

ANNEX I

SCHEDULE OF AUSTRALIA

INTRODUCTORY NOTES

1. **Description** sets out the non-conforming measure for which the entry is made.
2. In accordance with Article 9.12.1 (Non-Conforming Measures) and Article 10.7.1 (Non-Conforming Measures), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the non-conforming measures identified in the **Description** element of that entry.

Sector:	All
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)
Level of Government:	Regional
Measure:	All existing non-conforming measures at the regional level of government.
Description:	<u>Investment and Cross-Border Trade in Services</u> All existing non-conforming measures at the regional level of government.

Sector:	All
Obligations Concerned:	National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)
Level of Government:	Central
Measures:	Australia's Foreign Investment Policy, which consists of the <i>Foreign Acquisitions and Takeovers Act 1975</i> (FATA) (Cth); Foreign Acquisitions and Takeovers Regulations 1989 (Cth); <i>Financial Sector (Shareholdings) Act 1998</i> (Cth); and Ministerial Statements.

Description: Investment

1. The following investments¹ require notification and approval from the Australian Government:

- (a) proposed investments by foreign persons in existing² Australian businesses, or prescribed corporations,³ the value of whose assets

¹ *Foreign Acquisitions and Takeovers Act 1975* (Cth) (FATA). "Investments" means activities covered by Part II of FATA 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.

² For the purposes of this entry, "existing" means in existence at the time the investment is proposed or made.

³ For the purposes of this entry, "prescribed corporation" means:

- (a) a trading corporation;
- (b) a financial corporation;
- (c) a corporation incorporated in a Territory under the law in force in that Territory relating to companies;
- (d) a foreign corporation that, on its last accounting date, held assets the sum of the values of which exceeded \$A252 million (for item (a) of the entry) or \$A1,094 million (for item (b) of the entry), being assets consisting of all or any of the following:
 - (i) land situated in Australia (including legal and equitable interests in such land);
 - (ii) mineral rights;
 - (iii) shares in a corporation incorporated in Australia;

exceeds \$A252 million* in the following sectors:

- (i) the telecommunications sector;
- (ii) the transport sector, including airports, port facilities, rail infrastructure, international and domestic aviation and shipping services provided either within, or to and from, Australia;
- (iii) the supply of training or human resources, or the manufacture or supply of military goods, equipment or technology, to the Australian or other defence forces;
- (iv) the manufacture or supply of goods, equipment or technologies able to be used for a military purpose;
- (v) the development, manufacture or supply of, or provision of services relating to, encryption and security technologies and communication systems; and
- (vi) the extraction of (or rights to extract) uranium or plutonium, or the operation

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- (e) a foreign corporation that was, on its last accounting date, a holding corporation of an Australian corporation or Australian corporations, where the sum of the values on that date of the assets of the Australian corporation or Australian corporations exceeded \$A252 million (for item (a) of the entry) or \$A1094 million (for item (b) of the entry);
 - (f) a corporation that was, on its last accounting date, a holding corporation of a foreign corporation referred to in paragraph (d) or (e) of this footnote;
 - (g) a foreign corporation that, on its last accounting date, held assets of a kind or kinds referred to in paragraph (d) of this footnote, where the sum of the values on that date of those assets was not less than one-half of the sum of the values on that date of the assets of the foreign corporation and of all the subsidiaries of that corporation; or
 - (h) a foreign corporation that was, on its last accounting date, a holding corporation of an Australian corporation or Australian corporations, where the sum of the values on that date of the assets of that Australian corporation or those Australian corporations was not less than one-half of the sum of the values on that date of the assets of the foreign corporation and of all the subsidiaries of that corporation.

* This is the figure as at 1 January 2015. To be indexed on 1 January each year to the GDP implicit price deflator in the Australian National Accounts for the previous financial year.

of nuclear facilities;

- (b) proposed investments by foreign persons in existing Australian businesses, or prescribed corporations, in all other sectors, excluding financial sector companies⁴, the value of whose total assets exceeds \$A1,094 million*;
- (c) proposed direct investments by foreign government investors, irrespective of size;
- (d) proposed investments by foreign persons⁵ of five per cent or more in the media sector, regardless of the value of the investment;
- (e) proposed acquisitions by foreign persons of developed non-residential commercial real estate where the property is valued at more than \$A1,094 million*.

Notified investments may be refused, subject to interim orders, and/or approved subject to compliance with certain conditions. Investments referred to above for which no notification is received may be subject to orders under Sections 18 through 21 and 21A of the FATA.

⁴ A “financial sector company” means, as defined in section 3 of the *Financial Sector (Shareholdings) Act 1998* (Cth):

- (a) an authorised deposit-taking institution;
- (b) an authorised insurance company; or
- (c) a holding company of a company covered by paragraph (a) or (b) of this footnote.

⁵ A “foreign person” means, as defined in section 5 of the FATA:

- (a) a natural person not ordinarily resident in Australia;
- (b) a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;
- (c) a corporation in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest;
- (d) the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
- (e) the trustee of a trust estate in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

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

2. 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 control⁶ of an existing financial sector company, may be refused, or be subject to certain conditions.⁷

⁶ “Unacceptable shareholding situation” and “practical control” as defined in the *Financial Sector (Shareholdings) Act 1998* (Cth).

⁷ Ministerial statements on foreign investment policy including the Treasurer’s Press Release No. 28 of 9 April 1997.

Sector:	Professional Services
Obligations Concerned:	Local Presence (Article 10.6)
Level of Government:	Central
Measures:	<i>Patents Act 1990</i> (Cth) Patent Regulations (Cth)
Description:	<u>Cross-Border Trade in Services</u> In order to register to practise in Australia, patent attorneys must be ordinarily resident in Australia. ⁸

⁸ For the purposes of this entry, a person is taken to be “ordinarily resident” in Australia if: (a) the person has his or her home in Australia; or (b) Australia is the country of his or her permanent abode even though he or she is temporarily absent from Australia. However, the person is taken not to be ordinarily resident in Australia if he or she resides in Australia for a special or temporary purpose only.

Sector: All

Obligations Concerned: Performance Requirements (Article 9.10)⁹

Level of Government: Central
Regional

Measures: *Designs Act 2003* (Cth)

Description: Investment

A design that has been registered or disclosed in a filed design application may be used by an Australian government (or a person authorised by an Australian government) and, if it is used, any agreement or licence fixing the terms on which a person other than that government may use the design may be inoperative with respect to the government use unless the agreement or licence has been approved by that government.

⁹ Applies only in relation to Article 9.10.1(i) (Performance Requirements).

Sector:	Professional Services
Obligations Concerned:	National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4)
Level of Government:	Central
Measures:	<i>Migration Act 1958 (Cth)</i>
Description:	<u>Cross-Border Trade in Services</u> 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.

Sector: Professional Services

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: *Corporations Act 2001 (Cth)*

Description: Cross-Border Trade in Services

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.

Sector: Professional Services

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: *Customs Act 1901* (Cth)

Description: Cross-Border Trade in Services

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

Sector:	Fishing and Services incidental to Fishing
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3)
Level of Government:	Central
Measures:	<i>Fisheries Management Act 1991</i> (Cth) <i>Foreign Fishing Licences Levy Act 1991</i> (Cth)
Description:	<u>Investment and Cross-Border Trade in Services</u> Foreign fishing vessels¹⁰ 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.¹¹

¹⁰ 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), that is, an Australian-flagged boat (not owned by a foreign resident) or a boat owned by an Australian resident or corporation and built, and whose operations are based, in Australia.

¹¹ The levy charged will be in accordance with the *Foreign Fishing Licences Levy Act 1991* (Cth) or any amendments thereto.

Sector: Communication Services

Obligations Concerned: National Treatment (Article 9.4)
Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: *Telstra Corporation Act 1991* (Cth)

Description: 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 five 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.

Sector: Health Services

Obligations Concerned: National Treatment (Article 9.4)
Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: *Commonwealth Serum Laboratories Act 1961 (Cth)*

Description: Investment

The votes attached to significant foreign shareholdings¹² 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.

¹² 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 five per cent of the voting shares in CSL.

Sector: Transport Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)
Local Presence (Article 10.6)

Level of Government: Central

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

Description: Investment and Cross-Border Trade in Services

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 person¹³ 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 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.

¹³ For the purposes of this entry, sections 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.

Sector: Maritime Transport

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)
Local Presence (Article 10.6)

Level of Government: Central

Measures: *Shipping Registration Act 1981* (Cth)
Shipping Registration Regulations 1981 (Cth)

Description: Investment and Cross-Border Trade in Services

For a ship to be registered on the Australian Shipping Register it must be majority Australian-owned or on demise charter to Australian-based operators. In the case of small craft, a ship must be wholly owned by or solely operated by Australian residents, Australian nationals or both.

For a trading ship to be registered on the International Shipping Register it must be wholly or majority Australian-owned, on demise charter to Australian-based operators or operated solely by Australian residents, Australian nationals or both. The master or chief mate, and chief engineer or first engineer of the ship must be an Australian national or Australian resident.

A ship on demise charter to an Australian-based operator is a ship on demise charter to:

- (a) an Australian national or Australian nationals; or
- (b) in circumstances where there are two or more persons who include an Australian national, where the Australian national is in a position to control the exercise of the rights and powers of the charterers under the charter party.

For the purposes of this entry, an Australian national is an Australian citizen who is ordinarily resident in Australia; or a body corporate that has its principal place of business in Australia.

Sector:	Transport Services
Obligations Concerned:	National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)
Level of Government:	Central
Measures:	<i>Air Navigation Act 1920</i> (Cth) Ministerial Statements
Description:	<u>Investment</u> 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: (a) at least two-thirds of the Board members must be Australian citizens; (b) the Chairperson of the Board must be an Australian citizen; (c) the airline's head office must be in Australia; and (d) the airline's operational base must be in Australia.

Sector:	Transport Services
Obligations Concerned:	National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)
Level of Government:	Central
Measures:	<i>Qantas Sale Act 1992</i> (Cth)
Description:	<u>Investment</u> Total foreign ownership of Qantas Airways Ltd is restricted to a maximum of 49 per cent. In addition: (a) the head office of Qantas must always be located in Australia; (b) the majority of Qantas' operational facilities must be located in Australia; (c) at all times, at least two-thirds of the directors of Qantas must be Australian citizens; (d) at a meeting of the Board of Directors of Qantas, the director presiding at the meeting (however described) must be an Australian citizen; and (e) Qantas is prohibited from taking any action to become incorporated outside Australia.