

Annex 7
Referred to in Chapter 9 (Trade in Services) and
Chapter 14 (Investment)

NON-CONFORMING MEASURES RELATING TO PARAGRAPH 2 OF ARTICLES
9.7 AND 14.10

PART 1
SCHEDULE OF AUSTRALIA

Section 1
Notes for Sections 2 and 3

1. Section 2 of the Schedule of Australia sets out, pursuant to Articles 9.7 (Trade in Services - Non-Conforming Measures) and 14.10 (Investment - Non-Conforming Measures and Exceptions) the specific sectors, sub-sectors or activities for which Australia may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

- (a) Article 9.3 (Trade in Services - Market Access);
- (b) Article 9.4 (Trade in Services - National Treatment) or 14.3 (Investment - National Treatment);
- (c) Article 9.5 (Trade in Services - Most-Favoured-Nation Treatment) or 14.4 (Investment - Most-Favoured-Nation Treatment);
- (d) Article 9.6 (Trade in Services - Local Presence);
- (e) Article 14.8 (Investment - Senior Management and Boards of Directors); or
- (f) Article 14.9 (Investment - Prohibition of Performance Requirements).

2. Section 3 of the Schedule of Australia sets out, pursuant to Articles 9.7 (Trade in Services - Non-Conforming Measures) and 14.10 (Investment - Non-Conforming Measures and Exceptions), additional financial services sectors or activities for which Australia may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

- (a) Article 9.3 (Trade in Services - Market Access);
- (b) Article 9.4 (Trade in Services - National Treatment) or 14.3 (Investment - National Treatment);
- (c) Article 9.5 (Trade in Services - Most-Favoured-Nation Treatment) or 14.4 (Investment - Most-Favoured-Nation Treatment);
- (d) Article 9.6 (Trade in Services - Local Presence);
- (e) Article 14.8 (Investment - Senior Management and Boards of Directors); or
- (f) Article 14.9 (Investment - Prohibition of Performance Requirements).

Note 1: Commitments on financial services are undertaken subject to the limitations and conditions set forth in Chapter 9 (Trade in Services), Chapter 11 (Financial Services), Chapter 14 (Investment), this Section and the Schedule below.

Note 2: To clarify Australia's commitment with respect to Article 9.3 (Trade in Services - Market Access), enterprises supplying financial services and constituted under the laws of Australia are subject to non-discriminatory limitations on juridical form.¹

¹ For example, partnerships and sole proprietorships are generally not acceptable juridical forms for authorised depository institutions in Australia. This note is not itself intended to affect, or otherwise limit, a choice by a financial service supplier of the other Party between branches or subsidiaries.

Note 3: Without prejudice to other means of prudential regulation of cross-border trade in financial services, Australia reserves the right to require the non-discriminatory licensing or registration of cross-border financial service suppliers of Japan and of financial instruments in accordance with Article 11.4 (Financial Services - Domestic Regulation).

Note 4: Australia reserves the right to adopt or maintain non-discriminatory limitations concerning admission to the market of new financial services where such measures are required to achieve prudential objectives. Australia may determine the institutional and juridical form through which a new financial service may be supplied and may require authorisation for the supply of the service. Where authorisation to supply a new financial service is required, the authorisation may only be refused for prudential reasons.

3. Each Schedule entry sets out the following elements:

- (a) "Sector" refers to the sector for which the entry is made;
- (b) "Obligations Concerned" specifies the obligation(s) referred to in paragraph 1 that, pursuant to paragraph 2 of Articles 9.7 (Trade in Services - Non-Conforming Measures) and 14.10 (Investment - Non-Conforming Measures and Exceptions), do not apply to the sectors, sub-sectors or activities listed in the entry;
- (c) "Description" sets out the scope of the sector, sub-sector or activities covered by the entry; and
- (d) "Existing Measures" identifies for transparency purposes, where relevant and practical, existing measures that apply to the sector, sub-sector or activities covered by the entry.

Note 1: In accordance with Articles 9.7 (Trade in Services - Non-Conforming Measures) and 14.10 (Investment - Non-Conforming Measures and Exceptions), the articles of this Agreement specified in the "Obligations Concerned" element of an entry do not apply to the non-conforming measure identified in the Description element of that entry.

Note 2: A reference to National Treatment in the "Obligations Concerned" element of an entry specifies Australia's obligations under Article 9.4 (Trade in Services - National Treatment) and Article 14.3 (Investment - National Treatment).

Section 2

1	Sector:	All Sectors
	Obligations Concerned:	Market Access (Article 9.3)
	Description:	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 entry or temporary stay, subject to the provisions of Chapter 12 (Movement of Natural Persons).
	Existing Measures:	

2	Sector:	All Sectors
	Obligations Concerned:	<p>Market Access (Article 9.3)</p> <p>National Treatment</p> <p>Local Presence (Article 9.6)</p> <p>Senior Management and Boards of Directors (Article 14.8)</p> <p>Prohibition of Performance Requirements (Article 14.9)</p>
	Description:	<p>Australia reserves the right to adopt or maintain any measure according to 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 and Torres Strait Islander peoples.</p>
	Existing Measures:	<p>Legislation and ministerial statements at all levels of government including:</p> <p><i>Australia's Foreign Investment Policy</i> <i>Native Title Act 1993 (Cth)</i> <i>Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)</i> <i>Aboriginal Land Rights Act 1983 (NSW)</i> <i>Native Title (New South Wales) Act</i></p>

1994 (NSW)
Aboriginal Land Act 1991 (Qld)
Torres Strait Islander Land Act 1991
(Qld)
Native Title (South Australia) Act
1994 (SA)
Maralinga Tjarutja Land Rights Act
1984 (SA)
Anangu Pitjantjatjara Yankunytjatjara
Land Rights Act 1981 (SA)
Anangu Pitjantjatjara Yankunytjatjara
Land Rights Regulations 2010 (SA)
Pitjantjatjara Land Rights Regulations
2003 (SA)
The statutory bodies that administer
the Anangu Pitjantjatjara
Yankunytjatjara lands and the
Maralinga Tjarutja lands
Mining Act 1971 (SA)
Opal Mining Act 1995 (SA)
Aboriginal Lands Act 1995 (Tas)
Traditional Owner Settlement Act 2010
(Vic)

3 Sector: All Sectors

Obligations
Concerned: Market Access (Article 9.3)

Description: Australia reserves the right to adopt or maintain any measure at the regional level of government that is not inconsistent with Australia's Revised Services Offer of 31 May 2005 in the World Trade Organization Doha Development Agenda negotiations (WTO Document - TN/S/O/AUS/Rev.1).

Existing
Measures:

4 Sector:	All Sectors
Obligations Concerned:	Market Access (Article 9.3) National Treatment Prohibition of Performance Requirements (Article 14.9)
Description:	Australia reserves the right to adopt or maintain any measure with respect to proposals by 'foreign persons' ² and foreign government investors to invest in Australian urban land ³ (including interests that arise via leases, financing and profit sharing arrangements, and the acquisition of interests in urban land corporations and trusts), other than developed non-residential commercial real estate.
Existing Measures:	Australia's foreign investment policy, which includes the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth) (FATA); <i>Foreign Acquisitions and Takeovers Regulations 1989</i> (Cth); <i>Financial Sector (Shareholdings) Act 1998</i> (Cth); and Ministerial Statements. <i>Economic Development Act 2012</i> (Qld) <i>Sustainable Planning Act 2009</i> (Qld) <i>Integrated Resort Development Act 1997</i> (Qld) <i>Mixed Use Development Act 1992</i> (Qld) <i>Sanctuary Cove Resort Act 1995</i> (Qld) <i>Townsville City Council (Douglas Land Development) Act 1993</i> (Qld)

² The term "foreign person" has the meaning set out in the FATA.

³ The term "Australian urban land" has the meaning set out in the FATA.

5	Sector:	All Sectors
	Obligations Concerned:	Market Access (Article 9.3) National Treatment Most-Favoured-Nation Treatment (Article 14.4) Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8) Prohibition of Performance Requirements (Article 14.9)
	Description:	Australia reserves the right to adopt or maintain any measure that it considers necessary for the protection of its essential security interests with respect to proposals by foreign persons ⁴ and foreign government investors to invest in Australia.
	Existing Measures:	Australia's foreign investment policy, which includes the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth); <i>Foreign Acquisitions and Takeovers Regulations 1989</i> (Cth); <i>Financial Sector (Shareholdings) Act 1998</i> (Cth); and Ministerial Statements.

⁴ The term "foreign person" has the meaning set out in the FATA.

6 Sector:	All Sectors
Obligations Concerned:	Market Access (Article 9.3) National Treatment Most-Favoured-Nation Treatment (Article 14.4) Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8) Performance Requirements (Article 14.9)
Description:	Australia reserves the right to adopt or maintain any measure to allow the screening of proposals, by foreign persons ⁵ , to invest 15 million Australian Dollars or more in Australian agricultural land and 53 million Australian Dollars or more in Australian agribusinesses.
Existing Measures:	Australia's foreign investment policy, which includes the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth); <i>Foreign Acquisitions and Takeovers Regulations 1989</i> (Cth); <i>Financial Sector (Shareholdings) Act 1998</i> (Cth) and Ministerial Statements.

⁵ The term "foreign person" has the meaning set out in the FATA.

7 Sector: All Sectors

Obligations Concerned: Market Access (Article 9.3)
National Treatment
Senior Management and Boards of Directors (Article 14.8)
Prohibition of Performance Requirements (Article 14.9)

Description: Australia reserves the right to adopt or maintain any measure with respect to:

- (a) the devolution 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:

8	Sector:	All Sectors
	Obligations Concerned:	Market Access (Article 9.3) National Treatment Most-Favoured-Nation Treatment (Article 9.5 and Article 14.4) Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8) Prohibition of Performance Requirements (Article 14.9)
	Description:	Australia reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services ⁶ to the extent that they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health and child care.
	Existing Measures:	

⁶ For the avoidance of doubt, this includes any measure with respect to: the collection of blood and its components; the distribution of blood and blood-related products, including plasma derived products; plasma fractionation services; and the procurement of blood and blood-related products and services.

9 Sector:	Broadcasting and Audiovisual Services ⁷ Advertising Services Live Performance ⁸
Obligations Concerned:	Market Access (Article 9.3) National Treatment Most-Favoured-Nation Treatment (Article 9.5 and Article 14.4) ⁹ Local Presence (Article 9.6) ¹⁰ Prohibition of Performance Requirements (Article 14.9)
Description:	Australia reserves the right to adopt or maintain any measure with respect to: <ul style="list-style-type: none"> (a) transmission quotas for local content on free-to-air commercial television broadcasting services; (b) non-discriminatory expenditure requirements for Australian production on subscription television broadcasting services; (c) transmission quotas for local content on free-to-air radio broadcasting services;

⁷ For greater certainty, Australia reserves the right to adopt or maintain measures under subparagraphs (a)-(f) with respect to the services supplied by the Australian Broadcasting Corporation and the Special Broadcasting Service Corporation.

⁸ Applies only in respect of subparagraph (f).

⁹ Applies only to the treatment as local content of New Zealand programs or productions.

¹⁰ Applies only in respect of subparagraph (e) and in respect of the licensing of services covered by subparagraph (d).

- (d) other audiovisual services transmitted electronically, in order to make Australian audiovisual content reasonably available to Australian consumers;¹¹
- (e) spectrum management and licensing of broadcasting services; and¹²
- (f) subsidies or grants for investment in Australian cultural activity.

This entry does not apply to foreign investment restrictions in the broadcasting and audiovisual services sector.

Existing
Measures:

Broadcasting Services Act 1992 (Cth)
Radiocommunications Act 1992 (Cth)
Income Tax Assessment Act 1936 (Cth)
Income Tax Assessment Act 1997 (Cth)
Screen Australia Act 2008 (Cth)
 Broadcasting Services (Australian Content) Standard 2005
 Children's Television Standards 2009
 Television Program Standard 23 -
 Australian Content in Advertising
 Commercial Radio Codes of Practice and
 Guidelines
 Community Broadcasting Codes of
 Practice

¹¹ Any such measure will be implemented in a manner that is consistent with Australia's commitments under Articles XVI and XVII of the GATS.

¹² In respect of subparagraph (e), Australia's entry applies only in respect of the Market Access and Local Presence obligations.

10 Sector: Broadcasting and Audiovisual Services

Obligations
Concerned: Most-Favoured-Nation Treatment
(Article 9.5 and Article 14.4)

Prohibition of Performance
Requirements (Article 14.9)

Description: Australia reserves the right to adopt
or maintain, under the International
Co-Production Program, preferential
co-production arrangements for film
and television productions. Official
co-production status, which may be
granted to a co-production produced
under these co-production
arrangements, confers national
treatment on works covered by these
arrangements.

Existing
Measures: International Co-Production Program

11 Sector:	Recreational, Cultural and Sporting Services (other than Audiovisual Services)
Obligations Concerned:	Market Access (Article 9.3) National Treatment Most-Favoured-Nation Treatment (Article 9.5 and Article 14.4) Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8) Prohibition of Performance Requirements (Article 14.9)
Description:	Australia reserves the right to adopt or maintain any measure with respect to the creative arts ¹³ and cultural heritage ¹⁴ .
Existing Measures:	

¹³ For the purposes of this entry, the term "creative arts" means: the performing arts (including live theatre, dance and music); visual arts and craft; literature; Indigenous traditional cultural expressions and; hybrid art work, including those that use new technologies to transcend discrete art form divisions.

¹⁴ For the purposes of this entry, the term "cultural heritage" means: 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.

12 Sector: Distribution Services

Obligations
Concerned: Market Access (Article 9.3)

Description: Australia reserves the right to adopt
or maintain any measure with respect
to wholesale and retail trade services
of tobacco products, alcoholic
beverages, or firearms.

Existing
Measures:

13 Sector: Education Services

Obligations Concerned: Market Access (Article 9.3)
National Treatment
Local Presence (Article 9.6)
Senior Management and Boards of Directors (Article 14.8)
Prohibition of Performance Requirements (Article 14.9)

Description: Australia reserves the right to adopt or maintain any measure with respect to primary education.

Existing Measures:

14 Sector:	Education Services
Obligations Concerned:	<p>National Treatment</p> <p>Most-Favoured-Nation Treatment (Article 9.5 and Article 14.4)</p> <p>Local Presence (Article 9.6)</p> <p>Senior Management and Boards of Directors (Article 14.8)</p> <p>Prohibition of Performance Requirements (Article 14.9)</p>
Description:	<p>Australia reserves the right to adopt or maintain any measure with respect to:</p> <ul style="list-style-type: none"> (a) the ability of individual education and training institutions to maintain autonomy in admissions policies (including in relation to considerations of equal opportunity for students and recognition of credits and degrees), in setting tuition rates and in the development of curricula or course content; (b) non-discriminatory accreditation and quality assurance procedures for education and training institutions and their programs, including the standards that must be met; (c) government funding, subsidies or grants, such as land grants, preferential tax treatment and other public benefits, provided to education and training institutions; or

- (d) the need for education and training institutions to comply with non-discriminatory requirements related to the establishment and operation of a facility in a particular jurisdiction.

Existing
Measures:

15 Sector:	Gambling and Betting
Obligations Concerned:	Market Access (Article 9.3) National Treatment Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8) Prohibition of Performance Requirements (Article 14.9)
Description:	Australia reserves the right to adopt or maintain any measure with respect to gambling and betting.
Existing Measures:	Legislation and ministerial statements including: <i>Interactive Gambling Act 2001</i> (Cth) <i>Gambling and Racing Control Act 1999</i> (ACT) <i>Unlawful Gambling Act 2009</i> (ACT) <i>Race & Sports Bookmaking Act 2001</i> (ACT) <i>Betting (ACTTAB Limited) Act 1964</i> (ACT) <i>Racing Act 1999</i> (ACT) <i>Casino Control Act 2006</i> (ACT) <i>Gaming Machine Act 2004</i> (ACT) <i>Interactive Gambling Act 1998</i> (ACT) <i>Lotteries Act 1964</i> (ACT) <i>Pool Betting Act 1964</i> (ACT) <i>Casino Control Act 1992</i> (NSW) <i>Gaming Machines Act 2001</i> (NSW) <i>Public Lotteries Act 1996</i> (NSW) <i>Lotteries and Art Unions Act 1901</i> (NSW) <i>Racing Administration Act 1998</i> (NSW) <i>Greyhound Racing Act 2009</i> (NSW) <i>Harness Racing Act 2009</i> (NSW) <i>Thoroughbred Racing Act 1996</i> (NSW) <i>Totalizator Act 1987</i> (NSW) <i>Unlawful Gambling Act 1998</i> (NSW) <i>Gambling Control Act</i> (NT)

Gaming Machine Act (NT)
Racing and Betting Act (NT)
Totaliser Licensing and Regulation Act (NT)
Soccer Football Pools Act (NT)
TAB Queensland Limited Privatisation Act 1999 (Qld)
Casino Control Act 1982 (Qld)
Jupiters Casino Agreement Act 1983 (Qld)
Brisbane Casino Agreement Act 1992 (Qld)
Breakwater Island Casino Agreement Act 1984 (Qld)
Lotteries Act 1997 (Qld)
Cairns Casino Agreement Act 1993 (Qld)
Charitable and Non-Profit Gaming Act 1999 (Qld)
Keno Act 1996 (Qld)
Wagering Act 1998 (Qld)
Gaming Machine Act 1991 (Qld)
Racing Act 2002 (Qld)
Casino Act 1997 (SA)
Lottery and Gaming Act 1936 (SA)
Independent Gambling Authority Act 2001 (SA)
Gaming Machines Act 1992 (SA)
State Lotteries Act 1966 (SA)
Racing (Proprietary Business Licensing) Act 2000 (SA)
Racing Act 1976 (SA)
Authorised Betting Operations Act 2000 (SA)
TAB (Disposal) Act 2000 (SA)
Gaming Control Act 1993 (Tas)
TT-Line Gaming Act 1993 (Tas)
Gambling Regulation Act 2003 (Vic)
Racing Act 1958 (Vic)
Casino Control Act 1991 (Vic)
Casino (Management Agreement) Act 1993 (Vic)
Casino (Burswood Island) Agreement Act 1985 (WA)
Racing and Wagering Western Australia Act 2003 (WA)
Gaming and Wagering Commission Act 1987 (WA)

Betting Control Act 1954 (WA)
Casino Control Act 1984 (WA)
Lotteries Commission Act 1990 (WA)

16 Sector:	Maritime Transport
Obligations Concerned:	Market Access (Article 9.3) National Treatment Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8) Prohibition of Performance Requirements (Article 14.9)
Description:	Australia reserves the right to adopt or maintain any measure with respect to maritime cabotage services and offshore transport services. ¹⁵
Existing Measures:	<i>Customs Act 1901 (Cth)</i> <i>Workplace Relations Act 1996 (Cth)</i> <i>Seafarers' Compensation and Rehabilitation Act 1992 (Cth)</i> <i>Occupational Health and Safety (Maritime Industry) Act 1993 (Cth)</i> <i>Shipping Registration Act 1981 (Cth)</i> <i>Income Tax Assessment Act 1936 (Cth)</i> <i>Coastal Trading (Revitalising Australian Shipping) Act 2012 (Cth)</i> <i>Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012 (Cth)</i> <i>Shipping Reform (Tax Incentive) Act 2012 (Cth)</i>

¹⁵ For the purposes of this entry, the term "cabotage" means 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. The term "offshore transport" means 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.

17 Sector: Maritime Transport

Obligations
Concerned: National Treatment

Description: Australia reserves the right to adopt
or maintain any measure with respect
to the registration of vessels in
Australia.

Existing
Measures:

18 Sector: Transport Services

Obligations Concerned: Market Access (Article 9.3)
National Treatment
Senior Management and Boards of Directors (Article 14.8)

Description: Australia reserves the right to adopt or maintain any measure with respect to investment in federal leased airports.

Existing Measures: *Airports Act 1996 (Cth)*
Airports (Ownership-Interests in Shares) Regulations 1996 (Cth)
Airports Regulations 1997 (Cth)

19 Sector: All Sectors

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and Article 14.4)

Description: Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to the service suppliers or investors of non-Parties under any bilateral or multilateral international agreement in force on, or signed prior to, the date of entry into force of this Agreement.¹⁶

Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to the service suppliers or investors of non-Parties under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:

- (a) aviation;
- (b) fisheries; or
- (c) maritime matters, including salvage.

Existing Measures:

¹⁶ For greater certainty, this right extends to any differential treatment accorded pursuant to a subsequent review or amendment of the relevant bilateral or multilateral international agreement. For the avoidance of doubt, this includes measures adopted or maintained under any existing or future protocol to the *Australia New Zealand Closer Economic Relations - Trade Agreement* (ANZCERTA).

Section 3

20 Sector:	Financial Services
Obligations Concerned:	National Treatment
Description:	Australia reserves the right to adopt or maintain any measure ¹⁷ with respect to the guarantee by government of government-owned entities, including guarantees related to the privatisation of such entities, which may conduct financial operations.
Existing Measures:	

¹⁷ That is, measures that would be excluded from the application of Chapter 9 (Trade in Services) under subparagraph 2(e) of Article 9.1, (Trade in Services - Scope) as modified by subparagraph 2(c) and paragraph 3 of Article 11.2 (Financial Services - Definitions), except for the application of Australia's policy on competitive neutrality which in general allows competition and avoids providing a net competitive advantage to an entity by virtue of its public sector ownership.

21 Sector:	Financial Services
Obligations Concerned:	<p>Market Access (Article 9.3)</p> <p>National Treatment</p> <p>Most-Favoured-Nation Treatment (Article 9.5 and Article 14.4)</p> <p>Local Presence (Article 9.6)</p> <p>Senior Management and Boards of Directors (Article 14.8)</p>
Description:	<p>Banking and other Financial Services (excluding Insurance and Insurance-related Services):</p> <p>Except as provided in paragraphs 2 and 3 Australia reserves the right to adopt or maintain any measure with respect to trade in services as defined in subparagraph (n)(i) of Article 9.2 (Trade in Services - Definitions) ("cross-border supply mode") for banking and other financial services.</p> <p>Australia shall permit, under terms and conditions that accord national treatment, a services supplier of Japan to undertake the cross-border provision and transfer of financial information and financial data processing as referred to in paragraph (o) of Annex 9 (Financial Services) and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in paragraph (p) of Annex 9 (Financial Services).</p>

In relation to the following services Australia shall ensure a services supplier of Japan, upon obtaining an Australian financial services licence and any other necessary authorisations, or exemptions therefrom, in accordance with prescribed Australian laws and regulations, may undertake:

- (a) securities related transactions on a wholesale basis between and among financial institutions and other entities;
- (b) the following services to a collective investment scheme located in Australia:
 - (i) investment advice; and
 - (ii) portfolio management services, excluding:
 - (A) trustee services; and
 - (B) custodial services and execution services that are not related to managing a collective investment scheme.

Note: For the purposes of this entry, the term "collective investment scheme" means a managed investment scheme as defined under section 9 of the Corporations Act 2001 (Cth), other than a managed investment scheme operated in contravention of subsection 601ED (5) of the Corporations Act 2001 (Cth), or an entity that:

- (i) carries on a business of investment in securities, interests in land, or other investments; and
- (ii) in the course of carrying on that business, invests funds subscribed, whether directly or indirectly, after an offer or invitation to the public (within the meaning of section 82 of the *Corporations Act 2001* (Cth)) made on terms that the funds subscribed would be invested.

Existing
Measures:

22 Sector:	Financial Services
Obligations Concerned:	<p>Market Access (Article 9.3)</p> <p>National Treatment</p> <p>Most-Favoured-Nation Treatment (Article 9.5 and Article 14.4)</p> <p>Local Presence (Article 9.6)</p> <p>Senior Management and Boards of Directors (Article 14.8)</p>
Description:	<p>Insurance and Insurance-related Services:</p> <p>Except as provided in paragraph 2, Australia reserves the right to adopt or maintain any measure with respect to trade in services as defined in subparagraph (n)(i) of Article 9.2 (Trade in Services - Definitions) ("cross-border supply mode") and in subparagraph (n)(ii) of Article 9.2 (Trade in Services - Definitions) ("consumption abroad mode") in each case for insurance and insurance related services.</p> <p>Australia shall ensure a services supplier of Japan, under terms and conditions that accord national treatment may provide via cross-border supply mode or consumption abroad mode and whether as a principal, through an intermediary or as an intermediary, the following services:</p> <p style="padding-left: 40px;">(a) insurance of risks relating to:</p>

- (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and
 - (ii) goods in international transit;
- (b) reinsurance and retrocession and the services auxiliary to insurance as referred to in paragraph (d) of Annex 9 (Financial Services); and
- (c) insurance intermediation, such as brokerage and agency as referred to in paragraph (c) of Annex 9 (Financial Services) in relation to the services referred to in subparagraphs (a) and (b).

Existing
Measures:

23 Sector: Financial Services

Obligations
Concerned: Prohibition of Performance Requirements
(Article 14.9)

Description: Australia reserves the right to adopt
or maintain any measure with respect to
financial services.

Existing
Measures:

24 Sector: Financial Services

Obligations
Concerned: Market Access (Article 9.3)

National Treatment

Most-Favoured-Nation Treatment
(Article 9.5 and Article 14.4)

Local Presence (Article 9.6)

Description: Australia reserves the right to adopt
or maintain any measure regarding
solicitation in its Area.

Existing
Measures:

PART 2
SCHEDULE OF JAPAN

Section 1
Notes for Section 2

1. Section 2 of the Schedule of Japan sets out, in accordance with Articles 9.7 (Trade in Services - Non-Conforming Measures) and 14.10 (Investment - Non-Conforming Measures and Exceptions), the reservations taken by Japan with respect to specific sectors, sub-sectors or activities for which it may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

- (a) Article 9.3 (Trade in Services - Market Access);
- (b) Article 9.4 (Trade in Services - National Treatment) or 14.3 (Investment - National Treatment);
- (c) Article 9.5 (Trade in Services - Most-Favoured-Nation Treatment) or 14.4 (Investment - Most-Favoured-Nation Treatment);
- (d) Article 9.6 (Trade in Services - Local Presence);
- (e) Article 14.8 (Investment - Senior Management and Boards of Directors); or
- (f) Article 14.9 (Investment - Prohibition of Performance Requirements).

2. Each reservation sets out the following elements:

- (a) "Sector" refers to the general sector in which the reservation is taken;
- (b) "Sub-Sector" refers to the specific sector in which the reservation is taken;
- (c) "Industry Classification" refers, where applicable, and only for transparency purposes, to the activity covered by the reservation according to domestic or international industry classification codes;

- (d) "Type of Reservation" specifies the obligations referred to in paragraph 1 for which the reservation is taken;
- (e) "Description" sets out, the scope of the sector, sub-sector or activities covered by the reservation; and
- (f) "Existing Measures" identifies, for transparency purposes, existing measures that apply to the sector, sub-sector or activities covered by the reservation.

3. In the interpretation of a reservation, all elements of the reservation shall be considered. The "Description" element shall prevail over all other elements.

4. With respect to financial services:

- (a) for prudential reasons within the context of Article 11.4 (Financial Services - Domestic Regulation), Japan shall not be prevented from taking measures such as non-discriminatory limitations on juridical forms of a commercial presence. For the same reasons, Japan shall not be prevented from applying non-discriminatory limitations concerning admission to the market of new financial services which shall be consistent with regulatory framework aimed at achieving such prudential objectives. In this context, securities firms are allowed to deal in securities defined in the relevant laws of Japan, and banks are not allowed to deal in those securities unless allowed in accordance with those laws.
- (b) services supplied in the Area of Australia to the service consumer in Japan without any active marketing from the service supplier are considered as services supplied under subparagraph (n)(ii) of Article 9.2 (Trade in Services - Definitions).

5. With respect to air transport services, measures affecting traffic rights or measures affecting services directly related to the exercise of traffic rights are not listed in this Schedule, as these are excluded from the scope of Chapter 9 (Trade in Services) pursuant to subparagraph 2(a) of Article 9.1 (Trade in Services - Scope).

6. Laws and regulations with regard to spectrum availability affecting obligations under Article 9.3 (Trade in Services - Market Access) are not included in the Schedule, taking into account the Attachment 6 of Guidelines for the Scheduling of Specific Commitments (WTO Document S/L/92, dated 28 March 2001).

7. For the purposes of this Part:

- (a) the term "JSIC" means Japan Standard Industrial Classification set out by the Ministry of Internal Affairs and Communications, and revised on 6 November 2007; and
- (b) the term "CPC" means the Provisional Central Product Classification (Statistical paper Series M, No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991).

Section 2

1	Sector:	All Sectors
	Sub-Sector:	
	Industry Classification:	
	Type of Reservation:	Market Access (Article 9.3) National Treatment (Articles 9.4 and 14.3) Senior Management and Boards of Directors (Article 14.8)
	Description:	Trade in Services and Investment When transferring or disposing of its equity interests in, or the assets of, a state enterprise or a governmental entity, Japan reserves the right to: (a) prohibit or impose limitations on the ownership of such interests or assets by investors of Australia or their investments; (b) impose limitations on the ability of investors of Australia or their investments as owners of such interests or assets to control any resulting enterprise; or (c) adopt or maintain any measure relating to the nationality of executives, managers or members of the board of directors of any resulting enterprise.
	Existing Measures:	

2 Sector: All Sectors

Sub-Sector:

Industry
Classification:

Type of
Reservation: Market Access (Article 9.3)

National Treatment (Articles 9.4 and
14.3)

Local Presence (Article 9.6)

Senior Management and Boards of
Directors (Article 14.8)

Description: Trade in Services and Investment

1. Japan reserves the right to adopt
or maintain any measure relating to
investments in or the supply of
telegraph services, postal services,
betting and gambling services,
manufacture of tobacco products,
manufacture of Bank of Japan notes and
minting and sale of coinage in Japan,
which are restricted to designated
enterprises or governmental entities.

2. In the event where the supply of
telegraph services, postal services,
betting and gambling services,
manufacture of tobacco products,
manufacture of Bank of Japan notes,
and minting and sale of coinage in
Japan, which are restricted to
designated enterprises or governmental
entities, are liberalised to those
other than the designated enterprises
or governmental entities, or in the
event where such designated
enterprises or governmental entities
no longer operate on a non-commercial
basis, Japan reserves the right to
adopt or maintain any measure relating
to those activities.

Existing
Measures: Telecommunications Business Law (Law
No. 86 of 1984) Supplementary
Provisions, Article 5

Postal Law (Law No. 165 of 1947),
Article 2

Horse Racing Law (Law No. 158 of
1948), Article 1

Law relating to Motorboat Racing (Law
No. 242 of 1951), Article 2

Bicycle Racing Law (Law No. 209 of
1948), Article 1

Auto Racing Law (Law No. 208 of 1950),
Article 3

Lottery Law (Law No. 144 of 1948),
Article 4

The Law relating to Unit of Currency
and Issue of Coin (Law No. 42 of
1987), Article 10

3 Sector: All Sectors

Sub-Sector:

Industry
Classification:

Type of
Reservation: Most-Favoured-Nation Treatment
(Articles 9.5 and 14.4)

Description: Trade in Services and Investment

1. Japan reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral agreement in force on, or signed prior to, the date of entry into force of this Agreement.

Note: This reservation does not include the differential treatment accorded as a result of subsequent reviews, amendments, or liberalisation under the framework of any such agreement, to the extent that the differential treatment is newly accorded as a result of such subsequent reviews, amendments, or liberalisation.

2. Notwithstanding the Note to paragraph 1, Japan reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral agreement involving:

- (a) aviation;
- (b) fisheries; or
- (c) maritime matters, including salvage.

Existing
Measures:

4 Sector: All Sectors (Unrecognised or Technically Unfeasible Services)

Sub-Sector:

Industry
Classification:

Type of
Reservation: Market Access (Article 9.3)
National Treatment (Article 9.4)
Most-Favoured-Nation Treatment
(Article 9.5)
Local Presence (Article 9.6)

Description: Trade in Services

1. Japan reserves the right to adopt or maintain any measure relating to services other than those recognised or other than those should have been recognised owing to the circumstances at the time of entry into force of this Agreement by the Government of Japan.

Any services classified positively and explicitly in JSIC or CPC, at the time of entry into force of this Agreement should have been recognised by the Government of Japan at that time.

2. Japan reserves the right to adopt or maintain any measure relating to the supply of services in any mode of supply in which those services were not technically feasible at the time of entry into force of this Agreement.

Note: This reservation does not apply to new financial services covered by Article 11.3 (Financial Services - New Financial Services).

Existing
Measures:

5 Sector: Aerospace Industry

Sub-Sector: Aircraft Industry

Space Industry

Industry Classification:

Type of Reservation: Market Access (Article 9.3)

National Treatment (Articles 9.4 and 14.3)

Local Presence (Article 9.6)

Senior Management and Boards of Directors (Article 14.8)

Prohibition of Performance Requirements (Article 14.9)

Description: Trade in Services and Investment

1. Japan reserves the right to adopt or maintain any measure relating to investments in the aircraft industry and the space industry.

2. Japan reserves the right to adopt or maintain any measure relating to the supply of services in the aircraft industry to the extent not inconsistent with its obligations under Articles XVI and XVII of the GATS, and the space industry, including:

- (a) services based on technological inducement contracts for importing technology for development, production or use;
- (b) production services on fee or contract basis;
- (c) repair and maintenance services; and
- (d) space transportation services.

Existing
Measures:

Foreign Exchange and Foreign Trade Law
(Law No. 228 of 1949), Articles 27 and
30

Cabinet Order on Foreign Direct
Investment (Cabinet Order No. 261 of
1980), Articles 3 and 5

Aircraft Manufacturing Industry Law
(Law No. 237 of 1952), Articles 2
through 5

6 Sector: Arms and Explosives Industry

Sub-Sector: Arms Industry
Explosives Manufacturing Industry

Industry Classification:

Type of Reservation: Market Access (Article 9.3)
National Treatment (Articles 9.4 and 14.3)
Local Presence (Article 9.6)
Senior Management and Boards of Directors (Article 14.8)
Prohibition of Performance Requirements (Article 14.9)

Description: Trade in Services and Investment

1. Japan reserves the right to adopt or maintain any measure relating to investment in the arms industry and the explosives manufacturing industry.

2. Japan reserves the right to adopt or maintain any measure relating to the supply of services in the arms industry and the explosives manufacturing industry, including:

- (a) services based on technological inducement contracts for importing technology for development, production or use;
- (b) production services on fee or contract basis; and
- (c) repair and maintenance services.

Existing Measures: Ordnance Manufacturing Law (Law No. 145 of 1953), Article 5
Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Articles 27 and 30

Cabinet Order on Foreign Direct
Investment (Cabinet Order No. 261 of
1980), Articles 3 and 5

7 Sector: Information and Communications

Sub-Sector: Broadcasting Industry

Industry Classification: JSIC 380 Establishments engaged in administrative or ancillary economic activities

JSIC 381 Public broadcasting, except cablecasting

JSIC 382 Private-sector broadcasting, except cablecasting

JSIC 383 Cablecasting

Type of Reservation: Market Access (Article 9.3)

National Treatment (Articles 9.4 and 14.3)

Local Presence (Article 9.6)

Senior Management and Boards of Directors (Article 14.8)

Prohibition of Performance Requirements (Article 14.9)

Description: Trade in Services and Investment

Japan reserves the right to adopt or maintain any measure relating to investments or the supply of services in broadcasting industry.

Existing Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Radio Law (Law No. 131 of 1950), Chapter 2

Broadcast Law (Law No. 132 of 1950), Chapters 2 and 5 through 8

8 Sector: Education, Learning Support

Sub-Sector: Primary and Secondary Educational Services

Industry Classification: JSIC 811 Kindergartens
 JSIC 812 Elementary schools
 JSIC 813 Lower secondary schools
 JSIC 814 Upper secondary schools, secondary schools
 JSIC 815 School for special needs education

Type of Reservation: Market Access (Article 9.3)
 National Treatment (Articles 9.4 and 14.3)
 Local Presence (Article 9.6)

Description: Trade in Services and Investment

Japan reserves the right to adopt or maintain any measure relating to investments in, or the supply of, primary and secondary educational services.

Existing Measures: Fundamental Law of Education (Law No. 120 of 2006), Article 6
 School Education Law (Law No. 26 of 1947), Article 2
 Private School Law (Law No. 270 of 1949), Article 3

9 Sector: Energy

Sub-Sector: Electricity Utility Industry
Gas Utility Industry
Nuclear Energy Industry

Industry Classification:

Type of Reservation: Market Access (Article 9.3)
National Treatment (Articles 9.4 and 14.3)
Most-Favoured-Nation Treatment (Articles 9.5 and 14.4)
Local Presence (Article 9.6)
Senior Management and Boards of Directors (Article 14.8)
Prohibition of Performance Requirements (Article 14.9)

Description: Trade in Services and Investment

Japan reserves the right to adopt or maintain any measure relating to investments or the supply of services in the energy industry listed in the "sub-sector" element.

Existing Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Articles 27 and 30
Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Articles 3 and 5
Electricity Business Law (Law No. 170 of 1964), Articles 3 and 5
Gas Business Law (Law No. 51 of 1954), Articles 3 and 5
Specified Radioactive Waste Final Disposal Act (Law No. 117 of 2000), Chapter 5

10 Sector: Financial Services

Sub-Sector: Banking and other financial services
(excluding Insurance)

Industry
Classification:

Type of
Reservation: Market Access (Article 9.3)
National Treatment (Article 9.4)
Local Presence (Article 9.6)

Description: Trade in Services

Japan reserves the right to adopt or maintain any measure with respect to trade in services as defined in subparagraph (n) (i) of Article 9.2 (Trade in Services - Definitions) for banking and other financial services, other than:

- (a) securities-related transactions with financial institutions and other entities in Japan as prescribed by the relevant laws and regulations of Japan;
- (b) sales of a beneficiary certificate of an investment trust and an investment security, through securities firms in Japan;

Note: Solicitation must be conducted by securities firms in Japan.

- (c) the following services to a collective investment scheme; and
 - (i) investment advice; and
 - (ii) portfolio management services, excluding:
 - (A) trustee services; and

(B) custodial services and execution services that are not related to managing a collective investment scheme.

Note: The term "collective investment scheme" in this reservation is construed as a financial instruments business operator engaged in investment management business under the Financial Instruments and Exchange Law (Law No. 25 of 1948).

(d) provision and transfer of financial information and financial data processing as referred to in paragraph (o) of Annex 9 (Financial Services) and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in paragraph (p) of Annex 9 (Financial Services).

Note: With respect to paragraphs (a) through (d) of this reservation, Japan may require the registration or authorization of cross-border financial service suppliers of Australia and of financial instruments.

Japan reserves the right to adopt or maintain any measure with respect to trade in services as defined in subparagraph (n) (ii) of Article 9.2 (Trade in Services - Definitions) of banking and other financial services, other than the services as referred to in paragraphs (e) through (p) of Annex 9 (Financial Services).

Existing
Measures:

Financial Instruments and Exchange
Law, Articles 29, 29bis and 61

- 11 Sector: Financial Services
- Sub-Sector: Insurance and Insurance-Related Services
- Industry Classification:
- Type of Reservation: Market Access (Article 9.3)
National Treatment (Article 9.4)
Local Presence (Article 9.6)
- Description: Trade in Services
- Japan reserves the right to adopt or maintain any measure with respect to trade in services as defined in subparagraph (n) (i) of Article 9.2 (Trade in Services - Definitions) and trade in services as defined in subparagraph (n) (ii) of Article 9.2 (Trade in Services - Definitions) for insurance and insurance-related services, other than the following services supplied by a financial service supplier of Australia established in Australia:
- (a) insurance of risks relating to:
 - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and
 - (ii) goods in international transit;

- (b) reinsurance, retrocession and the services auxiliary to insurance as referred to in paragraph (d) of Annex 9 (Financial Services); and
- (c) insurance intermediation, such as brokerage and agency as referred to in paragraph (c) of Annex 9 (Financial Services), of insurance risks related to services listed in subparagraphs (a) and (b) of this reservation.

Note: Insurance intermediation services may be supplied only for insurance contracts allowed to be supplied in Japan.

Existing
Measures:

Insurance Business Law (Law No. 105 of 1995), Articles 185, 186, 275, 276, 277, 286 and 287

12 Sector: Fisheries and Services Incidental to Fisheries

Sub-Sector: Fisheries within the Territorial Sea, Internal Waters, Exclusive Economic Zone and Continental Shelf

Industry Classification: JSIC 031 Marine fisheries
 JSIC 032 Inland water fisheries
 JSIC 041 Marine aquaculture
 JSIC 042 Inland water aquaculture
 JSIC 8093 Recreational fishing guide business

Type of Reservation: Market Access (Article 9.3)
 National Treatment (Articles 9.4 and 14.3)
 Most-Favoured-Nation Treatment (Articles 9.5 and 14.4)
 Local Presence (Article 9.6)
 Senior Management and Boards of Directors (Article 14.8)
 Prohibition of Performance Requirements (Article 14.9)

Description: Trade in Services and Investment

Japan reserves the right to adopt or maintain any measure relating to investments or the supply of services in fisheries in the territorial sea, internal waters, exclusive economic zone and continental shelf of Japan.

For the purposes of this reservation, the term "fisheries" means the work of taking and cultivation of aquatic resources, including the following fisheries related services:

(a) investigation of aquatic resources without taking such resources;

- (b) luring of aquatic resources;
- (c) preservation and processing of fish catches;
- (d) transportation of fish catches and fish products; and
- (e) provision of supplies to other vessels used for fisheries.

Existing
Measures:

Foreign Exchange and Foreign Trade Law
(Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct
Investment (Cabinet Order No. 261 of
1980), Article 3

Law for Regulation of Fishing
Operation by Foreign Nationals (Law
No. 60 of 1967), Articles 3, 4 and 6

Law concerning the Exercise of
Sovereign Rights concerning Fisheries
in the Exclusive Economic Zones (Law
No. 76 of 1996), Articles 4, 5, 7, 8,
9, 10, 11, 12 and 14

13 Sector: Land Transaction

Sub-Sector:

Industry
Classification:

Type of
Reservation: National Treatment (Articles 9.4 and
14.3)

Most-Favoured-Nation Treatment
(Articles 9.5 and 14.4)

Description: Trade in Services and Investment

With respect to the acquisition or
lease of land properties in Japan,
prohibitions or restrictions may be
imposed by Cabinet Order on foreign
nationals or legal persons, where
Japanese nationals or legal persons
are placed under identical or similar
prohibitions or restrictions in the
foreign country.

Existing
Measures: Alien Land Law (Law No. 42 of 1925),
Article 1

14 Sector: Public Law Enforcement and Correctional Services and Social Services

Sub-Sector:

Industry Classification:

Type of Reservation: Market Access (Article 9.3)

National Treatment (Articles 9.4 and 14.3)

Most-Favoured-Nation Treatment (Articles 9.5 and 14.4)

Local Presence (Article 9.6)

Senior Management and Boards of Directors (Article 14.8)

Prohibition of Performance Requirements (Article 14.9)

Description: Trade in Services and Investment

Japan reserves the right to adopt or maintain any measure relating to investments or the supply of services in public law enforcement and correctional services, and in social services such as income security or insurance, social security or insurance, social welfare, public training, health and child care.

Existing Measures:

15 Sector:	Security Guard Services
Sub-Sector:	
Industry Classification:	JSIC 923 Guard Services
Type of Reservation:	Market Access (Article 9.3)
	National Treatment (Article 9.4)
	Local Presence (Article 9.6)
Description:	Trade in Services
	Japan reserves the right to adopt or maintain any measure relating to the supply of security guard services.
Existing Measures:	Security Business Law (Law No. 117 of 1972), Articles 4 and 5