

4 September 2015

**By email:** [services.exports@pc.gov.au](mailto:services.exports@pc.gov.au)

Ms Angela MacRae  
Commissioner  
Australian Services Exports  
Productivity Commission  
Locked Bag 2, Collins Street  
Melbourne VIC 8003

Dear Ms MacRae

## **Barriers to Growth in Service Exports - Productivity Commission Draft Report August 2015**

Corrs Chambers Westgarth welcomes the chance to comment on the Productivity Commission's Draft Report on Barriers to Growth in Service Exports (**Draft Report**).

### **Summary**

- 1 We believe that the key to the growth in services exports and particularly legal services is "connectedness". Our competitiveness and economic engagement with Asia is best developed through point-to-point, person-to-person engagement aimed at the development of deep local relationships. The future of Australia's integration in Asia's legal services market depends upon our ability to build and link these deep connections and deliver services efficiently as and where needed. That does not necessarily require us to practice local law in these jurisdictions.
- 2 Connectedness could be facilitated by the Commonwealth providing practical assistance to Australian lawyers who want to build connections and provide face-to-face legal services overseas on a temporary or fly-in/fly-out (**FIFO**) basis. Practical measures that make inbound and outbound Business Visas and APEC Business Travel Cards (**APEC Cards**) easier and quicker to obtain and renew will support the growth and competitiveness of Australian legal services exports.

### **Background**

- 3 Figure 5.2 'Services trade restrictiveness by subsector' of the Draft Report (at page 130) shows that Australian legal services experience the highest average level of trade restrictions in 26 of Australia's top trading partners in comparison to other professional services.
- 4 The Draft Report (at pages 142 to 143) acknowledges that burdensome requirements and inefficient processing procedures in relation to visas, licensing and registration impose significant costs on exporters and result in the loss of

business opportunities if service providers cannot meet a client's need for timely face-to-face service.

- 5 Person-to-person engagement is declining, indicating that these costs and inefficiencies dissuade service providers from operating on a FIFO basis or from supplying to the export market at all. The Draft Report (at page 76) identifies, that the growth in the cross-border supply of Australian exports of legal services has coincided with a fall in the proportion and value of FIFO exports.
- 6 As the region experiences freer trade and movement of people, capital and information, higher than average trade barriers on legal service exporters are particularly damaging. While policies adopted by some of our key trading partners are not always put in place for the primary purpose of impeding the export of legal services they have the incidental effect of protecting local firms from competition.
- 7 Rather than represent a threat to the Australian legal services industry, freer trade and investment should provide greater opportunity for growth. For example, the International Legal Services Advisory Council (ILAC)<sup>1</sup> and Law Council of Australia<sup>2</sup> in their submissions to the Productivity Commission (at page 143) highlighted the vast opportunities that would be available in the Indian legal sector if licensing regulations that discriminate against foreign providers were removed.
- 8 IBISWorld reports that Australia only needs to be competitive in one-quarter of our economy to pay for our imports, which account for 20% to 25% of our GDP. IBISWorld pinpoints service industries as an area in which Australia should seek to grow its competitiveness in the region. It is therefore critical that the Australian Government improve rules and procedures governing visas and APEC Cards to address barriers to the growth in legal service exports.

### Connectedness

- 9 Connectedness of Australian legal services in the Asia region demands mobility. The Draft Report (at page 13) identifies that investment flows and infrastructure investment are closely linked to the demand for legal services. As overseas investment patterns shift Australian legal services need to be nimble enough to follow. We are already looking at what the [China's One Belt One Road](#) means for Australia's service industry. This is just one example of the opportunity for Australian service providers to engage in the growth of spending on infrastructure in our region. We know from the Asian Century White Paper that the need for infrastructure investment in Asia's emerging economies is vast. Around US\$8 trillion is needed to fund the region's estimated infrastructure gap in just the current decade.<sup>3</sup>

<sup>1</sup> International Legal Services Advisory Council 2008, *Submission on Legal Services to the Department of Foreign Affairs and Trade in Respect of Australia-India Free Trade Agreement Feasibility Study*, June, Canberra.

<sup>2</sup> Law Council of Australia 2012, *Australia-India Comprehensive Economic Cooperation Agreement*, 30 January, Canberra, <http://dfat.gov.au/trade/agreements/aifta/Documents/law-council-australia.pdf> (accessed 30 July 2015)

<sup>3</sup> [The Treasurer is right to have pushed for Australia to join the Asian Infrastructure Investment Bank](#)

### Mobility and flexibility

- 10 This requires measures that assist mobility and flexibility as legal service exporters move away from the traditional bricks and mortar model. Studies by the Law Council of Australia<sup>4</sup> and ILAC<sup>5</sup> and referred to in the Draft Report (at page 88) found that a long term commercial presence is not crucial to servicing foreign markets. In 2010 to 2011, less than 20% of Australian legal services exports involved law firms with a commercial presence abroad. In 2008 to 2009, North America was our largest market for legal service exports even though no Australian law firm had a commercial presence there.
- 11 Throughout China and much of Asia, we are seeing investment patterns shift from the centre to the provinces and from the State to companies.
- 12 Government and public spending in Asia generally occurs at the sub-national or provincial level. In our experience, provincial leaders are often senior decision makers within the central government as well as in their own jurisdictions. These leaders control populations larger than Australia, which often have their own language, culture and identity, ethnicity or religion.
- 13 The method used by most central governments to control provincial leaders and stop the development of regional fiefdoms is to encourage competition between different sub-national jurisdictions. Sub-national competition is a major opportunity for Australian legal services exporters as their leaders are more motivated to engage with Australian firms to compete with other provinces.
- 14 The Boston Consulting Group predicts that in the next five years, China, India and Indonesia will have 3,000 new billion-dollar revenue companies. Of the 200 biggest companies in India more than 70% are family-owned and most are conglomerates. Businesses in the region are adopting business models that meet their own needs, as opposed to cookie-cutter copies of the standard western model.
- 15 Understanding these unique business models and provincial level competition is vital to our competitiveness in the region. A sophisticated provincial engagement strategy allows a relatively small legal services exporter to have more clout than under 'normal' conditions. However, the development of deep local relationships takes time and depends upon our ability to easily engage point to point and person-to-person both for us going into these regions and for them to visit us here.
- 16 The benefits of providing practical assistance towards the development of deep local relationships are far reaching. Connectedness is the key not only to growth in legal services exports but also to open trade, cultural exchange and understanding, diplomacy and sound defence pacts and alliances.

<sup>4</sup> Law Council of Australia 2012, *Australia-India Comprehensive Economic Cooperation Agreement*, 30 January, Canberra, <http://dfat.gov.au/trade/agreements/aifta/Documents/law-council-australia.pdf> (accessed 30 July 2015)

<sup>5</sup> International Legal Services Advisory Council 2008, *Submission on Legal Services to the Department of Foreign Affairs and Trade in Respect of Australia-India Free Trade Agreement Feasibility Study*, June, Canberra.

**Barriers to Growth in Service Exports - Productivity  
Commission Draft Report August 2015**

---

**Proposed measures**

- 17 If connectedness is Australia's key to integration and competitiveness in Asia, the Australian Government must work towards the removal of burdensome rules and inefficient procedures that impede FIFO exports and person-to-person engagement. Australian legal service exporters require practical measures that make person-to-person engagement easier to be able to compete in a fast-emerging borderless world.

**Business Visas**

- 18 Business Visa settings are important as they determine the ease with which short-term visitors are able to enter another country to provide legal services as and where needed and for clients to visit us here.
- 19 The Draft Report (at pages 142 to 143) acknowledges that inefficient visa processing procedures may dissuade service exporters from operating on a FIFO basis and can impose costs or result in foregone business opportunities if providers cannot meet clients' needs for timely face-to-face service.
- 20 Business Visas that are easy and fast to obtain and allow an Australian lawyer to work overseas for short periods and for our clients to come and visit us here will encourage exports and our ability to compete regionally and globally.
- 21 In addition, we should have streamlined processes that enable us to have lawyers from overseas law firms join us for periods of up to 18 months and for us to second our staff to overseas investment banks, law firms and similar. This is how we believe that you build deep connections. Indeed, in many ways this is consistent with the Government's new Colombo plan. In that both models seek to deepen Australia's relationships in the region, both at the individual level and through expanding business and other stakeholder links.

**APEC Business Travel Cards**

- 22 APEC Cards remove the need for frequent business travellers to apply for visas or entry permits. According to a study conducted by APEC's Business Mobility Group, APEC Cards reduced business travel and transaction costs by 30% or USD 3.7 million over the 12 month period between March – July 2010 and March – July 2011.<sup>6</sup> In 2008, Australia was the highest user of these cards, accounting for nearly 40% of the total amount issued.<sup>7</sup>
- 23 The introduction of stricter eligibility and renewal requirements by the Department of Immigration and Citizenship in 2011 reduced some of these benefits. In addition, application processing times vary significantly and are not centrally controlled by any one country or department.

---

<sup>6</sup> APEC Policy Support Unit study on [Reducing Business Travel Costs: The Success of APEC's Business Mobility Initiatives](#)

<sup>7</sup> APEC statistics available at: [APEC Business Travel Card](#)

- 24 Perhaps more frustrating is the renewal process that requires all eligibility criteria to be fully re-assessed and may take as long as a new application to be finalised. Making APEC Cards easier and faster to obtain and in particular, to renew, would facilitate the competitive export of Australian legal services to APEC member countries.
- 25 Extension of the duration of APEC Cards is another way to reduce the costs and inefficiencies of the renewal process. While the duration of APEC Cards was recently extended from three years to five years, further extension to seven years or more means that business travellers will not have to apply for a new card as frequently and will reduce processing times.
- 26 As we have discussed better rules and more efficient procedures affecting the availability and renewal of Business Visas and APEC Cards could, based on our experience, significantly reduce barriers to the export of Australian legal services. We need practical measures aimed at enhancing our ability to connect with overseas markets in order to ensure the integration and competitiveness of Australian legal services in regional and global markets.

We would be delighted to discuss our comments on the Draft Report with you.

Yours sincerely

**Andrew Lumsden**  
Partner  
Co-Chair China Business Group