



19 August 2022

Mr Josh Wilson MP
Chair
Joint Standing Committee on Treaties
PO Box 6021
Parliament House
Canberra ACT 2600

By email: jsct@aph.gov.au

Dear Chair

Australia-India Economic Co-operation Agreement

The Law Council of Australia's International Law Section (**ILS**) appreciates the opportunity to provide a submission to the Joint Standing Committee on Treaties (**JSCOT**) inquiry into the *Australia-India Economic Co-operation Agreement (Agreement)*, which was signed on 2 April 2022.

The ILS expresses its support for the Agreement, which it understands is intended to function as an interim or 'early harvest' agreement in advance of a Comprehensive Economic Cooperation Agreement to be concluded by the end of 2022.

The ILS notes the significant benefits for Australia from the Agreement as identified in the various briefing materials provided to JSCOT. As the various media releases indicate, India is the world's largest democracy, the world's fastest-growing major economy, and Australia's third largest services export market.

The ILS understands that under the Agreement:

- India has agreed to 31 commercially-meaningful services sectors and subsectors in which it will guarantee that Australian service suppliers will receive the same treatment that India accords to like services and service suppliers from India's future FTA partners (most-favoured-nation or "**MFN**"). As India is currently participating in many FTA negotiations, including with the UK, Canada and the EU, Australia will be able to reap the benefits of these future FTAs and upgrades in those sectors. This is the first time India has committed to MFN in a bilateral trade agreement, and consequently constitutes the best MFN outcome that India has given to any trading partner.
- The Agreement includes an Annex on Professional Services, Annex 8C, that will provide a solid foundation for Australia and India to continue discussions and to look at ways to further liberalise professional services. The Agreement will establish a Professional Services Working Group for the future facilitation of the mutual recognition of qualifications, licensing and registration procedures between

professional services bodies. Australia and India have agreed to engage their respective professional services bodies to negotiate mutual recognition arrangements for qualifications, licensing and registration procedures across professional services and services in regulated or licensed occupations.

The ILS understands that professional legal services is not currently one of the service sectors included in India's Schedule of Specific Commitments in Annex 8E of the Agreement. However, the Agreement sets up a framework for engagement between Australia and India on all professional services, including legal services.

The ILS notes that the Indian legal market is closed to foreign lawyers. Only lawyers licensed to practise in India and regulated by the Bar Council of India are permitted to practise law – a position which includes both foreign and local law. There is also no provision for foreign lawyers to requalify in India, and no form of commercial association is currently permitted between foreign and local lawyers and law firms.

Generally, the ILS would welcome rights for Australian lawyers to work in India with local lawyers in a manner that is flexible and suitable to the needs of their transnational clients. If the appropriate opportunity arises, for example under the auspices of the Professional Services Working Group established under Annex 8C, the ILS would support efforts to secure rights for Australian lawyers to:

- a. establish a branch office and use their firm name of choice;
- b. enter into a voluntary commercial association with local lawyers and employ local lawyers to provide multijurisdictional legal services,
- c. provide legal services on a fly-in, fly-out basis;
- d. prepare and appear in arbitrations and mediations and serve as arbitrators and mediators;
- e. participate in secondment or similar exchange programs; and
- f. obtain appropriate working visas without onerous conditions.

The Agreement is a welcome step and provides a foundation for further engagement. We look forward to continuing to engage with the Department of Foreign Affairs and Trade on these issues.

Please contact Ms Charlotte Stubbs, Senior Policy Lawyer, on [REDACTED] or at [REDACTED], in the first instance, should you require further information or clarification.

Yours sincerely

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President