



## AUSTRALIAN PARLIAMENTARY INQUIRY INTO THE BUSINESS EXPERIENCE IN UTILISING AUSTRALIA'S FREE TRADE AGREEMENTS

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Thank you for the opportunity to provide a submission on the inquiry into the business experience in utilising Australia's free trade agreements. Please find our submission below.

The Financial Services Council (FSC) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, licensed trustee companies and public trustees. The Council has over 125 members who are responsible for investing more than \$2.5 trillion on behalf of 11 million Australians.

The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world. The Financial Services Council (FSC) promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

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## UTILISING AUSTRALIA'S FREE TRADE AGREEMENTS

### 1. INTRODUCTION

In this submission, we will outline measures to boost Australia's trade performance in financial services, outline barriers to trade and how these should be removed through regulatory reform and increased government coordination. We will also outline the financial services sector experience in utilising existing FTAs and increasing trade.

Despite having an end-to-end financial services industry with scale, sophistication and a record of innovation and delivery of quality outcomes to clients, the industry is neither a major source of export income nor is Australia recognised as a major financial centre with export capability.

The Asian region is expected to be a significant driver for growth of the global financial services industry in the future. This is due economic and demographic changes that are occurring in the region:

- Asia's middle class is growing quickly – this will drive demand for financial products as investors look for opportunities to invest and grow wealth;
- Asia's population is ageing rapidly – hence a need for pension and retirement savings products; and
- many countries in the region do not yet have compulsory superannuation contribution systems for workers– again driving a need for individual savings plans.

FSC urges the Committee to ensure the North Asian FTAs are capitalised on for the financial services industry in particular so Australia's exports can increase and provide benefits for the economy.

### 2. TRADE IN FINANCIAL SERVICES

While Australia's financial services industry is large, exports make up a small proportion of the sector. Regulation has prevented Australia's industry from competing strongly against other jurisdictions with more attractive regulatory settings.

As Australia's largest industry, financial services should be the top priority. There is much to gain from increased trade – the North Asian FTAs provide a great opportunity to capitalise on our comparative advantage.

There have been numerous reviews examining the barriers to trade in financial services in Australia. These include the Johnson Review 2009 and the Financial System Inquiry 2014.

These reviews have outlined recommendations to increase Australia's exports and provided a clear reform agenda for Australia to follow. They have made clear what must be done to capitalise on our comparative advantage.

The Johnson Review stated:

*This Report has stressed the enormous opportunities available to Australia as a result of the likely ongoing growth, development and opening up of financial markets in the region. The key recommendations need to be seen as a package, designed to remove obstacles to Australian*

*based companies engaging in cross border business and also to offshore companies and investors conducting more business in and through Australia.<sup>1</sup>*

This reform agenda includes:

1. Competitive taxation rates;
2. Introduction of a Collective Investment Vehicle (CIV) regime consisting of a broader range of CIVs;
3. Tax certainty for offshore investors including introduction of an Investment Manager Regime (IMR); and
4. The correct architecture in place (through the Asia Region Funds Passport, Free Trade Agreements or Mutual Recognition).

Despite these reviews and recommendations, the reform agenda has not yet been implemented.

The policy reform process for increasing trade in financial services has not produced outcomes and progress has been slow. This reform agenda has not been implemented largely due to a lack of coordination between policy makers and somewhat due to the calculation methodology of costing revenue impacts of tax changes (see tax section). This has hampered progress in this area.

If we are to benefit from increasing exports in this sector, policy makers must act now and implement the necessary regulatory and tax reforms outlined below.

We now provide an overview of the financial services industry's experience in exporting and utilising FTAs which we detail throughout the submission.

### **3. BARRIERS TO TRADE**

As a heavily regulated industry, regulation impacts the competitiveness of the financial services industry. The 2009 Johnson Report into 'Australia as a financial centre' provided a framework to resolve many of the issues which were making it difficult for foreign investors to access Australian financial services products.

These barriers significantly hamper progress made on FTAs as the agreements cannot be utilised by industry and have made Australia an unattractive trading partner.

The Johnson report also identified Australia's comparative advantage in funds management – an advantage that derives from our proximity to Asia, highly skilled funds management workforce, and our first mover advantage in establishing superannuation.

Government coordination of policy, regulation and international competitiveness issues has not occurred in Australia. The Free Trade Agreement process in Australia has not focussed on implementation to ensure market access commitments are actually made available to Australian firms.

By implementation, we typically mean the inclusion of mutual recognition between regulators so financial services firms can export to offshore markets through licencing equivalency.

Australia requires a greater focus on tax and regulatory competitiveness issues as well as ensuring the provision of the necessary architecture to allow Australian firms to export financial services.

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<sup>1</sup> Mark Johnson 2009 'Australia as a Financial Centre: Building on our strengths' page 109

The Financial System Inquiry final report quoted 'Australia's financial sector is less open and internationally integrated than it could be now – and than it will need to be in the future'<sup>2</sup>. The FSC agrees with this statement and urges the Committee to provide recommendations in its report to increase Australia's international integration.

#### **4. REMOVAL OF BARRIERS AND DOMESTIC POLICY REFORM**

It is imperative domestic policy and regulatory barriers are removed before the financial services industry will be able to capitalise on Australia's FTAs.

As noted, many domestic barriers exist to the exporting of funds management services. These include:

1. Uncompetitive taxation rates;
2. Lack of a broad range of collective investment vehicles (CIVs);
3. Lack of tax certainty for offshore investors; and
4. Lack of architecture to allow trade in financial services.

There are also other barriers which relate to policymaking and how government policy treats financial services as an industry. We discuss these later in the submission.

Firstly, Australia needs to implement competitive taxation policy settings in order to attract foreign investment. Importantly, taxation policy must be focussed on how to attract more capital to Australia, both in terms of direct investment into Australian assets but also foreign capital that can be managed by Australians for foreign investors.

The Johnson Review<sup>3</sup> examined impediments to international integration and made a number of recommendations to improve Australia's competitiveness. It outlined a clear pathway to reform Australia's taxation settings.

The Johnson Review also recommended that the Financial Centre Taskforce monitored progress on implementation of the tax recommendations in the report.

Despite bipartisan support for the report's recommendations, changes have been slow and many recommendations are still outstanding six years on. Part of the reason for this delay is that some changes are complex and require interaction between multiple government agencies to implement.

All too often, however these policy changes are being delayed due to the anticipated 'cost to revenue'. Ironically, the only cost to revenue which occurs in reality is the missed opportunity for more economic activity to be generated in Australia earlier.

#### **Costing methodology changes**

A fundamental shift in approach to policy costings is required for Australia to successfully compete within the Asian region and globally. The traditional approach to costing policy changes must differ when the policy is directed at improving Australia's ability to attract highly mobile capital.

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<sup>2</sup> Financial System Inquiry Final Report 2014, page 20

<sup>3</sup> Mark Johnson AO – Building on our Strengths – Australia as a Financial Centre 2009

The focus on 'cost to revenue' must be adjusted when examining policies targeted at increasing economic activity that would otherwise be located offshore. Australia is competing in a global economy and the alternative for investors is to choose a jurisdiction with better tax treatment and a more flexible investment regime.

Instead of costing policy measures using a framework that treats foreign investors as taxpayers who are captured within the Australian economy, the focus must be lifted to Australia's ability to attract foreign investors in the global economy.

Calculating 'cost to revenue' on the basis that foreign investors would otherwise be subject to 30 per cent corporate tax within Australia is flawed logic. In reality no foreign investor would subject themselves to this rate when they can legitimately utilise service providers from alternative jurisdictions and be subject to a lower rate. Offering a competitive tax rate and policy settings that attract and respect foreign investors will result in additional revenue that Australia would not otherwise receive.

## **5. AUSTRALIA'S TRADE COORDINATION PROCESS**

Australia's trade coordination process has also been a key factor as to why the financial services industry has been unable to utilise FTAs.

Australia's regulatory and international relations process is governed by several government bodies – Treasury (Passport, International financial organisations), DFAT (International organisations and FTA negotiation), ASIC (mutual recognition and domestic regulation), Austrade (trade promotion), the RBA and APRA.

While these bodies attempt to coordinate as much as possible, it doesn't always work efficiently in practice. There is no one sole body responsible for coordinating Australia's regulation in the financial sector and for promoting Australia as a financial sector globally. This lack of coordination has led to inadequate progress in trade of Australia's financial services.

A key piece of the puzzle for the financial services industry is involvement of the regulators. In particular, the regulators need to be more involved in the process to assist in negotiation, enable implementation and consequently the development of mutual recognition arrangements.

A key issue is that Australian regulators do not have mandates for considering international competitiveness and trade issues. They have also not been involved in the FTA process which has hampered usefulness for the financial services industry.

Australian regulators also often have different approaches to regulation than our Asian neighbours. Australian regulators should take international regulatory systems, especially those of Asian countries, into account when implementing regulations and policies that may affect trade in financial services.

The Financial System Inquiry Final Report stated that 'policy makers should avoid adopting unique Australian regulatory approaches that are inconsistent with international practice'<sup>4</sup>.

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<sup>4</sup> Financial System Inquiry Final Report 2014, page 21

Further, the Johnson Review recommended 'periodic reviews of the regulatory rules and framework applying to the financial sector' focussed on unnecessary regulation and ensuring Australia's framework is best practice.

The low proportion of funds sourced globally in Australia's managed funds pool demonstrates a barrier to entry or disconnect between the policy settings of Australia and the rest of the region. Globally, financial system regulation was tightened following the global financial crisis in order to protect domestic economies from shocks. From now, as Australia looks to increase financial integration particularly with Asia, we must re-assess our regulatory and tax settings to ensure we are competitive as a financial centre.

The government's recently launched 'economic diplomacy' policy aims to support Australia's prosperity through promoting trade, encouraging growth, attracting investment and supporting Australian business. In a response to the policy, Lowy noted:

Because economic diplomacy requires domestic policy settings which reduce barriers to trade, economic growth and investment, DFAT, along with its two ministers, will need to lead a whole-of-government, whole-of-society effort to achieve positive economic outcomes through diplomacy.

### **Recommendations**

- The FSC recommends that cooperation between regulators occurs to ensure international competitiveness is considered in decision making. ASIC should appoint a commissioner to lead international trade and competitiveness.
- ASIC should work with DFAT in negotiations of financial services sections of free trade agreements and subsequently negotiate mutual recognition with regulators in our region.
- Taxation policy targeted at attracting foreign investor activity must be costed on the basis of the investor's options a global economy and consideration must be given to the impact of taxation.

### **Free Trade Agreement Process**

Several major FTAs have been negotiated by Australia with major Asian trading nations. Both the Korean and Japanese agreements have excellent sections on financial services, however many of the previous commitments in financial services have never been implemented or established within Australia so they can actually be used by businesses.

This is because there is no agency responsible for the implementation of the agreements. This could explain the lack of impact of FTAs and the low functional usefulness of the mutual recognition arrangements negotiated thus far.

Australia has a poor record of realising the benefits of bilateral free trade agreements. Where market access commitments are made within the financial services chapter of an agreement, it is essential that a whole of government implementation occurs. ASIC and DFAT should develop an implementation policy for financial services chapters of free trade agreements and mutual recognition agreements.

The government should look to further strengthen financial services trade with both Korea and Japan following the successful negotiation of the KAFTA and the JAEPA. It is essential that these

agreements are fully implemented so that both jurisdictions can capitalise on these cross border relationships.

In order for this to occur, the FSC urges ASIC to ensure that market access is gained so both of these agreements are fully leveraged for Australian industry. Commencement of discussions with the relevant Korean and Japanese regulators should be progressed as soon as possible.

In particular, investigation of the potential for mutual recognition of financial service licensing and investment product offerings should be undertaken in conjunction with ASIC's counterparts in Korea and Japan.

### **Mutual Recognition**

Australian regulators should take international regulatory systems, especially those of Asian countries, into account when implementing regulations and policies that may affect trade in financial services.

A roadmap should be developed on how market access (through licensing and mutual recognition) will be facilitated by the regulators. ASIC should take an active role in this process as the Australian securities regulator which would need to work with its Korean and Japanese counterparts.

The Johnson Review recommended as part of the ARFP implementation:

*ASIC negotiates bilateral mutual recognition arrangements with key jurisdictions in the region. In doing this, the Forum recommends that ASIC attempt to ensure that investment restrictions allow a relatively broad range of funds to be offered across borders, and that licencing requirements are as streamlined as possible<sup>5</sup>.*

Accordingly, we welcome the Memorandum of Understanding that ASIC has signed with the Korean FSS on 11 February 2015.

In seeking a roadmap for implementing the agreements, we believe the pitfalls in the existing mutual recognition arrangements ASIC has developed for managed funds must be avoided.

### **Case Study: Hong Kong-Australia 2008 Declaration**

While at first glance, the Declaration seemed to remove barriers, the finer detail created considerable barriers to entry. The mutual recognition program with Hong Kong commenced in 2008 but not one fund has been sold through this mechanism in either market.

It appears that the reasons for failure have differed between Australian managers wanting to access Hong Kong and Hong Kong managers wanting to access Australia.

#### *Hong Kong – failure of Australian funds to use the 2008 Declaration*

The reasons for this failure are multifaceted. Although Australian MISs are no longer required under the Declaration to demonstrate full compliance with the SFC's requirements, under the SFC's Code on Unit Trusts and Mutual Funds ("the Code"), the relevant Australian MIS must still comply with the Code in respect of the following matters:

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<sup>5</sup> Johnson Review 2009, page 121



- (a) appointment of an ASIC-regulated custodian that holds an Australian Financial Services Licence and is separate from the responsible entity for safe custody of scheme assets;
- (b) core investment restrictions;
- (c) the monthly dealing requirement; and
- (d) the appointment of a Hong Kong representative and an approved person.

A number of these provisions have caused problems. Investment managers have issues where:

- (1) the Responsible Entity for Funds are able to hold the “scheme property” because where funds are over \$5m NTA (and will from 1 July 2014 have \$10m NTA), they are not required to appoint a separate custodian. Yet the SFC's Code requires the appointment of a separate custodian;
- (2) Investment restrictions are more restrictive than those in the Australian market.

There are also non-legal issues such as a lack of distributor appetite for non-UCITS product and lack of familiarity with Australian MIS/RE settings.

Our understanding of an “ideal” mutual recognition framework is that where a fund is approved and fully compliant in its local jurisdiction, it should be fully recognised in the corresponding jurisdiction. In other words, if it's good enough for ASIC, it should be good enough for the SFC.

#### *Australia – failure of Hong Kong funds to use the 2008 Declaration*

Tax remains a significant barrier to Australia exporting managed funds. It is most acute in nations where we do not have a double tax agreement in place.

In the case of the 2008 Declaration, tax has singlehandedly undermined the ability for Hong Kong funds to access the Australian market under this agreement.

**Table 1: List of existing mutual recognition arrangements**

Arrangement	Mutual recognition between governments
<b>Mutual recognition of securities offerings in NZ and Australia (2009)</b>	Allows an issuer in Australia and New Zealand to offer securities or interests in collective or managed investment schemes in either country using one disclosure document prepared under regulation in its home country.
<b>Mutual recognition of cross-border offering of MIS/CIS between Hong Kong and Australia (2008)</b>	Allows most funds registered in Australia for offer to retail investors in Hong Kong while making available to Australian investors similar funds authorised in Hong Kong.
<b>Mutual recognition framework between US and Australian Stock exchanges and broker-dealers (2008)</b>	Framework for the SEC, the Australian government and ASIC to ‘consider regulatory exemptions’ to permit U.S. and eligible Australian stock exchanges and broker-dealers to operate in both jurisdictions, based on home country regulation. No exemptions granted under the Framework as yet.

Arrangement	Unilateral recognition of foreign providers by ASIC <sup>6</sup>
<b>Relief for foreign financial service providers from Australian Financial Services Licensing requirements</b>	Exempts foreign providers of financial services from Australian licensing requirements. Available for foreign providers of wholesale services operating in 'sufficiently equivalent' regulatory regimes.  Class order relief granted to financial service providers from UK; US; Singapore, Hong Kong; Germany. Individual relief from ASF licensing granted to one overseas operator since June 2010.
<b>Relief for foreign collective investment scheme from other regulatory requirements</b>	Discretionary relief granted to foreign collective investment scheme (FCIS) operators authorised in other jurisdictions with a 'sufficiently equivalent' regulatory regime (registration; licensing; and product disclosure). Granted for NZ, US, Singapore, Hong Kong FCIS operators (as well as operators who conduct few Australian trades).
<b>Relief for foreign providers from product disclosure and reporting requirements</b>	Relief granted from product disclosure statements and prospectus provisions and financial reporting and auditing provisions in the Corporations Act 2001 to foreign companies.

In relation to managed funds, only the Hong Kong and New Zealand agreements would permit Australian investment managers to theoretically access other markets.

### Regulatory architecture: Recommendations

- Australian regulators should take international regulatory systems, especially those of Asian countries, into account when implementing regulations and policies that may affect trade in financial services.
- The FSC recommends that cooperation between regulators occurs to ensure international competitiveness is considered in decision making. ASIC should appoint a commissioner to deal directly with international competitiveness.
- ASIC should work with DFAT in negotiations of financial services chapters of free trade agreements.
- ASIC should develop a roadmap for pursuing mutual recognition and subsequently negotiate mutual recognition with regulators in our region.

## 6. BUSINESS EXPERIENCE IN UTILISING FREE TRADE AGREEMENTS

FSC engaged ITS Global to undertake research into the barriers in Australia's key trading countries – with specific case studies on Japan and Thailand. The report stocktakes Australia's FTAs and outlines barriers to trade faced by Australian fund managers and life insurers. The report also outlines a mechanism for Australia in negotiating FTAs in the future which is discussed in the next section.

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<sup>6</sup> ASIC has powers under the Corporations Act 2001 and the Corporations Regulations 2001 to recognise overseas regulatory regimes that are 'sufficiently equivalent' to the Australian regulatory regime. ASIC also has discretionary powers to grant relief from the provisions of the Corporations Act 2001. ASIC may grant relief through two instruments; 1) class order (for multiple applications) 2) individual relief instrument. ASIC have preference for granting relief through class orders (where they have "power and it is appropriate to do so"). Where class orders are not appropriate or ASIC do not have the power to make class orders, ASIC can exercise discretionary powers on a case-by-case basis (i.e. individual relief instrument).

## Barriers to Australian wealth management in the Asia Pacific region

Market access for Australia's wealth management industry across the region is constrained by a highly regulated operating environment, combined with range of controls on foreign investment and services delivery.

In more advanced markets like Japan, market access is affected by local presence requirements, plus compliance with local licensing and authorisation procedures.

In developing country markets, such as Thailand, foreign insurance and funds management providers face more direct barriers to market entry such as limits on FDI, and local incorporation requirements.

In most markets local services delivery and investment is subject to a range of restrictions - on permitted investments, type of service, and marketing activities. Controls on outsourcing also apply.

Two key markets for the Australian wealth management industry - Japan and Thailand - were selected as representative markets for a review of barriers faced by foreign providers. Key barriers identified were:

- Limits on foreign investment – caps on foreign equity participation, FDI approvals.
- Nationality requirements – limits on foreign participation for boards of directors and voting shares;
- Local presence requirements – local establishment and incorporation requirements;
- Minimum capital requirements;
- Licensing and approval procedures – compliance with domestic licensing criteria and conditions;
- Restrictions on scope of service – controls on the type of service or investment permitted, form of delivery and marketing activities in the local market;
- Controls on outsourcing of core and support functions;
- Lack of transparency in procedural decision making for licensing and approvals, and;
- Advantages to government entities competing in the market.

Examples of the type of barriers affecting life insurance and funds management in Japan and Thailand are summarised below.

**Table 2: Summary of barriers to life insurance and funds management providers in representative markets**

Barrier	Japan	Thailand
<b>Limits on foreign investment</b>	No limits on foreign investment in insurance companies or funds, however prior approval from the Prime Minister and authorization from the regulator is required to become an insurance holding company or acquire 20% or more of the voting rights of a Licensed Insurance Company.	FDI for insurance firms, brokers, securities businesses is limited under the Foreign Business Act. Foreign equity stakes in insurance companies are limited to 25%, up to 49% with approval.  Foreign brokerage service providers may apply to own 100 percent of a securities company. For other securities business up to 49% is permitted.
<b>Nationality requirements</b>	None specific.	Insurance companies must have a minimum 75% of Directors of Thai nationality with more than

		75% of voting shares.
<b>Local presence requirement</b>	<p>Insurance companies must be locally incorporated as stock companies or mutual companies (and be licensed) in order to sell insurance to persons or market services in Japan.</p> <p>Foreign companies undertaking management and sales of investment trusts must have a branch or office in Japan.</p>	<p>Firms must incorporate as a public liability company in Thailand or establish a branch office in order to sell insurance in Thailand. Insurance brokers must have a head office in Thailand.</p> <p>Foreign re-insurance companies may offer services from abroad, without the need to set up locally or operate through a local broker.</p> <p>Local incorporation is required to (be licensed to) sell securities and to market a fund.</p>
<b>Minimum capital requirements</b>	<p>Minimum capital requirement of JPY1 billion for an insurance license. Every licensed foreign insurance company must deposit JPY200 million with the deposit office in Japan.</p> <p>Insurance brokers must deposit JPY20 million.</p> <p>Minimum capital requirements for a funds management license holder are JPY 50 million.</p>	<p>Minimum capital requirements for a Life insurer/reinsurer are THB500 million, and for a General insurer/reinsurer THB300 million.</p> <p>Minimum capital requirements for being granted a license to market a fund are 500 million baht for the application, submitted from January 1 2012.</p>
<b>Licensing and approval procedures</b>	<p>Insurance companies, agents/brokers and new products must be licensed. Additional licensing criteria applies for foreign insurance providers - i) Prior approval of home country supervision, ii) recognition of home country supervision.</p> <p>Foreign companies undertaking management and sales of investment trusts, providers of mutual funds and pension funds and their branches must undertake the full application and compliance process, including providing evidence of home country supervision. A CIV must be authorised or registered.</p> <p>Disclosure documents must be in Japanese.</p>	<p>Insurance firms, brokers and agents must be licensed. Branch offices must be licensed.</p> <p>Securities business must be licensed as well as personnel providing investment advice. Foreign securities companies may provide investment advice on foreign securities through local securities firms without the need to apply for a license in the category of securities/derivative investment advisor.</p> <p>Disclosure documents must be in Thai.</p>
<b>Restrictions on scope of service</b>	<p>Restrictions on type of service – not permitted to deliver both life and non-life products. Representative offices are not permitted to engage in sales and marketing.</p> <p>The Japan Securities Dealer's Association marketing rules determine which foreign investment trusts can be marketed to investors other than qualified institutional investors in Japan. Requirement for a local agent which is located in Japan to authorise, register, distribute funds to investors other than qualified institutional investors in Japan.</p>	<p>Restrictions on permitted investments by insurers and fund managers, eg: infrastructure investment generally not open to foreigners.</p> <p>Restrictions on type of service. Providers are not permitted to deliver both life and non-life products.</p> <p>Insurers must be licensed domestically to market insurance services. Permitted activities are part of the domestic license.</p>

## 7. MECHANISMS FOR ADDRESSING BARRIERS TO SERVICES EXPORTS IN FTAs

Australia's FTAs have delivered little benefits to growing trade in financial services. Policymaking and implementation must be improved. The FSC is of the view that there is scope for this to be achieved in future FTAs. It requires a template on how market access outcomes, in particular for life insurance and funds management, might be better addressed in Australia's free trade agreements.

The following section outlines suggestions for improving outcomes for life insurers and fund managers in bilateral and multilateral trade negotiations, which can be used as a guide for government.

### **OUTCOMES FOR WEALTH MANAGEMENT UNDER AUSTRALIA'S FTAs**

Australia's recent FTAs with Japan and Korea, as well as the Australia USA FTA (AUSFTA), generally improve market access for Australian insurance and funds management operating in the region. However, significant barriers remain.

The most significant improvements in access arise from opening of the market to 'cross border' trade for insurance providers and fund managers - the supply of services by institutions which are organised and located in Australia, to institutions in or nationals of Japan. They open trade for the supply of new services, transfers of financial information and data processing.

The FTAs do less to alleviate the regulatory impediments associated with establishment and operation in the market. Sale and marketing of products of Australian providers in most FTA markets is still restricted, particularly at the retail level. A local branch office is often required. Compliance with domestic licensing procedures can be onerous and non transparent. Limits on foreign equity apply in some cases. It is usual that a right to regulate for prudential reasons is maintained by government.

Outcomes vary by market and by agreement. The most liberal regime exists between Australia and the US under AUSFTA. Greater market opening is achieved under KAFTA and JAEPA though the Korean and Japan markets remain more protected than the US.

The depth and scope of market access is more modest in FTAs with ASEAN countries, such as TAFTA, SAFTA and AANZFTA. Barriers in ASEAN are high compared to more advanced economies.

The outcomes for the life insurance and funds management industry in Australia's FTA are assessed below in terms of i) commitments made to improve market access and ii) remaining barriers. Agreements with Japan (JAEPA) and Thailand (TAFTA and AANZFTA) are each assessed first as these are the representative markets from which barriers were identified. Agreements with Korea, the US and Singapore are also covered for completeness.

**Table 3: Summary of measures for market access under Australia's FTAs**

Commitment	JAEPA	KAFTA	AUSFTA	AANZFTA	SAFTA	TAFTA
<b>Cross border delivery of financial services</b>	Yes, qualified	Yes, qualified	Yes, qualified	Limited	Yes, qualified	No provisions
<b>Prohibition on market controls</b>	Yes, exemptions	Yes, exemptions	Yes	Yes, numerous exemptions	Yes, numerous exemptions	Yes, numerous exemptions
<b>Investment treatment &amp; protection</b>	Yes	Yes	Yes	Yes, limited	Yes	Yes, limited
<b>Disciplines for regulatory decision making</b>	Yes, no timelines	Yes	Yes	Yes	Yes	No provisions for financial services

<b>Frameworks to address regulatory constraints</b>	Yes	Yes	Yes	Yes	Yes	No provisions for financial services
<b>Mandate for review</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>Mobility of financial services professionals</b>	Yes.	Yes.	No provisions	Some. Regulatory disciplines.	Yes.	No commitments

## 8. IMPROVING ACCESS FOR WEALTH MANAGEMENT IN AUSTRALIA'S FTAs

### The role of FTAs

Australia's FTAs are key instruments for improving market access for the Australian financial services industry and in promoting more open financial services markets in the region.

The key bilateral and multilateral trade deals of greatest significance to the financial services industry are:

- The bilateral FTAs with Japan, Korea, USA, Singapore, Taiwan, China and India. The Korea and USA FTAs have significant market access for Australian businesses
- The Regional Comprehensive Economic Partnership (RCEP) which has large potential for inclusion of key financial services market access provisions and covers key trading partners in Asia including growth markets.
- The Trade in Services Agreement – it will be important to include financial services, however arguably the countries included may have less significance for Australian financial services exports.
- The Trans Pacific Partnership deal - however this has neared completion with regrettably little scope for funds management exports.

They now not only grant legal rights for Australian financial institutions to trade and invest in foreign markets but are broad policy instruments which can be used to shape the regulatory environment in FTA partners, particularly growing economies in Asia.

There are limits on the extent of regulatory change FTAs can achieve. They are legal agreements primarily concerned with removing discriminatory treatment for foreign operators, or 'levelling the playing field'. They can create frameworks for measures to support regulatory integration and reform. Ultimately implementation is undertaken by regulators of the governments concerned.

The FTAs create a 'foot in the door.' Initial commitments are typically low, but increasingly in FTAs there are provisions for ongoing negotiations to increase market access and reduce regulatory barriers. Key principles and negotiating goals are outlined below.

### Negotiating goals

Future FTAs should improve on outcomes in existing FTAs and reduce barriers to life insurance and funds management in key markets.

- For bilateral FTAs (eg: India, Taiwan) the focus should be on removing barriers which are important to the Australian wealth management industry in the market in question and establishing a process for ongoing discussion to reduce regulatory impediments.
- For the RCEP the focus should be on improving market access commitments in existing FTAs, particularly for the ASEAN economies (AANZFTA and the bilateral FTAs), where barriers to services and investment are generally high. Market access should be supported by more binding disciplines to address 'beyond the border' regulatory constraints.
- TiSA provides a mechanism to achieve multilateral market access outcomes in important markets with which Australia does not have bilateral FTA, or are not party to either the RCEP or TPP (eg: Taiwan, EU).

### **Key principles**

1. Achieve a degree of market opening of trade and investment for insurance and funds management which is equivalent to or greater than AUSFTA;
2. Apply market opening across the board with 'exempted measures' included in an Annex. Commit not to make measures more restrictive over time;
3. Reduce the impediments to foreign providers arising from regulatory procedures for licensing and authorisation in the FTA market;
4. Facilitate regulatory reform and closer economic integration with FTA partners on issues of importance to the wealth management industry; and
5. Secure agreement to establish ongoing bilateral processes to reduce regulatory impediments.

**FTA Recommendation:** Future FTAs should improve on outcomes in existing FTAs and reduce barriers to life insurance and funds management in key markets as outlined in this submission.

## **9. CONCLUSION**

Increasing trade in financial services by removing domestic barriers and developing the regulatory architecture should be government and industry's top priority.

The many reviews into the barriers to trade in financial services have resulted in little action and many of the recommendations remain outstanding. FTAs have not been utilised by the financial services industry due to lack of implementation.

## **10. LIST OF RECOMMENDATIONS**

1. Australian regulators should take international regulatory systems, especially those of Asian countries, into account when implementing regulations and policies that may affect trade in financial services.
2. The FSC recommends that cooperation between regulators occurs to ensure international competitiveness is considered in decision making. ASIC should appoint a commissioner to deal directly with international competitiveness.
3. ASIC should work with DFAT in negotiations of financial services chapters of free trade agreements.
4. ASIC should develop a roadmap for pursuing mutual recognition and subsequently negotiate mutual recognition with regulators in our region.
5. Future FTAs should improve on outcomes in existing FTAs and reduce barriers to life insurance and funds management in key markets as outlined in this submission.