

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 8.12.1 (Non-Conforming Measures) and Article 9.7.1 (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.
3. For greater certainty, the Description element of each of Australia's entries in Annex I is to be interpreted in accordance with the relevant cited sources of the non-conforming measures.

Sector:	All
Obligations Concerned:	National Treatment (Article 8.4 and Article 9.3) Most-Favoured-Nation Treatment (Article 8.5 and Article 9.4) Performance Requirements (Article 8.10) Senior Management and Boards of Directors (Article 8.11) Local Presence (Article 9.6)
Level of Government:	Regional
Measures:	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 8.4) Senior Management and Boards of Directors (Article 8.11)
Level of Government:	Central
Measures:	Australia's Foreign Investment Framework, which comprises Australia's Foreign Investment Policy, the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth); <i>Foreign Acquisitions and Takeovers Regulation 2015</i> (Cth); <i>Foreign Acquisitions and Takeovers Fees Imposition Act 2015</i> (Cth); <i>Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015</i> (Cth); <i>Financial Sector (Shareholdings) Act 1998</i> (Cth); and Ministerial Statements.

Description:

Investment¹

A. The following investments² are subject to approval by the Australian Government and may also require notification³ to the Australian Government:

- (a) a proposed investment by a foreign person⁴ in an entity or Australian business valued above \$A1,094 million[†];
- (b) a proposed investment by a foreign person in an entity or Australian business valued above \$A252 million[†] relating to a sensitive business⁵ or its assets;
- (c) a proposed direct investment by a foreign government investor⁶ of any interest regardless of value;
- (d) a proposed investment by a foreign person of 5 per cent or more in the media sector, regardless of the value of the investment;
- (e) a proposed acquisition by a foreign person of an interest in developed commercial land⁷ where

¹ 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.

² "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.

³ 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.

⁴ For the purposes of this entry, 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).

⁵ The term "sensitive business" has the meaning set out in the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).

⁶ 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).

the value of the interest is more than \$A1,094 million[†], unless the land meets the conditions for the lower developed commercial land threshold of \$A55 million^{†8}.

Investments may be refused, subject to orders, and/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 and/or notification requirements apply from the lowest applicable threshold.

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.

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 control⁹ of an existing financial sector company, may be refused, or be subject to certain conditions¹⁰.

⁷ 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).

⁸ 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).

⁹ “Unacceptable shareholding situation” and “practical control” as defined in the *Financial Sector (Shareholdings) Act 1998* (Cth).

¹⁰ Ministerial statements on foreign investment policy including the Treasurer’s Press Release No. 28 of 9 April 1997.

[†] This is the figure as at 1 January 2017. To be indexed annually on 1 January.

Sector: Professional Services

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

Level of Government: Central

Measures: *Patents Act 1990 (Cth)*
Patents Regulations 1991 (Cth)

Description: Cross-Border 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.

Sector: Professional Services

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

Level of Government: Central

Measures: *Migration Act 1958 (Cth)*

Description: Cross-Border 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.

Sector: Professional Services

Obligations Concerned: Local Presence (Article 9.6)

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 9.6)

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 8.4 and Article 9.3)
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 vessels¹¹ 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.¹²

¹¹ 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.

¹² 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 8.4) Senior Management and Boards of Directors (Article 8.11)
Level of Government:	Central
Measures:	<i>Telstra Corporation Act 1991 (Cth)</i>
Description:	<p><u>Investment</u></p> <p>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.</p> <p>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.</p>

Sector:	Health Services
Obligations Concerned:	National Treatment (Article 8.4) Senior Management and Boards of Directors (Article 8.11)
Level of Government:	Central
Measures:	<i>Commonwealth Serum Laboratories Act 1961</i> (Cth)
Description:	<u>Investment</u>

The votes attached to significant foreign shareholdings¹³ 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.

¹³ 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 8.4 and Article 9.3) Local Presence (Article 9.6)
Level of Government:	Central
Measures:	<i>Competition and Consumer Act 2010 (Cth)</i>
Description:	<u>Investment and Cross-Border Trade in Services</u>

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 person¹⁴ 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.

¹⁴ 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 8.4 and Article 9.3) Local Presence (Article 9.6)
Level of Government:	Central
Measures:	<i>Shipping Registration Act 1981 (Cth)</i> <i>Shipping Registration Regulations 1981 (Cth)</i>
Description:	<u>Investment and Cross-Border Trade in Services</u>

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 8.4) Senior Management and Boards of Directors (Article 8.11)
Level of Government:	Central
Measures:	<i>Air Navigation Act 1920</i> (Cth) Ministerial Statements
Description:	<p><u>Investment</u></p> <p>Total foreign ownership of individual Australian international airlines (other than Qantas) is restricted to a maximum of 49 per cent.</p> <p>Furthermore, it is required that:</p> <ul style="list-style-type: none"> (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 8.4) Senior Management and Boards of Directors (Article 8.11)
Level of Government:	Central
Measures:	<i>Qantas Sale Act 1992</i> (Cth)
Description:	<p><u>Investment</u></p> <p>Total foreign ownership of Qantas Airways Ltd is restricted to a maximum of 49 per cent. In addition:</p> <ul style="list-style-type: none"> (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.