

# Review of Export Policies and Programs

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Secretariat, Review of Export Policies and Programs  
Department of Foreign Affairs and Trade

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## Background

The Law Council welcomes the opportunity to make a submission to Australia's Review of Export Policies and Programs ('Review') and thanks the Federal Government for presenting this opportunity.

The Law Council of Australia's International Law Section ('ILS') has primary responsibility for the Law Council's international affairs, consistent with its international strategy. A key element of the Law Council's international strategy is 'to develop international opportunities for the practising profession.'

The ILS has made a number of submissions in relation to each of Australia's current and prospective Free Trade Agreements ('FTA') and has consulted with officers of DFAT and other Government bodies including, Austrade, AusIndustry, IP Australia and the Australian Customs Service in relation to current and prospective FTAs.

In recent years, the Law Council has sought to improve the market for the export of legal services for Australian lawyers and law firms. In seeking improved access to foreign markets for Australian lawyers, the Law Council has developed close relationships with the Department of Foreign Affairs and Trade ('DFAT') and the International Legal Services Advisory Council ('ILSAC').

The Law Council has received support and funding from the Federal Government to pursue initiatives in the United States, China, Malaysia and Singapore and also capacity building initiatives in the South Pacific.

In addition to its work with the Federal Government, the Law Council is an active member of international legal forums and is a member of the International Bar Association, LawAsia, and the Commonwealth Lawyers Association. The Law Council is also a member of the Australian Services Roundtable and a number of Law Council members represent the interests of the legal profession as members of ILSAC.

Developing strong relationship with international legal bodies is important to creating opportunities for Australian lawyers in foreign legal markets. The Law Council's commitment to improving the export market for Australian legal services is reflected by the strong relationships it has developed with international legal bodies and in the 13 Memoranda of Understanding it has entered into with foreign legal representative bodies.<sup>1</sup>

The comments below are a brief summary of the views of the Law Council. The Law Council believes that the Review is an important opportunity to provide for the continued improvement in Australian legal services trade. The Law Council looks forward to the opportunity to make further contributions to the Review.

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<sup>1</sup> The China Law Society (1985 - re-affirmed 1994), Vietnamese Lawyers Association (1995), Law Society of Singapore (1996), Integrated Bar of the Philippines (1996), Korean Bar Association (1998), Taiwan Bar Association (1998), All China Lawyers Association (1998), Japan Federation of Bar Associations (1999), Malaysian Bar Council (2000), The Fiji Law Society (2006), The Bar Association of India (2006), Perhimpunan Advokat Indonesia (2007), Supreme Court of Delaware, USA (2007). In addition to this the International Law Section has signed a memorandum of understanding with the International Law Section of the State Bar of California, USA (2007).

## General Observations

1. Services are a vital segment of the world and the Australian economy. The importance of services to Australia's future economic growth has been detailed in a number of other submissions to the Review and the Law Council endorses those submissions.
2. The Law Council also recognises that services represent a considerably smaller proportion of exports revenue compared to domestic gross domestic product ('GDP'). Accordingly, there seems to be significant merit in adopting measures which support increases in the export of services as this could deliver more immediate benefits.
3. Within the services economy, legal services represent a significant proportion of domestic GDP and make a similarly significant contribution to exports. According to the *2004-5 ILSAC Survey of Australian Export Market for Legal Services* ('ILSAC Survey'), total export income from legal services was \$543 million.
4. The Law Council shares the views of ILSAC and others that Australian Bureau of Statistics ('ABS') data collection measures do not adequately capture the value of services (domestic and exported). The Law Council believes that while considerably more accurate than ABS data; the ILSAC Survey nevertheless represents an under-estimation of the value of legal services.
5. Notwithstanding the value of services (including legal services), the Law Council is of the view that the services agenda has not achieved adequate attention and support in trade negotiations, whether at the World Trade Organisation ('WTO'), through Plurilateral Conventions, regional trade blocs or through Australia's FTA agenda. Services are consistently consigned to "third" ranking status behind negotiations in agricultural and non-agricultural market-access ('NAMA') products.
6. This is reflected clearly in Australia's recent FTAs which only deliver very limited advancement on services and a series of commitments to work on improving access. For example, the Australia-United States ('AUSFTA') does not include substantial provisions relating to 'professional services'. Rather, the Annex to the AUSFTA chapter on services establishes a Working Group on Professional Services to support profession-led initiatives to further mutual recognition on licensing and certification of professional services suppliers, such as legal practitioners.
7. The effect of this has been that while limited gains have been made for legal services over time under completed FTAs (ie. AUSFTA and SAFTA), those gains have been relatively minor and the international growth of Australian legal services has been impeded.
8. The Law Council believes that this approach has continued in negotiations for proposed FTAs such as for the ASEAN-Australia-New Zealand FTA and the Australia-China FTA where services (including legal services) seem unlikely to secure any marked improvements due to Australia's lopsided focus on agriculture and NAMA.
9. As a result of the relative lack of access afforded in trade negotiations, any exports of Australian legal services have largely been the product of the efforts

of individual Australian legal firms through their own efforts and investments. It should be noted that those levels of investment only rarely secure reimbursement or other financial support from Government.

10. The export of legal services come from a number of sources, but is predominantly derived from Australian firms providing legal services overseas for Australian clients, in Australia for overseas clients, and establishing offices overseas.
11. Additionally, it is worth noting that a significant level of Australian legal services are provided through various aid programs overseas which are sponsored by both Government and non-government organisations ('NGOs'). The Review should not overlook the value of that work, particularly in terms of capacity-building of legal professions and legal infrastructure in the South-Pacific region.
12. The Law Council welcomes the support which has been provided by the Federal and State Governments through DFAT and other bodies. In particular, Legal Services Missions conducted by the Federal Attorney-General have proved to be extremely effective in stimulating negotiations to reduce market barriers to the practice of foreign law by Australian lawyers.
13. The work of bodies such as ILSAC has been invaluable to the advancement of the Law Council's international activities and the Law Council welcomes the permanent status which has now been afforded to ILSAC.

## Recommendations

The Law Council makes the following recommendations:

- (i) That the ABS be provided with additional resources to enable it to better measure and capture the value of services (including legal services) which are exported and that the ABS revise its charter to raise the priority of capturing such information.
- (ii) That the Government develop an international legal services strategy for private sector law firms in conjunction with the Law Council, State and Territory Law Societies and Bar Associations, ILSAC, DFAT, State Governments and relevant experts. Such a strategy should:
  - a. Recognise that the legal services sector has an equal entitlement to benefit from Government trade policy as other sectors such as trade in goods and manufactured goods.
  - b. Reflect the experiences, knowledge and needs of the private sector in exporting legal services.
- (iii) The Government should revise its priorities in trade policy both at the WTO and in other fora so that services are given equal standing to other sectors. In particular the Government should:
  - a. Acknowledge that the interests of Australia's services industries must be properly considered, documented and pursued in each of those fora at the outset.
  - b. Acknowledge that despite the challenge of reaching agreement in services round negotiations, it is often more difficult to advance services



## **Attachment A**

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### Profile – Law Council of Australia

The Law Council of Australia is the peak national representative body of the Australian legal profession. The Law Council was established in 1933. It is the federal organisation representing approximately 50,000 Australian lawyers, through their representative bar associations and law societies (the “constituent bodies” of the Law Council).

The constituent bodies of the Law Council are, in alphabetical order:

- Australian Capital Territory Bar Association
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society of the Australian Capital Territory
- Law Society of the Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar Association
- The Victorian Bar Inc
- Western Australian Bar Association
- LLFG Limited (a corporation with large law firm members)

The Law Council speaks for the Australian legal profession on the legal aspects of national and international issues, on federal law and on the operation of federal courts and tribunals. It works for the improvement of the law and of the administration of justice.

The Law Council is the most inclusive, on both geographical and professional bases, of all Australian legal professional organisations.