

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:	consists of the <i>Foreign Acquisitions and Takeovers Act 1975</i> (FATA) (Cth); <i>Foreign Acquisitions and Takeovers Regulations 1989</i> (Cth); <i>Financial Sector (Shareholdings) Act 1998</i> (Cth); and Ministerial Statements.
Description:	<u>Investment</u> 1. The following investments ¹ require notification and approval from the Australian Government: (a) proposed investments by foreign persons in existing ² Australian businesses, or prescribed corporations, ³ the value of whose assets

¹ *Foreign Acquisitions and Takeovers Act 1975* (Cth) (FATA) 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

exceeds \$A252 million* in the following sectors:

(

-
- (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.

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

(Shareholdings) Act 1998 (Cth).

⁷

1997.

Financial Sector

Release No. 28 of 9 April

Sector: Professional Services

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

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

Description: Cross-Border Trade in Services

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: *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 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: *Fisheries Management Act 1991 (Cth)*
Foreign Fishing Licences Levy Act 1991 (Cth)

Description: Investment and Cross-Border Trade in Services

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 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:	<i>Commonwealth Serum Laboratories Act 1961</i> (Cth)
Description:	<u>Investment</u>

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 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:	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:	<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) (d) tional 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: *Qantas Sale Act 1992* (Cth)

Description: Investment

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) 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.