

Legal services and the UK-Australia trade deal

Anne Bodley and Catherine Brims argue that finalising a UK-Australia trade deal could benefit both countries' legal sectors



Anne Bodley / Catherine Brims

Anne Bodley is chair of the Anglo-Australasian Lawyers' Society (UK Chapter). Catherine Brims is an international policy adviser (North Asia and Pacific) at the Law Society



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As the UK seeks to build relationships with countries outside the EU following Brexit, representative bodies, legal regulators and professionals have been discussing how legal services will be reflected in new UK trade agreements. Trade negotiations between the UK and Australia began on 17 June 2020, and legal services were a key aspect of these discussions.

In July 2020, Stephen Denyer, the Law Society's head of strategic relationships, and Catherine Brims, the Law Society's international policy adviser for North Asia and the Pacific, participated in an Anglo-Australasian Lawyers' Society (UK Chapter) panel discussion on what a trade deal would mean for lawyers in both countries, alongside representatives from the Australian High Commission and lawyers from Australia and the UK.

The webinar was opened by the Australian High Commissioner to the UK, George Brandis QC, and included panellists who had contributed to a Law Society background paper that informed the negotiations.

The discussion gave an overview of the negotiations and potential benefits for legal services, sharing experiences of the panellists practising across borders, including using the Qualified Lawyers' Transfer scheme (QLTS).

The most significant barrier to trade in legal services between Australia and the UK is recognition of qualifications. There are several reasons why a lawyer may decide to requalify in another jurisdiction, but the process can be onerous and costly despite the countries' shared histories and doctrinal similarities, referred to by several panellists.

Specific recommendations from the panel included a review of the required coursework, long felt by practitioners to be excessive and including subjects sometimes of little relevance to those requalifying, particularly for requalification into the Australian legal profession. However, this does not mean that it will be addressed in the free trade agreement (FTA).

The panellists also thought there would be benefits to expanded visa and immigration options between the countries.

The Law Society said that although UK firms could establish offices in Australia, there was no equivalent structure in Australia to

the UK limited liability partnership (LLP).

There is an Australian form of limited liability partnership, but this is not a commonly used legal structure and does not provide the same limited liability structural advantages as the UK LLP.

AGREEMENT IN PRINCIPLE

With negotiations a priority for both countries, in June 2021, the UK and Australia revealed they had agreement in principle (AIP) on a comprehensive FTA.

The wide-reaching agreement showed the UK's reach as a sovereign trading nation post-Brexit, removing tariffs on all UK goods exported to Australia along with nearly all Australian exports to the UK, subject to 'rules of origin'.

The Law Society said the FTA can create opportunities for the two countries to work together to address the remaining barriers to cross-border practice. The UK government said it is committed to finalising the FTA, to liberalise services in a manner that "strengthens existing bilateral trade, deepens market access and makes it easier for services companies to trade and for professionals to operate in each other's economies".

The AIP reaffirms that UK and Australian lawyers can advise clients and provide arbitration, mediation and conciliation services in the other country using existing qualifications and titles.

It also foreshadows the importance of increased collaboration between accreditation and regulatory bodies to facilitate qualification recognition and to reduce costs and other barriers to cross-qualifying.

There are also increased opportunities for digital trade across all economic sectors while maintaining personal data protection standards.

Younger lawyers will also benefit from increased opportunities up to age 35 to work in the other's country for up to three years under an expanded Youth Mobility Scheme.

The FTA is seen as a gateway into the fast-growing Indo-Pacific region and as a boost to the UK's bid to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, one of the largest free trade areas in the world, covering £9tn of GDP and 11 Pacific nations, including Australia, Canada and Mexico. 🇬🇧