Law Council
OF AUSTRALIA

Southeast Asia Free Trade Agreements Modernisation Review

Department of Foreign Affairs and Trade

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This submission builds upon and updates previous submissions made by the Law Council in relation to the negotiation and review of Free Trade Agreements with Southeast Asian economies.

Introduction

1. The Law Council of Australia thanks the Department of Foreign Affairs and Trade (**DFAT**) for the opportunity to provide a submission to support its review of Australia's Free Trade Agreements (**FTAs**) with Southeast Asia to determine priorities for potential agreement upgrade negotiations (the **Review**).

2. In conjunction with the Review, the Law Council received grant funding from the Commonwealth Government to undertake an analysis of barriers to trade in legal services in Southeast Asia and develop a strategy to address these barriers. The Law Council is currently finalising these outputs, which will be provided to DFAT in early 2026.

3. This submission principally addresses the Law Council's priorities with respect to trade in legal services in the region. It also provides comments and recommendations in relation to the incorporation of human rights standards in FTAs in response to the recommendations of the Joint Standing Committee on Trade and Investment Growth inquiry into understanding the utilisation of benefits under FTAs.

Trade in Legal Services

4. Australian businesses that seek to expand into or operate in Southeast Asia rely on Australian and foreign lawyers to navigate a web of challenging and evolving business, legal and regulatory obligations. At the same time, Southeast Asia remains one of the world's most restrictive regions for trade in legal services.

5. Improvements to the conditions of access for lawyers into overseas markets can have a broader impact on overall trade volumes, the availability of foreign investment and the efficiency with which transactions are conducted, and disputes can be concluded.

6. There is a growing demand for fully integrated legal services (i.e. legal services that combine advice on local, foreign and international law) driven by international clients involved in cross border trade and investment. The availability of these services is underpinned by the implementation of a system of regulation that permits local and foreign lawyers to work together flexibly to jointly provide advice on local and foreign law.

7. Regulations that support local and foreign lawyers to work together also facilitate the two-way transfer of skills, knowledge and expertise between lawyers from around the world. Working together, local and foreign lawyers mutually influence the way that law is practised in the host country. This supports improved business and client outcomes through availability of a wider range of services and drives changes in the way services are delivered.

Market access priorities for the Australian legal profession

8. The Law Council has developed a Generic Legal Services Market Access Request (the **Generic Request**) (**Attachment A**) which constitutes a baseline request of the rights Australian lawyers and law firms would seek in foreign jurisdictions, and which mirror the market access foreign lawyers from all jurisdictions have in Australia.

9. In sum, the Generic Request asks regulatory frameworks to permit:

   (a) different modes of services delivery, for example fly-in, fly-out practice or the ability to establish a commercial presence;

   (b) the use of a firm name used in Australia where a commercial presence has been established;

   (c) fee sharing arrangements or other forms of professional or commercial association between foreign and domestic lawyers; and

   (d) the right to provide arbitration, conciliation and mediation services.

10. Jurisdictions in Southeast Asia vary in the extent to which they already provide access in line with the different aspects of this Generic Request.

11. For the purposes of this Review, the Law Council has recently undertaken consultations to update its understanding of which jurisdictions in Southeast Asia are of particular interest to the Australian legal profession from a trade in legal services perspective.

12. For reasons that will be explored in further detail below, Indonesia and Singapore have been identified as being of highest priority to the Australian legal profession. Malaysia, Thailand and Vietnam have also been assessed as priority jurisdictions for Australian lawyers and law firms.

Jurisdictions

Indonesia

13. The Law Council has previously identified Indonesia as a jurisdiction of particular interest to the Australian legal profession due to its economic profile and the breadth of the trading relationship.[1]

14. Several Australian law firms (or global law firms with Australian offices) have close and longstanding relationships with Indonesian law firms, including through the secondment of senior lawyers to local law firms in Indonesia.[2]

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1 See for example, Law Council of Australia, *Legal Services Market Access under the Indonesia-Australia Comprehensive Economic Partnership Agreement* (Submission, 19 October 2016).

2 Examples include TNB & Partners, in association with Norton Rose Fulbright, Oentoeng Suria & Partners, in association with Ashurst; Hiswara Bunjamin & Tandjung, in association with Herbert Smith Freehills Kramer; HHP Law Firm, a member firm of the Baker & McKenzie Swiss Verein; and Ginting & Reksodiputro, in association with A&O Shearman.

15. However, Indonesia remains one of the most restrictive jurisdictions for trade in legal services in the region and by international standards. Barriers include restrictions on foreign firms establishing a commercial presence in Indonesia, ratios and caps which limit the number of foreign lawyers working in Indonesian firms, and restrictions on moving between firms. Foreign legal consultants are also required to provide at least 100 hours of free legal services per year.

16. In 2017 the Indonesian Ministry of Law and Human Rights issued a decree which allows foreign lawyers to practise as 'foreign legal consultants' in Indonesian firms at a ratio of 4:1, with a maximum of five foreign legal consultants per firm. In February 2020, there were 40 foreign lawyers practising in Jakarta among Indonesia's top 30 commercial law firms.[3]

17. In addition to domestic regulatory barriers, the Law Council has previously raised significant behind the border barriers in relation to visas and gaining permission to work for Indonesian firms.[4]

18. The Indonesia-Australia Comprehensive Economic Partnership Agreement (**IA-CEPA**) provides a platform through which Australia could seek further liberalisation of Indonesia's legal services and discuss challenges with implementation of existing commitments.

19. Under the IA-CEPA, Indonesia has committed to lock in further liberalisation of its legal services sector. The Law Council understands that there is less appetite in Indonesia for liberalisation of the legal services sector compared to Singapore or Malaysia, however discussions tied to IA-CEPA could provide a catalyst for reform.

Singapore

20. Singapore continues to be an important legal services market for Australian lawyers due to its position as an international legal services and dispute resolution hub. Australian lawyers use Singapore to deliver legal services to clients not only within the jurisdiction, but across the wider Southeast Asian region.[5]

21. At present, Singapore, which provides a number of different licenses and corporate forms through which foreign law firms can operate, is generally regarded as the easiest jurisdiction in Southeast Asia for Australian and foreign firms to establish a commercial presence.[6]

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[3] The breakdown of foreign counsel by jurisdiction is as follows: US (8), Australia (6), Japan (6), UK (5), Malaysia (4), the Netherlands (4), Singapore (2) the Philippines, (2), Korea (1), China (1), and New Zealand (1). See Jeremy Kingsley, 'Drafting Inter-Asian Legalities: Jakarta's Transnational Corporate Lawyers' (2021) 42(1) *Adelaide Law Review* 197, 203.

[4] Law Council of Australia, *Legal Services Market Access under the Indonesia-Australia Comprehensive Economic Partnership Agreement* (n 1).

[5] Law Council of Australia, *Parliamentary Inquiry into the Agreement to Amend the Singapore-Australia Free Trade Agreement (SAFTA)* (Submission, 2 May 2017).

[6] Examples of Australian firms (or global firms with Australian office) in Singapore include: Allens, through an alliance with Linklaters, Ashurst, through a Formal Law Alliance (FLA) with ADTLaw, A&O Sherman which holds a Qualifying foreign law practice (QFLP) license, Bird & Bird, including via an associated local firm ATMD, Clifford Chance which holds a QFLP license, Herbert Smith Freehills Kramer, which holds a QFLP license and has an FLA with Prolegis LLC, King & Wood Mallesons which has a QFLP

22. At the time of writing, the Singapore Ministry of Law is considering reforms relating to the criteria for a foreign and Singaporean law practice to enter into a collaboration arrangement, requirements for foreign law practice entities and foreign-qualified lawyers to hold interest in Singapore law practices and permitted areas of legal practice for licensed foreign law practices.[7]

23. The Law Council considers that there is scope for greater clarity regarding the ability for foreign lawyers to advise clients in Singapore either remotely or on a fly-in, fly-out (**FIFO**) basis. It further notes that residency requirements and academic requirements can be onerous for Australian lawyers seeking to practise in Singapore on a more permanent basis or obtain local admission to practise Singaporean law.

Malaysia

24. Malaysia is also a priority jurisdiction for Australian lawyers and law firms due to its common law legal system and close diplomatic and trading relationship with Australia.

25. Whilst Malaysia is one of the more liberalised jurisdictions in Southeast Asia, many Australian firms (and global firms with an Australian office) run their Malaysian practice out of Singapore and service Malaysian clients on a FIFO basis. One reason for this is the complications involved in establishing a commercial presence in Malaysia.[8]

26. Australian firms may establish in Malaysia as International Partnerships or Qualified Foreign law firms (**QFLFs**). Both structures are prohibited from practising domestic law across a number of areas.

27. The International Partnership structure involves a partnership between a foreign and local firm. The Malaysian partner must hold at least 60 per cent of equity, voting rights and the total number of lawyers in the partnership.

28. The QFLF pathway for foreign law firms was created to support the Malaysian Government's Malaysian International Islamic Finance Centre (**MIFC**).[9] As such, QFLF licences are only granted to international law firms that have proven expertise in international Islamic finance and are able to support and contribute to the MIFC.[10]

29. The Law Council is aware of only five QFLF licences being made available historically, and is not aware of any foreign law firms holding an International Partnership license.

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license, Norton Rose Fulbright which has a QFLP licence and a FLA with local Singapore law firm Ascendant Legal, and White & Case which has a QFLP license.

7 *Report of the Committee to Review the Regulatory Framework for Law Practices and Collaborations in Singapore* (Report, 16 October 2025).

8 Law Council of Australia International Law Section, *DFAT General Review of Malaysia Australia Free Trade Agreement* (Submission, 30 September 2021) 3.

9 Malaysian Bar Council, *Guidance Note for Applicants – Qualified Foreign Law Firm* (22 July 2020) 1.

10 Ibid.

30. In contrast to other jurisdictions in the region, Malaysia's legal professional regulation explicitly allows for FIFO practice, whereby foreign lawyers may practice their home country and international law in Peninsular Malaysia for a period not exceeding 60 days per calendar year.[11] These regulations reduce uncertainty and complexity with visas that arise in other Southeast Asian jurisdictions.

31. The Law Council has previously engaged closely with the Malaysian Bar Council and DFAT to encourage the liberalisation of the legal services sector in Malaysia, including through the support of the Malaysian Bar's 2009 'Roadmap for the liberalisation of the legal services sector in Malaysia.'[12]

32. Malaysia has demonstrated the most willingness in the region (with the exception of Singapore) to experiment with different licensing regimes and reform of its legal services sector. There is accordingly greater scope to work towards further liberalisation through engagement at the government-to-government level and through discussion between the Law Council and the Malaysian Bar.

Thailand

33. Thailand's position as Australia's third largest trading partner in Southeast Asia similarly makes it a priority jurisdiction in the region.

34. A number of Australian law firms (and global law firms with an Australian office) have a presence in Thailand, including A&O Sherman, Baker McKenzie, Herbert Smith Freehills Kramer and Norton Rose Fulbright.

35. However domestic legislation significantly limits the ways in which foreign firms and lawyers can operate in the country.[13] For this reason, most Australian or international firms that service Thailand do so from offices in Singapore.

36. Only Thai nationals may be registered as lawyers and the practice of law (both domestic and international law) is closed to foreigners, even on a temporary basis.[14] Foreign law firms must therefore either employ Thai nationals or employ foreign lawyers as 'legal' or 'business' consultants and advisors.

37. The Law Council notes that the Thailand—Australia FTA (**TAFTA**) contains limited commitments with respect to legal services, and considers that there is scope to seek improvements to Thailand's commitments across FTAs using commitments from other jurisdictions in the region as a benchmark.

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[11] *Legal Profession Act 1976* (Malaysia) s 37(2a).

[12] Malaysian Bar Council, *Roadmap for Liberalisation of the Legal Services Sector in Malaysia* (8 July 2009).

[13] This includes A&O Sherman, Baker McKenzie, Herbert Smith Freehills Kramer, and Norton Rose Fulbright.

[14] *Lawyers Act B.E. 2528 (1985)* (Thailand) s 35. Legal practice is a prohibited profession under clause 39 of the Royal Decree Naming Occupations and Professions Prohibited to Aliens (Foreigners).

Vietnam

38. Australia's trading relationship with Vietnam is one of the fastest growing in recent years, and there is strong interest in improving the terms on which Australian lawyers and law firms can practise in the country.

39. Like Thailand, a few Australian law firms (and global law firms with an Australian office) currently have a commercial presence in Vietnam, including A&O Shearman, Baker McKenzie, Herbert Smith Freehills Kramer and Norton Rose Fulbright.

40. Foreign lawyers are able to obtain a limited license which entitles them to provide advisory services in foreign and international law, however there are significant administrative barriers to obtaining a license and the scope of permitted practice is limited.

41. As a result of a decree issued in 2025, the power to issue professional practice certificates is now vested with the Chairman of the Provincial People's Committee as opposed to the Minister of Justice.[15] This reform is intended to align with broader decentralization of the governance of the judicial system in Vietnam. Substantial reform to the Law on Lawyers and the Law on Commercial Arbitration is anticipated over the next two years which will cause some level of uncertainty for foreign lawyers.[16]

42. The legal landscape in Vietnam currently poses a number of challenges for Australian lawyers wishing to practise in the country. At the same time, reforms to the domestic licensing regime may see Vietnam become a more hospitable jurisdiction to foreign lawyers and firms in the future.

Other jurisdictions in Southeast Asia

43. In identifying the above jurisdictions as being of higher priority to the Australian legal profession for the purposes of the Review, the Law Council does not suggest that there is no interest from the Australian legal profession in other Southeast Asian jurisdictions.

44. The Law Council continues to engage with its counterpart legal professional bodies across the region through regional forums and on a bilateral basis, including on the issue of approaches to the regulation of trade in legal services and trade barriers.

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[15] Decree No. 121/2025/ND-CP (Vietnam).

[16] LTS Law, *Decree 121/2025/ND-CP: A Landmark Decentralization in Vietnam's Judicial Administration* (Webpage, 26 June 2025).

Coverage of existing Free Trade Agreements

45. Australia has seven FTAs which include Southeast Asian jurisdictions. These include bilateral agreements and regional agreements.

Trade Agreement	***Southeast Asian Parties***	***Date of entry into force for Australia***
Singapore—Australia Free Trade Agreement (**SAFTA**)	Singapore	28 July 2003
Thailand—Australia Free Trade Agreement (**TAFTA**)	Thailand	1 January 2005
ASEAN—Australia—New Zealand Free Trade Agreement (**AANZFTA**)	ASEAN Members[17]	1 January 2010
Malaysia—Australia Free Trade Agreement (**MAFTA**)	Malaysia	1 January 2013
Comprehensive and Progressive Agreement for Trans-Pacific Partnership (**CPTPP**)	Singapore Malaysia Vietnam Brunei Darussalam	30 December 2018
Indonesia-Australia Comprehensive Economic Partnership Agreement (**IA-CEPA**)	Indonesia	5 July 2020
Regional Comprehensive Economic Partnership Agreement (**RCEP**)	ASEAN Members	1 January 2022

46. All of the Southeast Asian jurisdictions are World Trade Organization Member States and have agreed to be bound by the General Agreement on Trade in Services (**GATS**).

47. Unlike trade in goods, which involves the physical movement of products across a border, trade in services can happen in several different ways. The GATS classifies four modes of services supply as outlined below:

    Mode 1—cross border supply

    Example: an Australian lawyer provides legal advice to a client located in Southeast Asia remotely (e.g. via email, phone call, video conference).

    Mode 2—consumption abroad

    Example: a client from Southeast Asia visits an Australian lawyer in Australia. The Australian lawyer provides advice to the client.

[17] Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, Timor Leste, and Vietnam.

Mode 3—commercial presence

Example: an Australian law firm seeks to establish a business operation in Southeast Asia through a commercial presence.

Mode 4—presence of natural persons

Example: an Australian lawyer flies to a Southeast Asian jurisdiction, usually on a FIFO basis, to provide advice, often contemplating Mode 1.

48. Southeast Asian jurisdictions have made commitments and reservations on the extent to which they allow foreign services and services providers access to their domestic market under the four modes of supply. This includes through the GATS, and the bilateral and multilateral agreements referred to above.

49. Further detailed information and analysis of the existing commitments made under each agreement will be provided to DFAT as part of the Law Council's grant activity.

50. The Law Council observes that it can be difficult for lawyers, firms and governments to have a clear understanding of which accommodations have been made, particularly as there can be a gap between commitments contained in agreements and practice.[18]

51. Improved transparency in relation to the domestic regulation of foreign lawyers across ASEAN would greatly assist Australian lawyers and firms working in the region. It may also contribute to the regional harmonisation of standards and operationalise the goals of the ASEAN Economic Community 2025 Blueprint.[19]

52. Australia has previously led similar efforts through the development of the APEC Legal Services Inventory.[20] This inventory provided information about local regulatory frameworks including regulation of FIFO practice, joint ventures and licensing arrangements. The inventory was sponsored by Australia and co-sponsored by Singapore, New Zealand, Canada, Taiwan and the United States. As the development of the Inventory was a point-in-time exercise, it has not been updated since 2010.

Recommendation 1

Australia should work with the ASEAN Economic Community and ASEAN Dialogue Partners to develop and maintain a regional inventory on the requirements and procedures for legal services providers to practise foreign law in Southeast Asia.

[18] Pasha L Hsieh, 'Transnational Legal Services in Asia: Legal Implications of the AEC and the CPTPP' in Pasha L Hsieh and Bryan Mercurio (eds), *ASEAN Law in the New Regional Economic Order* (Cambridge University Press, 14 March 2019) 168, 175 -177.

[19] ASEAN Secretariat, *ASEAN Economic Community Blueprint 2025* (2025) 6.

[20] Asia-Pacific Economic Cooperation (APEC), *APEC Legal Services Initiative*.

Opportunities for upgrading FTAs

Improving Mode 1 (cross border electronic supply) commitments

53. Mode 1 has become increasingly prominent in the supply of legal services by Australian lawyers and firms in Southeast Asia. The global pandemic has also accelerated the use of video conferencing and the delivery of advice remotely.

54. The provision of legal services through Mode 1 is not always expressly permitted under domestic law or regulations, and can pose some level of risk to foreign lawyers advising clients across jurisdictions.

55. In providing transnational legal services, a distinction is often drawn between domestic and foreign law as well as contentious and non-contentious matters. International arbitration and other forms of alternative dispute resolution are often treated differently to other types of legal practice.

56. Generally, the position in most Southeast Asian jurisdictions is that the practice of providing advice remotely is widespread and tolerated in practice for transactional services, however regulatory authorities will be increasingly concerned if foreign lawyers are advising on domestic litigation, which may impinge on the role of domestic legal counsel. The exception to this is international arbitration, which tends to be regarded as an international law service.

57. There is scope to more formally recognise the provision of foreign legal services through Mode 1 in Australia's FTAs with Southeast Asian economies. This would provide more certainty and reassurance to Australian firms that the provision of international legal advice on transactional matters would not result in regulatory action or contravene insurance conditions.

Recommendation 2

Australia should seek to build upon Mode 1 commitments made by Southeast Asian economies, where such commitments have already been made in the WTO or previous FTAs with Australia or other jurisdictions.

Improving Mode 4 (FIFO) commitments

58. Despite the growth in the delivery of services through Mode 1, the importance of having a physical presence in a jurisdiction is still repeatedly emphasised by Australian lawyers working in the region.

59. For this reason, the Law Council would also like to see improved commitments and clarity around providing legal services through Mode 4 (FIFO) across the region.

60. As noted above, Malaysia is currently the only jurisdiction in the region which expressly allows temporary in-country practice of foreign (and international) law by

foreign lawyers. Malaysia permits foreign lawyers to provide international law services for up to 60 days in Peninsular Malaysia.[21]

61. Equivalent statutory provisions in Australia allow foreign lawyers to provide foreign legal services (ie to practise the law of the jurisdiction in which they are qualified or international law) on a FIFO basis for a maximum of 90 days in any 12-month period. Foreign lawyers who wish to practise in Australia for longer than 90 days may register with the local state or territory licensing authority as an "Australian-registered foreign lawyer".

Recommendation 3

Australia should seek to build upon Mode 4 commitments, where such commitments have already been made in the WTO or previous FTAs with Australia or other jurisdictions.

Recommendation 4

Southeast Asian jurisdictions should be encouraged to introduce express permission for FIFO practice, with Malaysia and Australia providing a model for adoption in other jurisdictions.

Improving Mode 3 (commercial presence) commitments

62. Establishing a commercial presence remains a challenge in most Southeast Asian jurisdictions.

63. As with Mode 1 and 4, the Law Council would like to see upgrades to the current level of commitment from Southeast Asian economies in FTAs on Mode 3. The two most important jurisdictions for commercial presence for Australian law firms are Indonesia and Singapore.

64. As noted above, many Australian and international firms service the region through a commercial presence in Singapore, which provides a number of different licenses and corporate forms through which foreign law firms can operate.

65. Foreign lawyers in Indonesia are prohibited from establishing a commercial presence to offer advisory services in foreign and international law under Article 23 of the Law on Advocates.[22] This prohibition is confirmed under Indonesia's services commitments under the IA-CEPA.[23]

66. Currently international and Australian law firms work around this restriction by operating in association with local Indonesian law firm partnerships.

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[21] *Legal Profession Act 1976* (Malaysia) s 37(2a).

[22] Undang-Undang Republik Indonesia Nomor 18 Tahun 2003 Tentang Advokat [Law No 18 of 2003 on Advocates] (Indonesia) art 23.

[23] *Indonesia-Australia Comprehensive Economic Partnership Agreement*, signed 4 March 2019 (entered into force 5 July 2020), Annex I ('Schedule of Indonesia'), 3.

67. Indonesia has undertaken to automatically lock in any future liberalisation that would allow Australian law firms to establish a commercial presence in Indonesia.[24] Whilst such a change requires domestic law reform, the Law Council would still encourage the Australian Government to raise these issues during IA-CEPA upgrade negotiations.

68. The Law Council would also encourage further discussions with Malaysia about expanding its Mode 3 commitments. The Law Council notes that under the AANZFTA and MAFTA, Australian lawyers and law firms can establish a commercial presence in the Federal Territory of Labuan in Malaysia to provide legal advisory and consultancy services to offshore corporations established in the Territory on Australian law, international law, and offshore corporations law of Malaysia.[25]

Recommendation 5

Australia should seek to build upon Mode 3 commitments, where such commitments have already been made in the WTO or previous FTAs with Australia or other jurisdictions.

Updating FTAs to reflect current domestic arrangements.

69. In addition to updating existing agreements to align with commitments already made in the WTO and other relevant FTAs since the negotiation of the Agreement., agreements should also be updated to reflect further liberalisation of the legal services sector in Australia.

Updates to TAFTA

70. Australia's commitments under the professional services annex of the TAFTA allow Thai lawyers to practice advisory services in home-country law, third-country law and international law as well as international commercial arbitration services and other dispute resolution services.

71. The annex notes that natural persons practising foreign law in Western Australia and South Australia may only join a local law firm as a consultant and may not enter into partnership with or employ local lawyers.[26] This exception was due to differences in the local legal professional acts in those States at the time TAFTA was agreed.

72. Subsequent reforms to legislation in both Western Australia and South Australia have brought the regulation of foreign lawyers in these both jurisdictions into broad

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[24] Australian Government, *National Interest Analysis Comprehensive Economic Partnership Agreement between the Government Of Australia and the Government of Indonesia* (4 March 2019) 21.

[25] *Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area*, Annex 3 ('Malaysia's Schedule of Specific Commitments'), 1; *Malaysia – Australia Free Trade Agreement*, signed 22 May 2012 (entered into force 1 January 2013), Annex 3 ('Malaysia's Schedule of Specific Services Commitments') 4.

[26] *Australia –Thailand Free Trade Agreement*, signed 5 July 2004 (entered into force 1 January 2005), Annex 8 ('Schedule of Commitments Australia') 5.

alignment with other Australian States and Territories. The annex should therefore be updated to remove this exception.

Recommendation 6

Any future upgrades to the TAFTA should include updating Australia's commitments under the professional services annex.

Prioritisation between bilateral and regional FTAs

73. The Law Council has previously expressed the view that both bilateral and regional agreements have distinct advantages and disadvantages, and neither form of preferential trade agreement should be given preference over another.[27]

74. As a general proposition, regional agreements allow outcomes to be achieved with multiple trade partners simultaneously, which enable a more efficient use of limited negotiation resources and provided greater uniformity and consistency in trade rules. In some case these agreements can allow jurisdictions to 'leapfrog' to international best practice. However, there are also disadvantages with regional preferential trade agreements, including the difficulty of achieving strong outcomes.

75. Conversely, bilateral preferential trade agreements provide greater opportunity to achieve wider and deeper trade liberalisation than regional preferential trade agreements, as well as greater opportunity to address 'WTO-plus' issues such as trade-related environmental issues. However, the utility of bilateral agreements is hampered by numerous factors including the cost to business of compliance with differing international trade rules.

76. Noting the compliance costs associated with international trade rules, the Law Council encourages DFAT to examine how existing preferential trade agreements could be harmonised and merged.

77. Of the existing agreements noted above, the CPTPP contains the most detailed provisions on the domestic regulation of legal services that engage all four modes of supply identified in the GATS.[28] The CPTPP also contains obligations covering some of the more controversial issues in trade in legal services, including associations between foreign and domestic lawyers. For this reason, the CPTPP is among the most progressive services instruments in the world.[29]

78. The CPTPP covers only a subset of jurisdictions in Southeast Asia (Singapore, Malaysia, Vietnam and Brunei Darussalam). Whilst there are potential pathways for other Southeast Asian jurisdictions to join the CPTPP, its provisions may also usefully serve as a benchmark that could be adopted in other regional FTAs such as the AANZFTA, as well as in bilateral agreements.

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27 Law Council of Australia, *Review of bilateral and regional trade agreements* (Submission, March 2010) 4.
28 Trans-Pacific Partnership Agreement, Chapter 10, 12-13.
29 David Collins, *The Public International Law of Trade in Legal Services* (Cambridge University Press, 2019) 203.

Recommendation 7

The Australian Government should continue to pursue both bilateral and regional preferential trade agreements where it assesses that the agreement will deliver substantial economic benefits to Australia within a reasonable period of time and without having trade distorting effects.

Recommendation 8

The Australian Government should examine how existing preferential trade agreements could be harmonised and merged.

Additional Comments on upgrading Free Trade Agreements

Incorporation of human rights standards into FTAs

79. The Law Council is committed to promoting the implementation of Australia's international human rights obligations, as well as the recognition, application and justiciability of international human rights standards.[30]

80. We agree with the Joint Standing Committee on Trade and Investment Growth that trade and investment agreements should be consistent with and not undermine commitments to internationally-agreed standards in areas such as human rights, labour and the environment, and support the Committee's recommendation that the Australian Government seek to include human rights, labour and environmental chapters in its trade agreements that reflect, and where appropriate contain specific references to, relevant United Nations and International Labour Organization conventions and declarations to which Australia is a signatory.[31]

Recommendation 9

The Australian Government should seek to include specific references, and where appropriate binding commitments, to relevant international standards and conventions regarding human rights, labour and the environment in its FTA network in Southeast Asia.

Human Rights Clauses

81. The Law Council's International Law Section supports measures to establish human rights clauses in Australia's network of FTAs in Southeast Asia.

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[30] Law Council of Australia 'Policy Statement on Human Rights and the Legal Profession: Key principles and commitments' (May 2017).

[31] Joint Standing Committee on Trade and Investment Growth, *Strengthening Australia's Approach to Trade Negotiations* (Report, April 2024) 51.

82. By way of comparison, the European Union (**EU**) had adopted a structured approach to incorporating human rights clauses in bilateral trade agreements, specifically through the inclusion of:

    (a) an 'essential elements clause' which affirms the parties' commitment to specific values or norms (eg respect for human rights, democratic principles and the rule of law) as essential to the agreement. These norms are usually identified by reference to international human rights instruments; and

    (b) a 'non-execution' clause permitting a party to take 'appropriate measures' in the event that the other party commits a serious breach of these norms, including suspension or termination of the agreement.

83. The EU typically includes such clauses in political framework agreements, to which trade agreements are linked. When there is no such framework agreement in place, the clauses are included in trade agreements themselves.[32]

84. Below is a human rights clause contained in the Framework Agreement between the EU and Australia:

> *"The Parties confirm their commitment to democratic principles, human rights and fundamental freedoms and the rule of law. Respect for democratic principles and human rights and fundamental freedoms as laid down in the Universal Declaration of Human Rights, as given expression in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and other international human rights instruments which the Parties have ratified or acceded to, and for the principle of the rule of law, underpins the domestic and international policies of the Parties and constitutes an essential element of this Agreement."*[33]

85. The primary objective of these clauses is to establish a platform for constructive dialogue and cooperation on human rights and rule of law issues with the other party.[34] Such clauses are not designed to be exclusive of other mechanisms, such as engagement through the United Nations human rights architecture or bilateral dialogue, but rather operate alongside existing forms of engagement.

86. The Law Council notes that many countries in Southeast Asia significantly curtail political rights and civil liberties. For example, Thailand, Brunei, Cambodia, Laos, and Vietnam are all considered to be "Not Free" according to Freedom House's 2025 Freedom in the World Report.[35] Vietnam, Cambodia and Laos continue to severely restrict civil and political rights despite having ratified treaties such as the International Covenant on Civil and Political Rights.

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[32] European Parliamentary Research Service, 'Human Rights in EU trade agreements: The human rights clause and its application', July 2019.

[33] Framework Agreement between the European Union and Australia, Article 2(2).

[34] European Parliament, 'Assessment of the implementation of the human rights clause in international and sectoral agreements' (May 2023); 'Human Rights in EU trade agreements: The human rights clause and its application', (n 32); P. Van Elsuwege and J. De Coninck, Ghent European Law Institute, 'The Effectiveness of Human Rights Clauses in EU Trade Agreements: Challenges and Opportunities' (2022).

[35] Freedom House, Freedom in the World Report (2025). Available at: <https://freedomhouse.org/country/scores>.

Recommendation 10

Australia should give consideration to including human rights clauses in FTAs with Southeast Asia with a view to establishing an additional mechanism for dialogue and cooperation on human rights and rule of law issues.

Protection of labour rights and intersection with the Modern Slavery Act 2018 (Cth)

87. The inclusion of international labour rights in FTAs protects against the erosion of labour rights in Australia and can also play a positive role in lifting working conditions and improving economic development in partner countries.

88. The Law Council encourages the Australian Government to include enforceable provisions aimed at promoting and protecting internationally-agreed labour rights and standards in Australia's network of FTAs in Southeast Asia.

89. The Law Council notes that of Australia's seven bilateral and regional FTAs with Southeast Asian economies, only the CPTPP presently contains provisions relating to labour rights. As noted above, only four of the eleven ASEAN member states are signatories to the CPTPP.[36]

90. The Law Council would therefore welcome the inclusion of strong and enforceable labour provisions modelled on those contained in the CPTPP in other bilateral and regional FTAs in Southeast Asia, particularly AANZFTA, IA-CEPA and TAFTA. These provisions should:

    (a) refer to the Parties' commitments under international human rights law and core International Labor Organization Conventions;

    (b) contain obligations to protect and promote internationally-agreed labour rights and standards in domestic law and policies, including procedural guarantees;

    (c) contain specific references to obligations to eliminate all forms of forced labour, compulsory labour and child labour;

    (d) contain mechanisms to enforce provisions and monitor compliance.

91. The modernisation of Australia's network of FTAs in Southeast Asia also provides an opportunity to further support the prevention of modern slavery in Australia, including through the *Modern Slavery Act 2018* (Cth) and the findings of the 2023 Statutory Review of the Act which the Australian Government is working to implement.[37]

92. The Law Council notes that the Free Trade Agreement between Australia and the United Kingdom (**A-UKFTA**) contains commitments relating to modern slavery,

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[36] Brunei, Malaysia, Singapore and Vietnam are parties to the CPTPP. Cambodia, Indonesia, Laos, Myanmar, the Philippines, Timor Leste and Thailand are not parties to the CPTPP.

[37] John McMillan AO, '*Report of the statutory review of the Modern Slavery Act 2018 (Cth): The first three years'*, 25 May 2023.

including to require responsible business conduct and supply chain transparency in respect of private sector entities operating in its territory.[38]

93. While acknowledging that the A-UKFTA, as an agreement between two countries that have adopted domestic modern slavery legislation and accord the issue particular priority, may represent a high watermark in terms of ambition to include modern slavery commitments in a trade agreement, the Law Council notes that there is scope for Australia's FTAs with Southeast Asian jurisdictions to support the *Modern Slavery Act 2018* (Cth) in other ways. These include:

    (a) (as mentioned above) embedding obligations to protect and promote internationally-agreed labour rights and standards;

    (b) including references to domestic monitoring and reporting requirements; and

    (c) establishing mechanisms for capacity-building and information-sharing.

94. Australia could also negotiate side letters that contain commitments to cooperation to combat modern slavery, and to align definitions.

Recommendation 11

Australia should include strong and enforceable labour provisions modelled on those contained in the CPTPP in other bilateral and regional FTAs in Southeast Asia, particularly AANZFTA, IA-CEPA and TAFTA. These provisions should:

- **refer to the Parties' commitments under international human rights law and core International Labor Organization Conventions;**
- **contain obligations to protect and promote internationally-agreed labour rights and standards in domestic law and policies, including procedural guarantees;**
- **contain specific references to obligations to eliminate all forms of forced labour, compulsory labour and child labour; and**
- **contain mechanisms to enforce provisions and monitor compliance.**

Recommendation 12

The Australian Government should give consideration to the ways in which Australia's FTAs in Southeast Asia align with, and give effect to, the *Modern Slavery Act 2018* (Cth).

[38] *Free Trade Agreement between Australia and the United Kingdom*, signed 17 December 2021, (entered into force 31 May 2023) Art 21.7.

About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its constituent bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice, and general improvement of the law.

The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its constituent bodies:

- the Australian Capital Territory Bar Association;
- the Law Society of the Australian Capital Territory;
- the New South Wales Bar Association;
- the Law Society of New South Wales;
- the Northern Territory Bar Association;
- the Law Society Northern Territory;
- the Bar Association of Queensland;
- the Queensland Law Society
- the South Australian Bar Association;
- the Law Society of South Australia;
- the Tasmanian Bar;
- the Law Society of Tasmania;
- the Victorian Bar Incorporated;
- the Law Institute of Victoria;
- the Western Australian Bar Association;
- the Law Society of Western Australia; and
- Law Firms Australia.

Through these bodies, the Law Council represents more than 110,000 Australian lawyers.

The Law Council is governed by a board of 23 Directors: one from each of the constituent bodies, and six Executive members elected by Directors. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President. In 2026, the Law Council Executive comprises:

- Ms Tania Wolff, President
- Ms Elizabeth Shearer, President-elect
- Mr Lachlan Molesworth, Treasurer
- Ms Jennifer Ball, Executive Member
- Mr Justin Stewart-Rattray, Executive Member
- Mr Ante Golem, Executive Member

The Chief Executive Officer of the Law Council is Dr James Popple.

The Law Council's Secretariat is based in Canberra. Its website is www.lawcouncil.au.

Attachment A

Generic Legal Services Market Access Request

Law Council
OF AUSTRALIA

This document identifies the market access priorities of Australia's legal and related service suppliers internationally. This information will:

- assist trade negotiators and others engaged in advancing the market access interests of Australia's legal and related service suppliers; and
- assist the legal profession and its representative bodies across Australia develop and promote an 'Australia Inc' approach through a shared understanding of the profession's international market access interests.

Australian legal and related services suppliers seek a right to:

i. Establish a commercial presence (through branch office or other legal presence with a right to establish one or more commercial presences as provided to local lawyers) and, where a commercial presence has been established, the option to use the firm name used in Australia respecting local customs or usage in the host country;

ii. Provide legal services covering the laws of multiple jurisdictions in respect of which the Australian legal service provider or employees of the Australian legal service provider are qualified to advise;

iii. Have the option of entering into commercial association with local lawyers and law firms, with the freedom to negotiate fee and profit sharing arrangements;

iv. Provide legal services on a fly-in/fly-out basis, without mandatory residency or registration requirements;

v. Include secondments and similar exchange programs to and from the host country;

vi. Prepare and appear in arbitrations, conciliations and mediations as well as provide services as Arbitrators, Conciliators and Mediators; and

vii. Free movement of professionals (non-burdensome visa conditions and processes) to work as independent service providers and intra-corporate transferees, and entry/work rights for their partners (Spouse/DeFacto) and dependents.

Transnational Practice Division
Law Council of Australia

November 2016