

WORLD TRADE
ORGANIZATION

Trade in Services

RESTRICTED

GATS/SC/6/Suppl.1

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AUSTRALIA

Schedule of Specific Commitments

Supplement 1

(This is authentic in English only)

This text replaces the Financial Services section contained in pages 31 to 38 of document GATS/SC/6.

AUSTRALIA - SCHEDULE OF SPECIFIC COMMITMENTS

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
ALL SECTORS INCLUDED IN THIS SCHEDULE	<p>3) Notification and examination under Australia's foreign investment policy guidelines and the Foreign Acquisitions and Takeovers Act 1975. In addition to the specific foreign investment policy requirement set out in those parts of this Schedule concerning financial services and international shipping, proposals for foreign interests to invest in the services identified in the Schedule are examined under the Government's policy guidelines without the need to demonstrate economic benefits or to provide for Australian equity participation and are approved unless judged contrary to the national interest. The onus for establishing that proposals are so contrary rests with the Australian authorities. Investors can expect that approval will not be withheld from proposals on national interest grounds other than in unusual circumstances affecting Australia's vital interests and development.</p>	<p>3) Australia's foreign investment policy guidelines apply to foreign-owned or controlled enterprises after establishment in Australia</p> <p>At least two of the directors of a public company must be ordinarily resident in Australia</p>	

AUSTRALIA (continued)

	<p>4) Unbound except for measures concerning the entry and temporary stay of natural persons in the following categories:</p> <p>a) Executives and senior managers, as intracorporate transferees, for periods of initial stay up to four years.</p>	<p>Unbound for current and future measures at the federal, state or local government levels according rights or preferences to any indigenous person or organisation 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. For the purposes of this Schedule, an indigenous person means a person of the Aboriginal race of Australia or a descendant of an indigenous inhabitant of the Torres Strait Islands.</p> <p>Unbound for subsidies for research and development</p> <p>4) Unbound except for measures concerning the categories of natural persons referred to in the market access column</p>	
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AUSTRALIA (continued)

Executives and senior managers being natural persons who are employees of a company operating in Australia, and who will be responsible for the entire or a substantial part of that company's operations in Australia, receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of the business, including directing the company or a department or sub-division of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or sub-division of the company.

- b) Independent executives, without requiring compliance with labour market tests, for periods of initial stay up to a maximum of two years.

AUSTRALIA (continued)

Independent executives being natural persons who meet the criteria of executives and senior managers who intend, or are responsible for the establishment in Australia, of a new business of a service supplier with its head of operations in the territory of another Member and which has no other representative, branch or subsidiary in Australia.

- c) Service sellers, as business visitors, without requiring compliance with labour market tests, for periods of initial stay of 6 months and up to a maximum of 12 months.

Service sellers being natural persons not based in Australia who are (sales) representatives of a service supplier and are seeking temporary entry for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service supplier, where those representatives will not be engaged in making direct sales to the general public or in supplying services themselves.

AUSTRALIA (continued)

Applicants for business visitor visas are natural persons seeking to travel to Australia for business purposes and not intending to engage in work that might otherwise be carried out by an Australian citizen or Australian permanent resident. This requirement will be satisfied where the service seller's remuneration and financial support for the duration of the visit are derived entirely from sources outside Australia.

- d) Specialists, subject to individual compliance with labour market testing, for periods of initial stay up to a maximum of two years with provision of extension provided the total stay does not exceed four years.

Specialists being natural persons with trade, technical or professional skills who are responsible for or employed in a particular aspect of a company's operations in Australia. Skills are assessed in terms of the applicant's employment experience, qualifications and suitability for the position.

AUSTRALIA (continued)

Labour market testing is not required for (i) natural persons who have specialised knowledge at an advanced level of a proprietary nature of the company's operations and have been employed by the company for a period of not less than two years and (ii) if the position in question is within a labour agreement in force at the time of application. A labour agreement is an agreement between the Australian Government, employers or industry organisations and unions for the entry of specialists from overseas.

The above commitments do not apply in cases of labour/management dispute.

AUSTRALIA (continued)

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
C. <u>Sanitation and similar services</u> (9403)	1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section	1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section	
<p>7. FINANCIAL SERVICES</p> <p>Australia undertakes its specific commitments on financial services in accordance with the attached "Understanding on Commitments in Financial Services" (hereinafter referred to as the "Understanding").</p> <p>The obligations under the Understanding are addressed in this Schedule additionally to those covered by the provisions of Part III of the Agreement and the Annex on Financial Services. Market access commitments with respect to "cross-border supply" and "consumption abroad" are bound in this Schedule to the extent of the obligations in paragraphs 3 and 4 of the Understanding.</p> <p>These specific commitments on financial services are subject to the general limitations contained in the "Horizontal Commitments" section of this Schedule.</p>			
A. <u>Insurance and insurance-related services</u> (8121, 8129**, 8140)			

AUSTRALIA (continued)

	3) Approval of non-resident life insurers is restricted to subsidiaries		
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	3) Registered foreign life insurance companies are required to have a principal officer resident in Australia		
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AUSTRALIA (continued)

	<p>1), 3) An authorised insurance company operating in Australia as a non-incorporated entity must appoint an Australian resident as agent of the insurer</p> <p>3) Most State and Territory Governments maintain restrictions, by way of monopolies or licensing provisions and associated controls on premiums and other terms of policies, in the following areas of insurance:</p> <p style="padding-left: 40px;">Compulsory Third Party Motor Vehicle Accident: VIC, WA, TAS, NT, ACT (monopolies); NSW, QLD, SA (licensing, premiums/policy terms)</p> <p style="padding-left: 40px;">Workers Compensation: VIC, QLD, SA (monopolies); NSW, WA, TAS (licensing, premiums/policy terms)</p> <p>4) The temporary entry of specialists in the operation of an insurance service supplier established in Australia is permitted subject to the terms stipulated in the horizontal section</p>	<p>3) Sub-national guarantees are provided to some State and Territory Insurance Offices</p>	
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AUSTRALIA (continued)

<p>B. <u>Banking and other financial services (excluding insurance)</u> (8112, 8113, 8119, 8131, 8132, 8133, 81115-81119, 81199, 81319, 81321, 81323, 81333, 81339)</p>	<p>1) The investment at interest in Australia of official reserves by foreign central banks and foreign government monetary institutions is approved by the Reserve Bank provided that it obtains assurance from the investing authority that it will aim to be a stable holder of the Australian dollar and that it will consult with the Bank in the event of significant changes in its Australian dollar portfolio. Monetary institutions, responsible for both reserve assets and commercial investments, are permitted to invest in Australia up to a limit under the same conditions.</p> <p>1), 3) A foreign bank located overseas is able to offer its services to Australian enterprises, but it is not allowed to raise funds in Australia or undertake business within Australia unless it is an authorised bank (or establishes a money market corporation, subsidiary etc.)</p>		
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AUSTRALIA (continued)

1), 3) Dealings in foreign exchange in Australia must be carried out through a dealer authorised by the Reserve Bank. Only banks, including branches of overseas banks, and financial institutions incorporated in Australia with the required minimum capital base are eligible to seek authorisation as a foreign exchange dealer.

Foreign banks satisfying prudential requirements and competition policy considerations may conduct banking in Australia. Foreign banks may undertake banking operations in Australia through an authorised branch, however, a branch may not accept "retail" deposits. A foreign bank wishing to accept "retail" deposits must seek authorisation as a locally-incorporated subsidiary for that purpose. Foreign bank branches may accept deposits (and other funds) in any amount from incorporated entities, non-residents and their own employees. Deposits (and other funds) may only be accepted from other sources where the initial deposit (or other funds) is greater than \$250 000. Deposit-taking outside of this is considered to be "retail" banking business.

AUSTRALIA (continued)

	<p>Acquisition, by foreign interests, of control of any of Australia's four main banks (Commonwealth Bank of Australia, National Australia Bank, Westpac Banking Corporation and Australia and New Zealand Banking Group) is not permitted. State and Territory governments reserve the right to prohibit foreign control of State-owned or controlled banks. Banks (resident and non-resident) are prohibited from holding shares in the Commonwealth Bank of Australia and other entities may not hold more than five per cent of its issued share capital.</p> <p>Banks operating in Australia, whether domestically owned or foreign owned with authorised branch status, may be permitted, in certain circumstances, to hold up to 75 per cent equity in Authorised Money Market Dealers (primary dealers). The Reserve Bank imposes restrictions on relationships and dealings between authorised dealers and related banks, in particular:</p>	<p>3) The Commonwealth Bank of Australia, the Australian Industry Development Corporation, and other Commonwealth owned entities which may conduct financial operations are guaranteed by the Commonwealth Government</p>	
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AUSTRALIA (continued)

authorised dealers must be independent legal entities and be separately capitalised;

authorised dealers' transactions with related entities (defined as parties which own 12.5 per cent or more of the authorised dealer) must be carried out at arm's length and not represent a disproportionate source of funding or turnover; and

authorised dealers must provide an impartial service to all participants in the money market.

A number of State and Territory Governments operate central financing authorities through which the Government's wholly or partly-owned statutory authorities and business enterprises are obliged to borrow (and in some cases invest) their funds, or otherwise obtain certain financial services:

AUSTRALIA (continued)

	<p>SA - South Australian Financing Authority, SA Local Government Financing Authority TAS - Tascorp NSW - Treasury Corporation VIC - Treasury Corporation of Victoria</p>		
	<p>3) The Australian Stock Exchange liquid capital requirements for members may have the effect of favouring membership of the Exchange by subsidiaries rather than branches of foreign companies</p> <p>An applicant must be a body corporate in order to obtain approval to conduct a stock market or a futures market as a stock exchange or a futures exchange</p>	<p>3) A majority of the directors of a member organisation of the Australian Stock Exchange must be Australian residents</p>	
	<p>4) The temporary entry of specialists in the operation of a financial service supplier established in Australia is permitted subject to the terms stipulated in the horizontal section</p>		

AUSTRALIA (continued)