.4)  
Market Access (Article 9.5)

**Level of Government:** Central

**Source of Measure:** *Banking Act 1959* (Cth)  
*Payment Systems (Regulation) Act 1998* (Cth)

**Description:** Trade in Services and Investment

To undertake banking business in Australia an entity must be a body corporate and authorised as an authorised deposit-taking institution (ADI).

Foreign deposit-taking institutions (including foreign banks) may only operate a banking business in Australia through locally incorporated deposit-taking subsidiaries or authorised branches (foreign ADIs), or through both structures.

A branch of a foreign bank that is authorised as a deposit taking institution in Australia (foreign ADI) is not permitted to accept initial deposits (and other funds) from individuals and non-corporate institutions of less than \$A 250,000.

A representative office of a foreign bank is not permitted to undertake any banking business, including advertising for deposits, in Australia. Such a representative office is only permitted to act as a liaison point.



**15. Sector:** Financial Services

**Obligations Concerned:** National Treatment (Article 9.3 and Article 14.4)

**Level of Government:** Central

**Source of Measure:** *Commonwealth Banks Act 1959* (Cth)

**Description:** Trade in Services and Investment

Liabilities of the Commonwealth Bank, previously Commonwealth Government-owned, are covered by transitional guarantee arrangements.

<b>16. Sector:</b>	Financial Services
<b>Sub-sector:</b>	Life insurance services
<b>Obligations Concerned:</b>	National Treatment (Article 9.3 and Article 14.4) Most-Favoured-Nation Treatment (Article 9.4 and Article 14.5) Market Access (Article 9.5)
<b>Level of Government:</b>	Central
<b>Source of Measure:</b>	<i>Life Insurance Act 1995 (Cth)</i>
<b>Description:</b>	<u>Trade in Services and Investment</u>  Approval of non-resident life insurers is restricted to subsidiaries incorporated under Australian law.