

# JAPAN- AUSTRALIA

## ECONOMIC PARTNERSHIP AGREEMENT



## Factsheet: Trade in Services and Investment

The Japan-Australia Economic Partnership Agreement (JAEPA) guarantees Australian services providers access to the large and well-developed Japanese market. JAEPA builds on the longstanding and important bilateral investment relationship to improve opportunities and protections for Australian investors in Japan, while sending a clear message to Japanese investors that Australia is open for business. The agreement establishes a comprehensive framework for continued growth and development in Australia's services and investment relationship with Japan.

### High-quality outcomes

Australia secured outcomes equal to, or better than, the best commitments Japan had made in any of its other trade agreements. The agreement goes beyond Japan's earlier commitments to Australia under the World Trade Organization, including in key areas of commercial interest such as financial, education, legal and telecommunications services. It includes a framework to advance mutual recognition of services qualifications and to support mutual recognition initiatives by professional bodies in Australia and Japan.

Importantly, Japan has committed to extend future liberalisation to Australian services and investors, generally including commitments it makes in future trade agreements to be extended to Australia. These commitments help ensure Australian companies will be able to operate in Japan, now and into the future, on the basis of the highest levels of market access enjoyed by any of our competitors.

### Legal services

- JAEPA guarantees existing market access for Australian lawyers and ensures Australian law firms can:
  - Form Legal Professional Corporations under Japanese law; and
  - Take advantage of expedited registration procedures for Australian lawyers residing in Japan and providing Australian and international legal services.
- Japan and Australia have agreed to discussions between the Law Council of Australia and the Japan Federation of Bar Associations to further cooperation in legal services. The discussions will cover greater movement and recognition of each other's lawyers, and provision of trans-national legal services in third countries.

### Financial services

- Australian financial services providers can benefit from commitments by Japan which improved upon those Japan made in its earlier trade agreements. These commitments by Japan help secure and protect Australia's access to one of the largest funds management (including pension fund) markets in the world. These include new commitments to allow cross-border access for:
  - Trade in wholesale securities transactions
  - Australian fund managers providing wholesale investment advice and portfolio management services.



- For financial services supplied on a cross-border basis, Australian providers do not need to open a full commercial presence.
- Provisions in JAEPA ensures access for Australia's innovative financial sector to business opportunities in newly emerging financial services.
- JAEPA includes strong commitments on enhanced transparency of financial services regulation in Japan, and streamlining of licensing processes for financial service providers, as well as financial products and services.

## Education services

- Japan guarantees market access for Australian education providers to Japan's higher education services market, including vocational and technical education.
- Japanese students seeking to study at a wide range of Australian education and training providers listed on the Australian National Register of Higher Education Providers can apply for low-interest loans offered by the Japan Student Services Organization. This particularly benefits the international competitiveness of the Australian TAFE sector.
- Japan guarantees to treat all Australian education providers, in areas other than primary and secondary schooling, as it does Japanese providers. This includes improved commitments on adult education and secures existing access for Australian universities in Japan.
- Australia and Japan have further agreed to cooperate bilaterally and exchange information regarding policies to promote the recognition of each other's education qualifications, improve access to graduate studies in each other's country and strengthen student mobility between both countries.
- This cooperation has contributed to Japan formally recognising Australian Bachelor degrees for entry into postgraduate programs in Japan, highlighting the important flow-on effects cooperation under FTAs can create.

## Telecommunications services

- Under JAEPA, Japan has committed not to go beyond its existing requirements for notification of investments in telecommunications and internet-based services by Australian companies in Japan. These requirements refer to investments at 10 per cent or more in listed companies, and apply to all foreign companies. Any future improvements in Japan's treatment of investment in these sectors will be guaranteed under JAEPA.
- Australian telecommunications providers benefit from commitments on non-discriminatory treatment, regulatory transparency, competitive safeguards and fair and reasonable access to telecommunications networks and services. JAEPA includes dedicated provisions providing for greater certainty of arrangements on interconnection, access to facilities, submarine cable systems, leased circuit services, resale services, number portability and dialing parity. It also includes strong provisions on transparency, licensing and review of regulatory decisions.

## Other professional services

- The Australian and Japanese governments committed in JAEPA to encourage and support efforts towards mutual recognition of professional services qualifications.
  - This recognises that, in many cases, professional qualifications are the prerogative of independent professional services bodies.
  - Where industry seeks government support for mutual recognition initiatives, Australia can pursue these interests directly with Japan under the JAEPA framework.

- Australian professionals can benefit from guaranteed visa access arrangements, including for their spouse and dependants, to enter and stay in Japan.
- A broad range of Australian professionals, including accountants, architects and building engineers, also benefit from Japan's commitment to guarantee existing market access. Japan has committed to confer any future preferential treatment for the professionals of other countries to Australian providers.

## Japanese investment in Australia

JAIPA sends a clear message to Japanese investors that Australia is an attractive investment destination that is open for business.

- Japan was Australia's fourth largest investor in 2017, with the stock of total investment in Australia worth \$219 billion. JAIPA promotes further growth and diversification in the flow of Japanese investment into Australia, in particular by liberalising the screening threshold at which private Japanese investments in non-sensitive sectors are considered by the Foreign Investment Review Board, from \$252 million to \$1,134 million.
- The Government retains the ability to screen Japanese investments in sensitive sectors, including media, telecommunications and defence-related industries, at lower thresholds, as well as all direct investments, new business proposals and acquisitions of interests in land by the Japanese Government, regardless of transaction size. The Government also retains the ability to screen proposals for Japanese investment in agricultural land of over \$15 million and agribusiness of over \$55 million.

## Australian investment in Japan

In addition to market access outcomes, JAIPA provides enhanced protections and certainty for Australian investors in Japan, with provisions to ensure non-discrimination, and protection and security for investments. In particular:

- All forms of investment are protected, including enterprises, shares and stocks, debt instruments and property rights
- Australian investors and investments may not be treated less favourably, in like circumstances, than Japanese investors with respect to the establishment, acquisition, operation and sale of investments in Japan;
- Australian investments may not be expropriated or nationalised in a discriminatory way or in the absence of prompt, adequate and effective compensation
- Investments must be treated in accordance with an internationally accepted minimum standard of treatment, which includes obligations of fair and equitable treatment and full protection and security of investments.

### Investor-State Dispute Settlement (ISDS)

- In JAIPA, Australia and Japan agreed not to include an Investor-State Dispute Settlement (ISDS) mechanism. JAIPA includes a review clause which provides for future consideration of an ISDS mechanism.