Law Council
OF AUSTRALIA

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Regional Trade Agreements Division
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Dear Regional Trade Agreements Division

General review of RCEP

1. The Law Council of Australia thanks the Department of Foreign Affairs and Trade (**DFAT**) for the opportunity to provide a submission to support the General Review of the Regional Comprehensive Economic Partnership Agreement (the **Agreement** or '**RCEP'**).

2. RCEP is the world's largest free trade agreement (**FTA**) by the combined gross domestic product of its members. Parties to the Agreement include Australia, Brunei Darussalam, Cambodia, China, Indonesia, Japan, Lao PDR, Malaysia, Myanmar, New Zealand, the Philippines, the Republic of Korea, Singapore, Thailand and Vietnam.

3. Article 20.8 of RCEP mandates a General Review five years after the Agreement's entry into force. The Review provides an opportunity to ensure the Agreement remains relevant to the trade and investment issues and challenges confronting the Parties.

4. This submission principally addresses the Law Council's priorities with respect to trade in legal services under RCEP, many of which were raised in the Law Council's recent submissions to DFAT as part of its Southeast Asia Free Trade Agreements Modernisation Review,[1] and General Reviews of the China–Australia Free Trade Agreement (**ChAFTA**) and the Indonesia–Australia Comprehensive Economic Partnership Agreement (**IA-CEPA**).[2]

5. This submission also provides comments and a recommendation in relation to the incorporation of human rights, labour and environmental standards in the Agreement.

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1 Law Council of Australia, *Southeast Asia Free Trade Agreements Modernisation Review* (Submission, 22 January 2026).

2 See Law Council of Australia, *General review of the China–Australia Free Trade Agreement* (Submission, 1 April 2026); and Law Council of Australia, *General review of the Indonesia–Australia Comprehensive Economic Partnership Agreement* (Submission, 1 April 2026).

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Trade in legal services

6. The Law Council has long highlighted that legal services are an essential facilitator of economic activity, and form a critical part of the infrastructure that underpins commercial transactions.[3] Legal services enable businesses to establish and enforce contractual rights, structure investment and financing, comply with regulatory requirements, protect assets including intellectual property, and resolve disputes. Their economic contribution is therefore not confined to the value of legal services purchased directly by clients, but includes the broader trade and investment those services facilitate.

7. Australian businesses that seek to expand into or operate in RCEP jurisdictions rely on Australian and foreign lawyers to navigate a web of challenging and evolving business, legal and regulatory obligations.

8. Whilst some RCEP Parties have adopted relatively liberalised markets for cross-border legal services (e.g. Singapore), others limit the ability of foreign lawyers to provide services on a fly-in, fly-out basis or remotely, to work in association with local lawyers, or to establish a commercial presence (e.g. Indonesia, the Philippines).

9. The Law Council's recent report *Navigating trade in legal services with Southeast Asia* identifies key market access barriers in a number of RCEP Parties, particularly Indonesia, Malaysia, Singapore, the Philippines, Thailand and Vietnam.[4]

Legal services under RCEP

10. Chapter 8 of RCEP makes commitments to trade in services in relation to national treatment and market access, including legal services.

11. Article 8.3 of RCEP allows Parties to the Agreement to choose either a positive or negative list approach to their services commitments.[5]

    (a) Under a **positive list** approach, countries submit a schedule of commitments that explicitly identifies all market access and national treatment commitments and limitations.

    (b) Under a **negative list** approach, members provide only a list of 'non-conforming measures.'

12. Parties that adopted a 'positive list' approach are required to transition to a 'negative list' within six years of the date of entry into force, with Cambodia, Lao PDR, and Myanmar afforded 15 years to make this transition.[6]

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[3] Law Council of Australia, *Navigating trade in legal services with Southeast Asia: Challenges and market access priorities for Australian lawyers and firms,* (Report, 13 February 2026) 7.

[4] Ibid.

[5] Australia, Brunei Darussalam, Indonesia, Japan, Republic of Korea, Malaysia, and Singapore adopted a negative list approach. Cambodia, China, the Lao PDR, Myanmar, New Zealand, the Philippines, Thailand, and Viet Nam adopted a positive list approach.

[6] RCEP, art 8.12.

13. The RCEP General Review provides an opportunity for Australia and other RCEP Parties to review and upgrade commitments that relate to trade in legal services, including national treatment, market access and movement of natural persons.

14. The Law Council has advocated for RCEP to include strong market access commitments in relation to legal services since the early stages of the RCEP negotiations.

15. This input recognised the consistent and growing demand for 'fully-integrated legal services' (i.e., legal services that combine advice on local, foreign and international law) – and that Australian lawyers and law firms can best meet this demand where regulatory frameworks permit local and foreign lawyers to work together flexibly to provide these services.

16. The Law Council's comments and recommendations as part of Australia's Southeast Asia Free Trade Agreements Modernisation Review are also relevant to the General Review of RCEP, both in terms of key market access priorities and barriers to be addressed in priority jurisdictions[7] The Law Council's report *Navigating legal services trade with Southeast Asia* also provides recommendations on Australia's general strategic approach to upgrade its network of FTAs in Southeast Asia to 2040.[8] The Law Council encourages the Australian Government to consider these recommendations as part of the RCEP General Review.

17. The Law Council would welcome efforts by the Australian Government to encourage RCEP Parties to:

    (a) include commitments that recognise and enable the remote provision of foreign legal services through cross-border electronic supply (Mode 1);

    (b) improve commitments and clarity regarding the provision of legal services on a fly-in, fly-out basis (Mode 4); and

    (c) include and improve commitments that enable the provision of foreign legal services through a local commercial presence (Mode 3).

18. As a starting point, the Law Council recommends that DFAT draw from legal services commitments already made or offered by RCEP Parties in the WTO and other FTAs, where these commitments are more ambitious than those offered through RCEP. For example, China could be encouraged to make legal services commitments afforded under the Mainland and Hong Kong Closer Economic Partnership Arrangement.

19. The *Navigating legal services trade with Southeast Asia* Report also identified that a lack of clarity regarding regulatory systems creates particular challenges for Australian lawyers and law firms seeking to provide services in the region.[9] The Law Council therefore recommends that the Australian Government encourage RCEP Parties to improve the transparency of regulatory frameworks and procedures for foreign legal services providers to practise foreign law.

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7 Law Council of Australia, *Southeast Asia Free Trade Agreements Modernisation Review* (above n 1).
8 See Law Council of Australia, *Navigating trade in legal services with Southeast Asia* (above n 3) 185–6.
9 Ibid, e.g., 42-43.

Recommendation 1

The Australian Government should seek legal services commitments from RCEP Parties that recognise and enable the provision of legal services through cross-border electronic supply, in country on a fly-in, fly-out basis, and through the establishment of a local commercial presence.

Recommendation 2

The Australian Government should seek to review and upgrade legal services commitments made by RCEP Parties, particularly where Parties have made or offered more ambitious commitments in the WTO and/or other FTAs.

Recommendation 3

The Australian Government should encourage RCEP Parties to improve the transparency of regulatory frameworks and procedures for foreign legal services providers to practise foreign law.

Australia

20. The RCEP General Review provides an opportunity for Australia to review and update its own commitments under Australia's *Schedule of reservations and non-conforming measures for services and investment*.[10]

21. Australia's Schedule contains an outdated restriction that natural persons practising foreign law in South Australia may only join a local law firm as a consultant, and may not enter into partnership with, or employ, local lawyers.[11] This restriction can be removed to reflect legislative amendments that took effect in July 2020.[12]

Recommendation 4

Australia should update its commitments under the *Schedule of reservations and non-conforming measures for services and investment* to reflect changes in domestic law.

China

22. The Law Council identified key barriers and opportunities to upgrade China's services commitments in its recent submission in response to the General Review of ChAFTA.[13]

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[10] RCEP Annex III – Schedule of Reservations and Non-Conforming Measures for Services and Investment – Australia, 51.

[11] Ibid.

[12] The *Legal Practitioners (Foreign Lawyers and Other Matters) Amendment Act 2019* (SA) amended the *Legal Practitioners Act 1981* (SA) to align provisions relating to foreign lawyers with every other Australian State and Territory, whereby Australian-registered foreign lawyers may employ and enter into partnership with Australian legal practitioners.

[13] See Law Council of Australia, *General review of the ChAFTA* (above n 2).

23. China's legal services commitments in RCEP are substantially the same as commitments it made in the ChAFTA, except they apply to all Parties of the regional framework.[14]

24. As part of the RCEP General Review, the Australian Government should encourage China to upgrade its commitments under the Agreement in relation to legal services, in particular:

    (a) remove the residency requirement for foreign lawyers to work as foreign representatives;

    (b) remove the requirement that foreign representatives undertake a minimum number of years of practice outside of China, or, alternatively, allow for experience to be obtained within China for the purposes of meeting minimum experience thresholds;

    (c) ease the requirements for foreign and local partner firms to form a commercial association, including by:

    - reducing the required number of full-time licensed lawyers a partner firm must employ;
    - reducing the amount of time a partner firm must have been established; and
    - reducing the experience requirements for foreign and domestic lawyers working in commercial associations;

    (d) allow foreign firms to structure as partnerships; and

    (e) update its commitments to reflect existing tolerance of fly-in, fly-out legal services in China, and update domestic regulations to expressly permit such practice by foreign lawyers.

25. The Law Council also encourages the Government to identify opportunities, as part of the RCEP General Review, to encourage China to adopt other practical measures to address barriers to the provision of foreign legal services in China, such as streamlining registration processes for foreign firms and removing or reducing waiting requirements.[15]

Recommendation 5

The Australian Government should encourage China to upgrade its commitments in relation to legal services under RCEP, and address key barriers to the provision of foreign legal services in China.

[14] See RCEP Annex II – Schedule of Specific Commitments for Services – China, 5.
[15] See Law Council of Australia, *General review of the ChAFTA* (above n 2).

Indonesia

26. The Law Council identified key barriers and opportunities to upgrade Indonesia's services commitments in its recent submission in response to the General Review of IA-CEPA.[16]

27. The Law Council notes that Indonesia's legal services commitments under RCEP are substantially the same as those provided under IA-CEPA.

28. As part of the RCEP General Review, the Australian Government should encourage Indonesia to upgrade its commitments under the Agreement in relation to legal services, in particular:

    (a) remove the prohibition on foreign law firms establishing a commercial presence in Indonesia; and

    (b) update its commitments to reflect existing tolerance of fly-in, fly-out legal services in Indonesia, and update domestic regulations to expressly permit such practice by foreign lawyers.

29. The Law Council also encourages the Government to identify opportunities, as part of the RCEP General Review, to encourage Indonesia to adopt other practical measures to address barriers to the provision of foreign legal services in Indonesia, in particular:

    (a) streamline the registration and renewal processes for foreign legal consultants;

    (b) reduce or remove the requirement for foreign legal consultants to undertake 120 hours of pro bono service per year as a condition of their registration;

    (c) remove barriers that prevent foreign legal consultants from moving between firms in Indonesia; and

    (d) remove the maximum cap and ratio requirements on the number of foreign legal consultants that can be employed by Indonesian law firms.

Recommendation 6

The Australian Government should encourage Indonesia to upgrade its commitments in relation to legal services under RCEP, and address key barriers to the provision of foreign legal services in Indonesia.

Human rights, labour and environmental standards

30. As noted in the Law Council's submission to the Southeast Asia FTA Modernisation Review, the Law Council is committed to promoting the implementation of Australia's

[16] Law Council of Australia, *General review of the Indonesia–Australia Comprehensive Economic Partnership Agreement* (above n 2).

international human rights obligations, as well as the recognition, application and justiciability of international human rights standards.[17]

31. The Law Council supports the recommendation of the Joint Standing Committee on Trade and Investment Growth that the Australian Government should seek to include human rights, labour and environmental chapters in its trade agreements that reflect, and where appropriate contain specific references to, relevant United Nations and International Labour Organization conventions and declarations to which Australia is a signatory.[18]

32. The Law Council notes that the Australian Government has accepted the recommendation of the Joint Standing Committee on Treaties that Australia continue to pursue the inclusion of human rights and environmental provisions within RCEP at the time of the first review.[19] The Law Council welcomes the Government's acceptance of this recommendation.

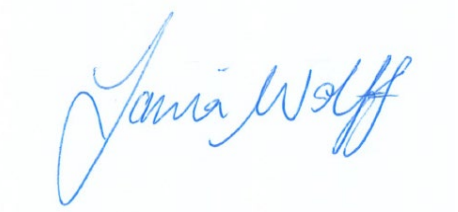
Recommendation 7

The Australian Government should act on its previous acceptance of JSCOT's recommendation, and seek to include specific references—and where appropriate, binding commitments—to relevant international standards and conventions regarding human rights, labour and the environment in RCEP as part of this Review.

Contact

33. If you require further information or clarification, please contact Dominic Harvey-Taylor [redacted]

Yours sincerely



Tania Wolff
President

[17] Law Council of Australia '[Policy Statement on Human Rights and the Legal Profession: Key principles and commitments]' (May 2017), cited in Law Council of Australia, *Southeast Asia Free Trade Agreements Modernisation Review* ([Submission], 22 January 2026) 14.

[18] Joint Standing Committee on Trade and Investment Growth, *[Strengthening Australia's Approach to Trade Negotiations]* (Report, April 2024) 51.

[19] Australian Government, *Australian Government response to the Joint Standing Committee on Treaties Report 196: Regional Comprehensive Economic Partnership Agreement* (tabled 16 February 2022) 3, [recommendation 3].