



Law Society
of Scotland

Consultation Response

UK-Australia trade negotiations

03 February 2022



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Society's Trade Policy Working Group welcomes the opportunity to consider and respond to the House of Lords International Agreements Committee inquiry into the UK-Australia trade negotiations. The working group has the following comments to put forward for consideration.

The inquiry welcomes short submissions which address any of the following:

- Does the free trade agreement signed between the UK and Australian Governments on 16 December 2021 deliver on UK interests, including those of the devolved nations? Does the FTA achieve the negotiating objectives set out by the Department for International Trade? What are the costs, benefits and key trade-offs?
- How reliable do you find the Department for International Trade's (DIT) assessment of the potential impacts of the proposed agreement with Australia, either as set out in the impact assessment or elsewhere? In particular, the impact assessment indicates that "net GVA [gross value added] in Northern Ireland is estimated to see a small reduction overall". How do you evaluate this assessment?
- What are the economic consequences for UK farmers and agri-food producers? To what extent do the tariff phase-out periods for certain agricultural imports from Australia and the bilateral safeguards for beef and sheep meat in the signed agreement address the concerns of the UK agricultural sector? What opportunities are there for UK companies that might wish to export more to the Australia under a new deal?
- The Government has said that the deal would support manufacturing jobs across the UK, particularly in the automotive sector. Does the signed agreement deliver on this objective and will it strengthen supply chains?
- What assessment would you make of the commitments in the competition and consumer protection chapter? Are consumer interests sufficiently recognised in other chapters throughout the signed agreement?
- How do you evaluate the provisions regarding the governance and implementation of the agreement? Do the working groups enable interested parties to engage in the implementation, including the devolved nations?
- The UK Government aimed to increase opportunities for the UK professional services industry by supporting Mutual Recognition of Professional Qualifications and facilitating the temporary movement of business people between the UK and Australia. Based on the provisions in the signed agreement, to what extent does it meet this objective?
- The UK Government stated in its negotiating objectives that it "will seek an ambitious agreement with Australia for financial services and will consider how to promote deeper co-operation on regulatory issues". Will the signed agreement deliver this objective?
- The Government has said that the Australian agreement will support the UK services industry through the digital provisions in the deal and bring opportunities to the UK. How would you assess this claim based on the digital provisions in the signed agreement?
- What is your assessment of the investment chapter of the signed agreement?
- The Government has said that the agreement with Australia would secure intellectual property rights that support UK creative industries and would protect the UK's existing IP standards. Will the signed agreement deliver this objective?

- How do you assess the commitments made on geographical indications in the signed agreement and side letter?
- What is your assessment of the labour chapter of the signed agreement?
- Is the environment chapter in the signed agreement sufficiently ambitious in its environmental protections and support for trade in environmental goods and services? Are there other provisions which could have beneficially been included in this chapter, and is this a good model for environmental chapters in future FTAs?
- Does the signed agreement adequately address climate change and take into account the relative carbon intensities of Australian and UK industries and agriculture?
- What is your assessment of the procurement chapter of the signed agreement?
- In your view, could the deal, and in particular the SPS provisions, have an impact on the operation of the Ireland/Northern Ireland Protocol and, if so, how?
- The UK Government has presented an FTA with Australia as a “gateway” to joining to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). To what extent will the bilateral FTA with Australia help the UK join CPTPP?
- What effect could the UK-Australia trade deal have on the UK’s future ability to negotiate deals with other countries, and to what extent does it set a precedent for future negotiations?

Response

The importance of legal services

The legal services sector facilitates trade across all other sectors as well as being an important contributor to the UK economy in its own right. This includes contract negotiations for the provision of goods or services and also extends to advice on matters such as intellectual property protection.

Businesses of all types are increasingly international in focus and global in reach and lawyers must be able to provide their services accordingly, whether this is through expansion of their own offices or partnering with firms in other jurisdictions on an ongoing or case-by-case basis. Furthermore, trade agreements create legal rights and obligations and it is therefore imperative that individuals and business have access to legal advice to allow them to exercise those rights and meet the requirements of their obligations.

Recognising and promoting Scottish legal services

Scotland has a strong market for professional services, including legal services. Furthermore, legal services support and facilitate trade and investment in other sectors. In terms of Scottish legal services, arbitration and other forms of international dispute resolution are seen as a potential growth area. Again, trade agreements should recognise that the Scottish legal industry, as with Scots law, offers many of the same advantages more frequently advertised in relation to England and Wales, while also retaining its own characteristics.

Ensuring coordination by facilitating sector-specific discussions encompassing relevant stakeholders would be helpful. For example, discussion of legal services should ensure that the reputation of the Scottish courts as impartial and independent, the offerings of the Scottish Arbitration Centre and the strengths of Scots law are harnessed alongside promotion of the high quality legal services offered by the Scottish legal profession.

Right to Practice

We welcome article 10.7 of the agreement which will “allow a national of the other Party who is professionally qualified and authorised in the other Party to practise as a lawyer to supply services, referred to in paragraph 2, without having to requalify as, or be authorised to practise as, a domestic (host Party) lawyer”.

This guarantees that Scottish lawyers will be able to practise foreign and international law in Australia using their Scottish title and qualification.

Mutual Recognition of Professional Qualifications (MRPQ)

The potential for the development of more wide-ranging MROQ agreement is also welcome. Chapter 10 of the agreement sets out the framework under which this can take place, namely by setting up a Professional Services Working Group (PSWG). Whilst we have some concerns that this is only to meet

once per year we welcome the opportunity to develop a dialogue and stand ready to participating where possible to further develop agreements in this area.

It would be useful to have confirmed whether or not the PSWG is the only mechanism through which it is possible to deliver such agreement or whether other more ad hoc mechanisms will also be developed as political will and economic interest dictate.

Whilst the agreement rightly focusses on qualified professionals we would also like to seek clarity over whether in the future there is any intention for this to apply to partially qualified individuals. For example a Scottish LLB and DPLP graduate moving to Sydney to work as a trainee solicitor or vice versa.

Immigration

In practical terms, an efficient business visa systems which allows lawyers to enter a country for the purposes of meeting their clients face-to-face is key. If a lawyer has to wait a long time for a business visa to be authorised this could act as practical barrier to provision of legal services.

It is welcome that more UK professionals will have access to visas to work in Australia without being subject to its changeable skilled occupation list that might otherwise restrict access.

E-commerce

We are broadly supportive of Article 14 of the agreement and in particular welcome the extension of eCommerce moratorium (ensuring customs duties are not applied) and the confirmation that the parties will undertake to recognise the legal validity of contracts concluded by electronic means.



For further information, please contact:

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