

## **ANNEX 4-II(A)**

### **AUSTRALIA'S RESERVATIONS TO CHAPTER 7 (TRADE IN SERVICES) AND CHAPTER 8 (INVESTMENT)**

Sector	All
Sub sector	-
Industry classification	-
Type of Reservation	Market Access National Treatment
Description of Reservation	Australia reserves the right to adopt or maintain any measure with respect to the supply of a service by the presence of natural persons, or other movement of natural persons, including immigration, entry or temporary stay, subject to the provisions of the Chapter 11 (Movement of Business Persons).
Existing Measures	-

Sector	All
Sub sector	-
Industry classification	-
Type of Reservation	Market Access National Treatment Prohibition of Performance Requirements
Description of Reservation	<p>Australia reserves the right to adopt or maintain any measure according preferences to any indigenous person or organisation or providing for the favourable treatment of any indigenous person or organisation in relation to acquisition, establishment or operation of any commercial or industrial undertaking in the service sector.</p> <p>Australia reserves the right to adopt or maintain any measure with respect to investment that accords preferences to any indigenous person or organisation or providing for the favourable treatment of any indigenous person or organisation.</p> <p>For the purpose of this reservation, an indigenous person means a person of the Aboriginal race of Australia or a descendent of an indigenous inhabitant of the Torres Strait Islands.</p>
Existing Measures	<p>Legislation and ministerial statements at all levels of government including Australia's foreign investment policy, which encompasses the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth) and the <i>Native Title Act</i> (Cth).</p> <p><i>NSW Aboriginal Land Rights Act 1983 (NSW)</i>  <i>Aboriginal Land Act 1991 (QLD)</i>  <i>Torres Strait Islander Act 1991 (QLD)</i>  <i>Native Title (New South Wales) Act 1994 (NSW)</i>  <i>Native Title (South Australia) Act 1994 (SA)</i>  <i>Maralinga Tjarutja Land Rights Act 1984 (SA)</i>  <i>Anangu Pitjantjatjara Yankunytjatjara Act 1981 (SA)</i>  <i>Pitjantjatjara Land Rights Regulations 2003 (SA)</i>  <i>Mining Act 1971 (SA)</i>  <i>Opal Mining Act 1995 (SA)</i>  <i>Aboriginal Lands Act 1995 (Tas)</i></p>

Sector	All
Sub sector	-
Industry classification	-
Type of Reservation	Market Access National Treatment Prohibition of Performance Requirements
Description of Reservation	Australia reserves the right to adopt or maintain any measure with respect to proposals by 'foreign interests' to invest in Australian urban land (including interests that arise via leases, financing and profit sharing arrangements and the acquisition of interests in urban land corporations and trusts).
Existing Measures	<p>Australia's foreign investment policy, which comprises the:</p> <ul style="list-style-type: none"> <li>• <i>Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA)</i>;</li> <li>• Foreign Acquisitions and Takeovers Regulations (Cth) ; and Ministerial statements.</li> </ul> <p>Prior Government approval is required where they involve the following acquisition of urban lands:</p> <ul style="list-style-type: none"> <li>• acquisition of developed non-residential commercial real estate, where the property is subject to heritage listing, valued at \$A5 million or more;</li> <li>• acquisition of developed non-residential commercial real estate, where the property is not subject to heritage listing, valued at \$A50 million or more;</li> <li>• acquisition of accommodation facilities irrespective of value;</li> <li>• acquisition of vacant urban real estate irrespective of value;</li> <li>• acquisition of residential real estate irrespective of value; or</li> <li>• proposals where any doubt exists as to whether they are notifiable. (Funding arrangements that include debt instruments having quasi-equity characteristics will be treated as direct foreign investment.)</li> </ul> <p>A 'foreign interest' is defined as:</p> <ul style="list-style-type: none"> <li>• a natural person not ordinarily resident in Australia;</li> <li>• a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;</li> <li>• a corporation in which 2 or more persons, each of whom is</li> </ul>

	<p>either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest;</p> <ul style="list-style-type: none"><li>. 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</li><li>. the trustee of a trust estate in which 2 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.</li></ul> <p>A 'substantial interest' occurs when a single foreigner (and any associates) has 15 per cent or more of the ownership of any corporation, business or trust.</p> <p>An 'aggregate substantial interest' occurs when several foreigners (and any associates) have, in aggregate, 40 per cent or more of the ownership of any corporation, business or trust.</p> <p>A 'controlling interest' will be as defined in section 9 of the FATA.</p> <p>A 'substantial interest in a trust estate' will be as defined in section 9A of the FATA.</p> <p>Proposed acquisitions of residential real estate are exempt from examination in the case of:</p> <ul style="list-style-type: none"><li>. Australian citizens living abroad purchasing either in their own name or through an Australian corporation or trust;</li><li>. foreign nationals purchasing (as joint tenants) with their Australian citizen spouse; and</li><li>. foreign nationals who are the holders of permanent resident visas or are holders, or are entitled to hold, a 'special category visa' purchasing either in their own name or through an Australian corporation or trust.</li></ul> <p>Full details are available at <a href="http://www.firb.gov.au">www.firb.gov.au</a>.</p> <p><i>Urban Land Development Authority Act 2007 (Qld)</i> <i>Integrated Planning Act 1997 (Qld)</i> <i>Integrated Resort Development Act 1997 (Qld)</i></p>
--	---

Sector	All
Sub sector	-
Industry classification	-
Type of Reservation	Market Access National Treatment Prohibition of Performance Requirements
Description of Reservation	Australia reserves the right to adopt or maintain any measure with respect to:  a) the devolvement to the private sector of services provided in the exercise of governmental authority at the time that the Agreement comes into force; and  b) the privatisation of government owned entities or assets.
Existing Measures	

Sector	All sectors and sub-sectors set out in the description of reservation.
Sub sector	-
Industry classification	- CPC Codes as indicated in description of reservation.
Type of Reservation	Market Access Prohibition of Performance Requirements
Description of Reservation	<p>Australia reserves the right to adopt or maintain any measure at the regional level of government in the following sectors or sub-sectors (with CPC Codes):</p> <ul style="list-style-type: none"> <li>• Legal services (practice of Australian law) (part of 861);</li> <li>• Medical services (9312);</li> <li>• Services provided by midwives, nurses, physiotherapists and para-medical personnel (93191);</li> <li>• Data base services (844);</li> <li>• Other computer services (849);</li> <li>• R&amp;D services on natural sciences (851);</li> <li>• Interdisciplinary R&amp;D services (853);</li> <li>• Other rental leasing services without operators (832);</li> <li>• Arbitration and conciliation services (86602);</li> <li>• Technical testing and analysis services (8676);</li> <li>• Services incidental to mining (other than consultancy on a fee or contract basis relating to mining and oil field development) (part of 883 and 5115);</li> <li>• Services incidental to manufacturing (884, 885);</li> <li>• Services incidental to energy distribution (other than consultancy services related to transmission and distribution) (part of 887);</li> <li>• Maintenance and repair of equipment (633, 8861, 8866);</li> <li>• Packaging services (876);</li> <li>• Printing, publishing (88442);</li> <li>• Credit reporting services (87901), and collecting agency services (87902);</li> <li>• Postal services (7511);</li> <li>• Courier services (7512);</li> <li>• Other construction services (511,515,518);</li> <li>• Sales of Motor Vehicles and Motorcycles, and of parts and accessories (6111, 6113, 6121)</li> <li>• Retail sales of pharmaceutical, medical and orthopaedic goods (63211);</li> <li>• Adult education (924);</li> <li>• Other education services (other than English language tuition) (part of 929);</li> <li>• Hospital services (9311);</li> </ul>

	<ul style="list-style-type: none"> <li>• Other human health services (other than podiatry and chiropody) (part of 9319)</li> <li>• Social services (933);</li> <li>• Maritime transport services (maintenance and repair of vessels) (8868);</li> <li>• Maritime transport services (pushing and towing services) (7214);</li> <li>• Maritime transport services (supporting services) (745)</li> <li>• Internal waterways transport (721, 745, 8868);</li> <li>• Space transport (733);</li> <li>• Rail transport services (711, 743);</li> <li>• Urban and suburban regular and special transportation (71211, 71212);</li> <li>• Road transport (rental of commercial vehicles with operator) (7124);</li> <li>• Road transport (maintenance and repair of road transport equipment) (6112, 8867);</li> <li>• Road transport (supporting services for road transport services) (744);</li> <li>• Cargo handling services (741).</li> </ul>
Existing Measures	



Sector	All
Sub-sector	-
Industry classification	-
Type of Reservation	Market Access National Treatment Prohibition of Performance Requirements
Description of Reservation	Australia reserves the right to adopt or maintain any measure with respect to the provision of public law enforcement and correctional services, and the following to the extent that they are social services established for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, child care, public utilities and public transport.
Existing Measures	

Sector	Agriculture
Sub-sector	-
Industry classification	-
Type of Reservation	Market Access National Treatment
Description of Reservation	Australia reserves the right to adopt or maintain any measures with respect to marketing boards.
Existing Measures	<i>Wheat Marketing Act 1989 (Cth)</i> <i>Grain Marketing Act 1991 (NSW)</i> <i>Marketing of Primary Products Act 1983 (NSW)(1)</i> <i>Sugar Industry Act 1999 (Qld)</i> <i>Barley Marketing Act 1993 (SA)</i> <i>Marketing of Potatoes Act 1946 (WA),</i> <i>Potato Marketing Regulations 1989 (WA)</i> <i>Marketing of Eggs Act 1945 (WA)</i> <i>Grain Marketing Act 2002 (WA)</i>

(1)This Act covers:

- (a) any grain, cereal, fruit (fresh, dried or canned), vegetable, livestock, meat, hay, chaff, poultry (live or dead), honey, beeswax or other product of agriculture, grazing, poultry-farming or bee-keeping in New South Wales, and
- (b) any dairy produce (including butter and cheese) and any other article prepared directly from the produce of agriculture, grazing, poultry-farming or bee-keeping in New South Wales.

The Act does not include wool, fresh milk, eggs or any coarse grain, oilseed or other primary product to which the *Grain Marketing Act 1991* for the time being applies.

Sector	Media
Sub-sector	-
Industry classification	-
Type of Reservation	Market Access National Treatment Prohibition of Performance Requirements
Description of Reservation	Australia reserves the right to adopt or maintain any measure with respect to foreign investment in the media sector, including broadcasting, audiovisual services and newspapers.
Existing Measures	<p>(a) Australia's foreign investment policy, which comprises the:</p> <ul style="list-style-type: none"> <li>- <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth);</li> <li>- Foreign Acquisitions and Takeovers Regulations; and Ministerial Statements.</li> </ul> <p>All proposals by foreign interests for direct (i.e., non-portfolio) investment in the media sector irrespective of size are subject to prior approval under the Government's foreign investment policy. Proposals involving portfolio shareholdings of 5 per cent or more must also be submitted for examination.</p> <p>Foreign investment in mass circulation national, metropolitan, suburban and provincial newspapers is restricted. All proposals by foreign interests to acquire an interest of 5 per cent or more in an existing newspaper or to establish a new newspaper in Australia are subject to case-by-case examination.</p> <p>For national and metropolitan newspapers, the maximum permitted aggregate foreign interest direct (non-portfolio) investment/involvement is 30 percent with any single foreign shareholder limited to a maximum interest of 25 per cent.</p> <p>For provincial and suburban newspapers, aggregate foreign interest direct involvement is limited to less than 50 per cent for non-portfolio shareholdings.</p> <p>Financial arrangements designed to avoid limits are treated as if they were directly covered.</p> <p>(b) The <i>Broadcasting Services Act 1992</i> (Cth) (BSA).</p> <p>While proposals for a foreign person to acquire an interest in an</p>

	<p>existing broadcasting service or to establish a new broadcasting service are subject to case-by-case examination under foreign investment policy, the following criteria must also be satisfied.</p> <p>Foreign interests in commercial television broadcasting services are limited to a 15 per cent company interest for individuals and a 20 per cent company interest in aggregate. A foreign person is prohibited from being in a position to exercise control of a commercial television licence. The BSA outlines when such control is deemed to exist. No more than 20 percent of the directors of each commercial television licensee may be foreign persons.</p> <p>For each subscription television broadcasting licence, foreign interests are limited to a 20 per cent company interest for an individual and a 35 per cent company interest in aggregate.</p> <p>Financial arrangements designed to avoid limits are treated as if they were directly covered.</p>
--	---

Sector	Communication Services, and Recreational, Cultural and Sporting Services
Sub-sector	Broadcasting and audiovisual, entertainment and cultural services
Industry classification	-
Type of Reservation	Market Access National Treatment Prohibition of Performance Requirements
Description of Reservation	Australia reserves the right to adopt or maintain any measure with respect to: <ul style="list-style-type: none"> <li>- the creative arts,<sup>1</sup> cultural heritage<sup>2</sup> and other cultural industries, including audiovisual services, entertainment services and libraries, archives, museums and other cultural services;</li> <li>- broadcasting and audiovisual services, including measures with respect to planning, licensing and spectrum management, and including: <ul style="list-style-type: none"> <li>. services offered in Australia;</li> <li>. international services originating from Australia.</li> </ul> </li> </ul>
Existing Measures	<i>Broadcasting Services Act 1992 (Cth)</i> <i>Radiocommunications Act 1992 (Cth)</i>  There are minimum Australian content requirements for commercial television.  <i>Film and Television Office Act 1988 (NSW)</i>

---

<sup>1</sup> 'Creative arts' include: the performing arts – including theatre, dance and music – visual arts and craft, literature, film, television, video, radio, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid arts work which uses new technologies to transcend discrete artform divisions.

<sup>2</sup> 'Cultural heritage' includes: ethnological, archaeological, historical, literary, artistic, scientific or technological moveable or built heritage, including the collections which are documented, preserved and exhibited by museums, galleries, libraries, archives and other heritage collecting institutions.

Sector	Wholesale trade services and retail trade services
Sub-sector	Wholesale trade services and retail trade services of alcoholic beverages and tobacco.
Industry classification	6222, 6310
Type of Reservation	Market Access National Treatment Prohibition of Performance Requirements
Description of Reservation	<p>Australia reserves the right to adopt or maintain any measure with respect to wholesale trade services of tobacco products and alcoholic beverages.</p> <p>Australia reserves the right to adopt or maintain any measure with respect to retail trade services of tobacco products and alcoholic beverages.</p>
Existing Measures	<p><i>Liquor Act 1992 (NSW)</i>  <i>Kava Management Act 2001 (NT)</i>  <i>Liquor Act 1992 (QLD)</i>  <i>Wine Industry Act 1994 (QLD)</i>  <i>Liquor Licensing Act 1997 (SA)</i>  <i>Liquor Licensing Act 1990 (TAS)</i>  <i>Liquor Licensing Act 1988 (WA)</i></p>

Sector	Education services
Sub-sector	Primary education services
Industry classification	921
Type of Reservation	Market Access National Treatment Prohibition of Performance Requirements
Description of Reservation	Australia reserves the right to adopt or maintain any measure with respect to primary education.
Existing Measures	-

Sector	Education services
Sub-sector	
Industry classification	
Type of Reservation	Prohibition of Performance Requirements
Description of Reservation	<u>Cross-Border Trade in Services and Investment</u>  Australia reserves the right to adopt or maintain any measure with respect to the supply of public secondary and higher educational services.
Existing Measures	



Sector	Education services
Sub-sector	Education services other than primary education services
Industry classification	922, 923, 924, 929
Type of Reservation	National Treatment Prohibition of Performance Requirements
Description of Reservation	Australia reserves the right to adopt or maintain any measure with respect to the supply of educational services through commercial presence.
Existing Measures	

Sector	Financial services
Sub-sector	Insurance and insurance related services.
Industry classification	-
Type of reservation	Market Access National Treatment
Description of Reservation	<p>Australia reserves the right to adopt or maintain any measure with respect to cross border supply or consumption abroad of insurance intermediation, such as brokerage and agency.</p> <p>Australia reserves the right to adopt or maintain any measure with respect to cross border supply or consumption abroad of direct life and non-life insurance (including co-insurance), other than insurance of risks relating to maritime shipping, commercial aviation, space launching, freight (including satellites) and goods in international transit.</p>
Existing Measures	-

Sector	Financial services
Sub-sector	Banking and other financial services (excluding insurance)
Industry classification	-
Type of reservation	National treatment
Description of Reservation	Australia reserves the right to adopt or maintain any measure with respect to the guarantee by government of government-owned entities which may conduct financial operations.
Existing Measures	

Sector	Financial services
Sub-sector	Banking and other financial services (excluding insurance).
Industry classification	-
Type of reservation	Market Access National Treatment
Description of Reservation	Australia reserves the right to adopt or maintain any measure with respect to cross-border supply of banking and other financial services including intermediation, but not including the provision and transfer of financial information, financial data processing and related software by suppliers of other financial services, advisory and other auxiliary services.
Existing Measures	-

Sector	Gambling and Betting
Sub-sector	-
Industry classification	-
Type of Reservation	Market Access National Treatment Prohibition of Performance Requirements
Description of Reservation	Australia reserves the right to adopt or maintain any measure with respect to gambling and betting.
Existing Measures	<p>Legislation and ministerial statements including the <i>Interactive Gambling Act 2001</i>(Cth) .</p> <p><i>Casino Control Act 1988</i> (ACT)</p> <p><i>Betting (ACTTAB) Act 1964</i> (ACT)</p> <p><i>Interactive Gambling Act 1998</i> (ACT)</p> <p><i>Race and Sports Bookmaking Act 2001</i> (ACT)</p> <p><i>Gaming Machine Act 1987</i> (ACT)</p> <p><i>Pool Betting Act 1964</i> (ACT)</p> <p><i>Casino Control Act 1992</i> (NSW)</p> <p><i>Racing Administration Act 1998</i> (NSW)</p> <p><i>Lotteries and Art Unions Act 1901</i> (NSW)</p> <p><i>Totalizator Act 1987</i> (NSW)</p> <p><i>Gaming Machines Act 2001</i> (NSW)</p> <p><i>Public Lotteries Act 1996</i> (NSW)</p> <p><i>Greyhound and Harness Racing Administration Act 2004</i> (NSW)</p> <p><i>Thoroughbred Racing Act 1996</i> (NSW)</p> <p><i>Unlawful Gambling Act 1998</i> (NSW)</p> <p><i>TAB Queensland Limited Privatisation Act 1999</i> (QLD)</p> <p><i>Casino Control Act 1982</i> (QLD)</p> <p><i>Jupiters Casino Agreement Act 1983</i> (QLD)</p> <p><i>Racing Act 2002</i> (QLD)</p> <p><i>Brisbane Casino Agreement Act 1992</i> (Qld)</p> <p><i>Breakwater Island Casino Agreement Act 1984</i> (Qld)</p> <p><i>Lotteries Act 1997</i> (Qld)</p> <p><i>Casino Act 1997</i> (SA)</p> <p><i>Lottery and Gaming Act 1936</i> (SA)</p> <p><i>Independent Gambling Authority Act 2001</i> (SA)</p> <p><i>Gaming Machines Act 1992</i> (SA)</p> <p><i>State Lotteries Act 1966</i> (SA)</p> <p><i>Racing Act 1976</i> (SA)</p> <p><i>Authorised Betting Operations Act 2000</i> (SA)</p> <p><i>TAB (Disposal) Act 2000</i> (SA)</p> <p><i>Casino (Burswood Island) Agreement Act 1985</i> (WA)</p> <p><i>Racing and Wagering Western Australia Act 2003</i> (WA)</p> <p><i>Gaming and Wagering Commission Act 1987</i> (WA)</p> <p><i>Betting Control Act 1954</i> (WA)</p> <p><i>Casino Control Act 1984</i> (WA)</p>

	<p><i>Lotteries Commission Act 1990 (WA)</i> <i>Gaming Control Act (NT) &amp; Regulations</i> <i>Gaming Machine Act (NT) &amp; Regulations</i> <i>Racing and Betting Act (NT) &amp; Regulations</i> <i>Totaliser Licensing and Regulation Act (NT) &amp; Regulations</i> <i>Soccer Football Pools Act (NT)</i> <i>Gaming Control Act 1993 (Tas)</i> <i>Racing (Totalizator Betting) Act 1952 (Tas)</i> <i>TT-Line Gaming Act 1993 (Tas)</i> <i>Gambling Regulation Act 2003 (Vic)</i> <i>Racing Act 1958 (Vic)</i></p>
--	--

Sector	Maritime Transport
Sub-sector	Coastal shipping
Industry classification	7211, 7212
Type of Reservation	Market Access National Treatment Prohibition of Performance Requirements
Description of Reservation	<p>Australia reserves the right to maintain or adopt any measure with respect to maritime cabotage services and offshore transport services.</p> <p>For the purposes of this reservation, cabotage is defined as the transportation of passengers or goods between a port located in Australia and another port located in Australia and traffic originating and terminating in the same port located in Australia.</p> <p>Offshore transport refers to shipping services involving the transportation of passengers or goods between a port located in Australia and any location associated with or incidental to the exploration or exploitation of natural resources of the continental shelf of Australia, the seabed of the Australian coastal sea and the subsoil of that seabed.</p>
Existing Measures	<p><i>Navigation Act 1912</i> (Cth) supported by <i>Migration Act 1958</i> (Cth), <i>Customs Act 1901</i> (Cth), <i>Workplace Relations Act 1996</i> (Cth), <i>Seafarers' Compensation and Rehabilitation Act 1992</i> (Cth), <i>Occupational Health and Safety (Maritime Industry) Act 1993</i> (Cth), <i>Shipping Registration Act 1981</i> (Cth) and <i>Income Tax Assessment Act 1936</i> (Cth)</p> <p>Currently, authorisation to carry coastal cargo is subject to compliance with relevant provision of the above legislation.</p>

Sector	Transport
Sub-sector	-
Industry classification	-
Type of Reservation	Market Access National Treatment
Description of Reservation	Australia reserves the right to maintain or adopt any measure with respect to investment in federal leased airports.
Existing Measures	<i>Airports Act 1996 (Cth)</i> <i>Airports (Ownership-Interests in Shares) Regulations 1996 (Cth)</i> <i>Airports Regulations 1997 (Cth)</i>