Chapter 2. The regulatory environment for services in Australia

Chapter 2 examines the measures affecting foreign investment and trade found in Australia's domestic regulatory regime. The chapter presents a short introduction of the OECD's Services Trade Restrictiveness Index (STRI) and a brief methodological overview of the project, and draws on the indices and database to benchmark Australia's regulations in strategic services sectors relative to those of other countries.

Barriers to foreign firms competing in Australia may restrict not only imports but also exports of services. Moreover, domestic consumers may be harmed by import barriers if domestic services sectors are not as competitive as they could be. This chapter reviews the main policy-induced barriers faced by foreign services providers in Australia, benchmarking the Australian regulatory environment relative to that of other similar economies in order to identify potential gains from aligning services policies to best-practice regulations. These measures are assessed using the OECD Services Trade Restrictiveness Index (STRI).

Introducing the OECD STRI

The OECD STRI is an evidence-based diagnostic tool that provides and up-to-date snapshot of regulations affecting services trade in 44 countries and 22 sectors, representing over 80% of global services trade (Box 2.1). The STRI suite of tools includes: i) a regulatory database compiled by the OECD and based on laws and regulations in force; ii) composite indices taking values between zero (complete openness to trade and investment) and one (total market closure to foreign services providers), that quantify the measures identified; and iii) an online, interactive policy simulator that allows the user to compare selected countries with one another and to simulate potential policy reforms. It captures barriers to services trade on a multilateral level, without taking into account free trade agreements or conditions applying on a preferential basis.

General regulatory environment

An open market for trade in services

Australia has a lower than average STRI score in 19 out of 22 sectors for 2017, in line with its favourable general regulatory environment. In Figure 2.1 the indices are separated into five policy areas, reflecting different types of restrictions and Modes of supply. Considering trade restrictions on a non-preferential basis, Australia still maintains some limitations to services trade and investment. For instance, foreign workers seeking to provide services in Australia on a temporary basis may only be recruited if granted visas specific to certain types of occupation, which are subject, among other things, to there being no suitably qualified and experienced Australian candidate available to take up the advertised position. The current analysis relies on the regulation in force in 2017 covered by the OECD STRI regulatory database. The visa considered at that time was the Temporary Work (Skilled) visa program (subclass 457), later abolished and replaced by the Temporary Skill Shortage (TSS) visa program (subclass 482) – see Box 2.2.[1]

Labour market tests (LMTs) apply both to skilled workers sponsored by a local business to fill certain occupations for a period of up to two or four years and to highly skilled workers employed for a shorter period to perform non-ongoing work.[2,3] By design, such labour market tests require that businesses look first to the domestic labour market before seeking to employ an overseas skilled worker. While they do not prevent businesses (both foreign and domestic) from accessing pools of foreign candidates, they do represent a barrier to services trade in that LMTs add an additional layer of regulatory burden in the recruitment of highly qualified foreign professionals for a limited period of time.[4,5]

Furthermore, the *Corporations Act 2001* requires that a least one board member must be resident in Australia. This requirement might constrain companies' choice when appointing directors and impede full control of their businesses, particularly for SMEs, which have smaller governing bodies.

Box 2.1. The OECD Services Trade Restrictiveness Index

The OECD STRI brings together information from more than 16 000 laws and regulations for 22 sectors in 44 countries. These are the 35 OECD countries and Brazil, the People's Republic of China, Colombia, Costa Rica, India, Indonesia, Lithuania, the Russian Federation, and South Africa. The STRI tools allow the identification of potential regulatory bottlenecks and the benchmarking of regulation to global best practices. The information collected in the regulatory database is summarised by composite indicators, with values ranging from zero (complete openness to trade and investment) to one (total market closure to foreign services providers). The regulatory information is organised under five policy areas.

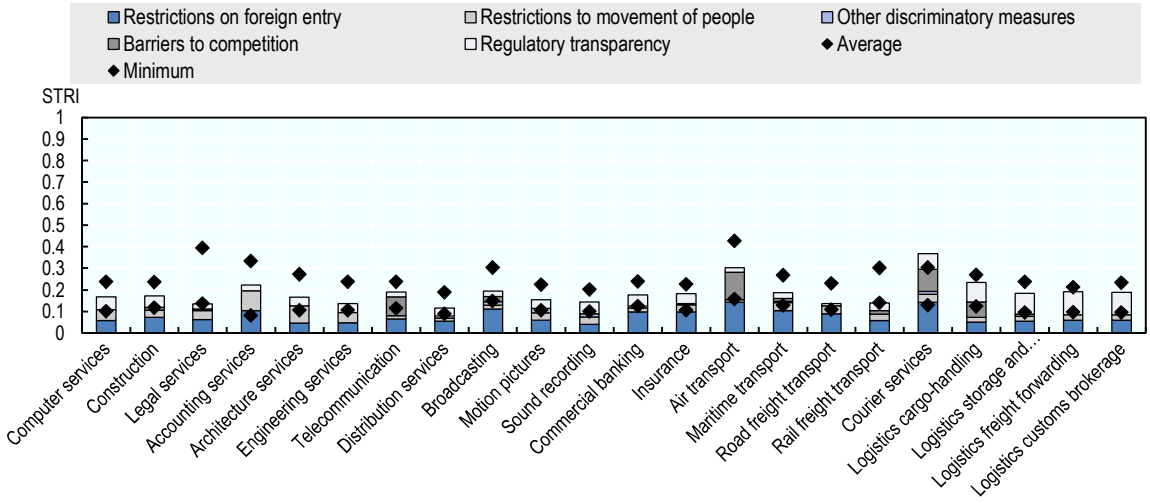
- *Restrictions to foreign entry*, including, *inter alia*, information on foreign equity caps, nationality and/or residency requirements for board of directors and managers, foreign investment screening, etc.
- *Restrictions on movement of people*, encompassing key restrictions to the movement of foreign services providers such as quotas, labour market tests, limitations to duration of stay, and lack of recognition of foreign qualifications.
- *Other discriminatory measures*, comprising discrimination of foreign services providers with respect to taxes, subsidies and public procurement participation.
- *Barriers to competition*, including information on anti-trust policy, government ownership of major services providers and whether these are exempt from competition law and price regulation.
- *Regulatory transparency*, recording information on consultation and publication of laws and regulation prior to entry into force, and excessive red tape in the form of burdensome administrative procedures related to the establishment of a company, obtaining a license or being granted a business visa.

While the first three policy areas cover measures that are typically related to market access and national treatment, the last three look at behind-the-border restrictions, largely found in domestic regulation. Within each policy area, a core set of measures is reported for all sectors; these are complemented by sector-specific measures reflecting the nature and market structure of each sector.

The OECD STRI regulatory database records laws and regulations enforced at the national level. However, in federal states, the regulation may vary considerably across states, provinces or regions. In such cases, one representative state is selected, based on its economic importance. In Australia, New South Wales has been chosen as the representative state.

Some foreign investments are also subject to screening in Australia. Under the *Foreign Acquisitions and Takeovers Act 1975* (FATA), screening broadly applies to natural persons as well as to foreign governments and entities, acquiring a substantial interest (at least 20%) in an Australian entity valued above AUD 261 million.[6] Approval is also needed for certain types of foreign investment involving business and land (commercial, agricultural, mining or production) acquisitions.[7] The Act empowers the Treasurer, advised by the Foreign Investment Review Board (FIRB), to decide, on a case-by-case basis, when a particular investment would be contrary to the national interest, based on certain criteria.[8] This form of discretion could possibly have a dissuasive impact on foreign investment by increasing the administrative burden and the level of uncertainty for potential foreign investors in services sectors. However, efforts are made to increase certainty for investors, for instance via publication of guidance and ministerial statements outlining factors that will be taken into account in considering the national interest.

Figure 2.1. Australia's STRI score, by sector and policy area



Note: The STRI takes values between zero and one, one being the most restrictive. The indices rely on the STRI regulatory database described in Box 2.1. Air transport and road freight cover only commercial establishments (with accompanying movement of people).
Source: OECD STRI database, 2017.

Business visa conditions also matter for the general competitiveness of a country. Australia has a range of visa options for short-term business visitors. Two business visa options are available for passport holders of a number of countries: the e-Visitor visa (subclass 651) or the Electronic Travel Authority visa (subclass 601).[9] These two visa types are processed in less than one day, applications can be lodged online free of charge, and allow short-term business visits (typically up to three months) to make general business enquiries, conduct negotiations, sign or review business contracts, etc. Other nationals can enter the country under the business stream of the Visitor visa (subclass 600).[10] While it is possible to submit an application online for the Visitor visa, visa processing time is between 9 and 20 days and the application procedure requires between 13 and 17 separate documents for a cost that varies between AUD 140 (USD 109) and AUD 1 020 (USD 797).

Australia does not impose on business visitors mandatory appointments for pre-approval prior to visa application, in-person biometric enrolment for Australia's major markets (e.g. China and India), or extensive original documentation. Australia also offers a range of long-validity visa options in key markets, as well as trials of priority consideration services. Asia-Pacific Economic Cooperation (APEC) Business Travellers generally receive a standard six year validity Australian business visitor visa.[11]

Further simplifying visa procedures by making them more readily available to a wider range of nationalities while still respecting risk management principles, can benefit foreign services providers and Australian companies) (Box 2.3).

Box 2.2. Changes to the Temporary Work (Skilled) visa (subclass 457)

On 18 April 2017, the Government announced a package of reforms to their immigration policy including the replacement of the Temporary Work (Skilled) visa (subclass 457 visa) by the Temporary Skill Shortage (TSS) visa. Implementation of these reforms commenced already on 19 April 2017 and was completed by March 2018. New applications, and pending applications lodged before April 2017, are affected by this reform.

The new TSS visa program consists of a Short-Term stream of up to two years (four years, where required under an international trade obligation), and a Medium-Term stream of up to four years. The Short-Term stream is designed to fill short-term skill gaps with foreign workers, on a temporary basis, and is renewable only once onshore (unless an international trade obligation applies), although subsequent renewals are possible via offshore application. The Medium- to Long-Term stream aims at addressing skill gaps over the medium to longer term. Renewal onshore is also possible for this stream and a permanent residence pathway is allowed after three years. There is also a Labour Agreement stream, for employers that wish to sponsor skilled overseas workers and have already entered into a labour agreement with the Australian Government. The main changes introduced by the reform are listed below:

- A consolidation of the occupation lists: The occupation lists underpinning the 457 visa program have been significantly condensed.[1] Both the Short-term Skilled Occupations List (STSOL), the Medium- and Long-term Strategic Skills List (MLTSSL), and the Regional Occupation List (ROL) considered for the new TSS visa, will be subject to regular review to ensure they reflect the skill needs of the Australian labour market.
- More stringent requirements for visa applicants: New applicants must have at least two years' work experience relevant to the particular occupation. Changes also include mandatory skills assessments for regulated occupations, a mandatory penal clearance certificate, and stricter English language requirements with increased English test scores.[2] The English Language Salary Exemption Threshold (ELSET), which exempted applicants whose salary was over AUD 96 400 from the English language requirement and intra-corporate transferees, has been removed.
- Changes affecting Australian sponsoring companies: Any Australian-based business wishing to bring in foreign workers must still apply for business sponsorship status with the Australian Department of Home Affairs (DoHA). Employers will continue to pay the Australian market salary rate and meet the Temporary Skilled Migration Income Threshold (TSMIT), set at AUD 53 900 as of 18 April 2017. Prospective sponsoring businesses will be subject to a discretionary non-discriminatory workforce test when there is evidence that employers are actively discriminating against Australian workers. Employers will continue to be subject to mandatory labour market testing, unless an international obligation applies.[3] Later in 2018, it is expected that sponsors no longer need to meet the current training benchmark requirements but will have to contribute to the new Skilling Australians Fund (SAF).

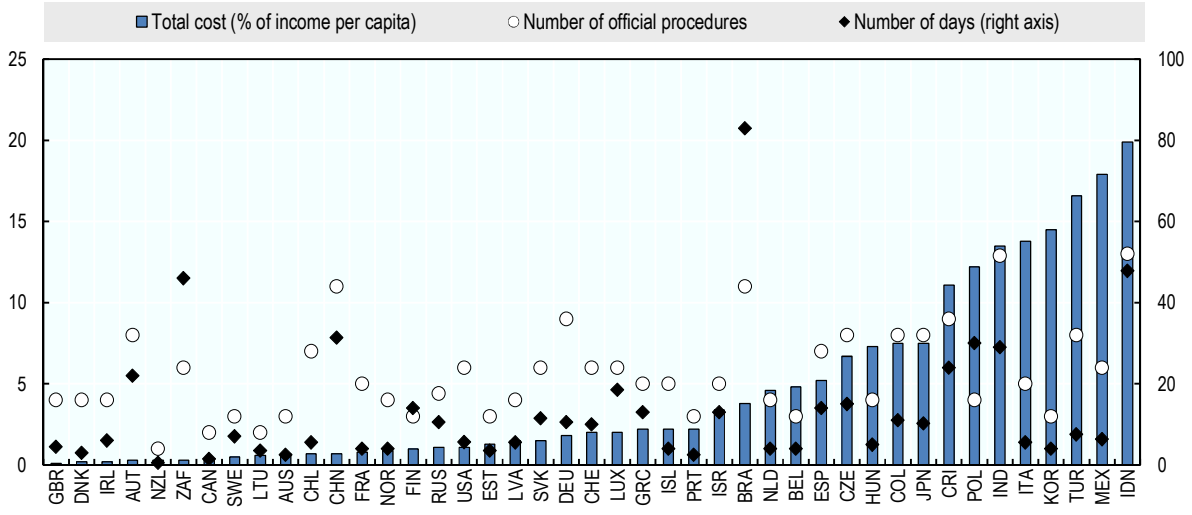
The new TSS visa program aims to support businesses addressing genuine skill shortages in their workforce whilst, at the same time, safeguarding Australian workers. The new TSS visa is part of the Government's reform package to strengthen the integrity and quality of Australia's temporary and permanent employer-sponsored skilled migration programs. The TSS visa foresees some additional flexibility for intra-corporate transfers and a Global Talent Scheme program for certain sponsors using this visa type. Nevertheless, the proposed Skilling Australians Fund levy, payable at the time the business sponsors an overseas skilled worker, may raise upfront costs for some businesses to employ highly qualified foreign professionals. In addition, smaller enterprises (with fewer than 5 employees and if the nominee is to be transferred to fill the position) are no longer able to sponsor overseas workers in a handful of occupations for a 457 visa program, while medium and larger firms still are.

1. In April 2017, "eligible skilled occupations" were pared down from 651 to 435. As of March 2018, the occupations list contains a total of 509 occupations: 242 on the STSOL, 208 on the MLTSSL, and 59 on the ROL. These three lists replace the former Consolidated Sponsored Occupation List, which underpinned the visa subclass 457 until April 2017. Over the last year, occupations have moved between lists, additional occupations have been included, while a few occupations have been removed. For more details on the current occupation list see: https://www.legislation.gov.au/Details/F2018L00302.
2. English proficiency requirements are not necessary for passport holders from Canada, Ireland, New Zealand, the United Kingdom and the United States, regardless from the salary. Exemptions are also made for diplomatic workers and if the applicant has been educated in English. However, the regulatory body may impose a higher English language standard than is required for visa purposes.
3. Under the World Trade Organisation's (WTO) General Agreement on Trade in Services (GATS), LMTs have been waived for independent executives, ICTs (such as Executives and Senior Managers) and skilled specialists who have been with their employer in Australia for at least two years. Under the MAFTA and AANZFTA LMT has been waived for all ICTs (Executive and Senior managers, and Specialists) and Independent executives. In ACIFTA, ChAFTA, KAFTA, JAEPA. SAFTA and TAFTA, Australia has also committed to waive LMT for contractual services suppliers, all ICTs, and Independent executives.

Australia has a relatively favourable business environment

When it comes to starting a company, few bureaucratic and legal steps are needed to incorporate and register a new business in Australia (Figure 2.2). It takes around 2.5 days to complete and lodge an application to register a proprietary company in Sydney, requiring on average only three official procedures at minimal cost.[12] Australia comes fourth on these metrics after New Zealand, Lithuania and Canada.

Figure 2.2. Ease of starting a business



Source: World Bank Doing Business indicators (2016).

This encouraging business environment is the product of Australia's various initiatives to reduce unnecessary red tape and facilitate business start-ups.[13] Recently, Australia established a one-stop shop, the Australian Business License Information Service (ABLIS), to facilitate business registration and establishment. ABLIS serves as a repository of government licences, permits, approvals, and registrations, codes of practice, standards and guidelines. It has proven very useful to new businesses – especially SMEs – that are spared from long interactions with multiple agencies, often

using different terminologies and relying on different procedures and registration forms (PC, 2015a). ABLIS also enables foreign companies unfamiliar with the various registration requirements to reduce compliance costs.

Box 2.3. Transforming Australia's visa system

Visa reform

The DoHA began with a public consultation on the design elements of the new visa system following a request from the Australian Government in 2017 to make Australia's visa system easier for visitors to understand and navigate, to streamline complex procedures and reduce maintenance costs. The consultation considered: a) reducing the number of visas from 99 at present to approximately ten visas; b) better delineating between temporary entry and long-term/permanent residence; c) the role that a period of provisional residence could play in enhancing the integrity of the visa system and easing the burden on taxpayers; and d) a visa system that would still support Australia as a competitive and attractive destination for temporary and longer-term entrants.

Service delivery reform

The DoHA has already begun work on improving visa services delivery, using the latest digital technologies, in order to respond to growing volumes of visa applications and travellers. The reform also aims at ensuring greater access to online visa products, which will come with the benefit of faster decision-making, and more equitable pricing.

In June 2017, the DoHA issued a market consultation paper to start the process of market engagement. This first consultation aimed to collect views and inputs from different stakeholders, including peak industry bodies, businesses and international partners, to investigate ways to create a more sustainable and efficient visa service delivery model and to explore how new technologies could help design a global digital visa-processing platform. The information gathered was used to inform the next stage of the market engagement process, namely a Request for Expressions of Interest: "Delivering visa services for Australia – Bundle 1" (September 2017). The market engagement will continue until the Government produces a visa simplification reform proposal. In the meantime, all the existing visa settings will remain in place, with no immediate impact for current visa applicants or holders.

The current visa system is quite complex with a large number of visa programs. A reduced number of visa types, with clear and well defined distinctions between temporary and permanent visas, would help Australia to continue attracting the best talents, which would increase business performance and global competitiveness.

Australia has a relatively liberal approach to cross-border data flows compared to some other OECD countries in that it facilitates cross-border disclosures of personal information while safeguarding privacy and security.[14] More broadly, the *Privacy Act 1988*, which includes thirteen *Australian Privacy Principles (APPs)*, sets out standards, rights and obligations for the collection, use and disclosure of personal information by APP entities. The APPs are legally binding principles although they are not prescriptive rules – i.e. each APP entity has the flexibility of tailoring the application of the APPs to its own business model. In particular, APP 8.1 and section 16C of the *Privacy Act 1988* deal with the disclosure of personal information to overseas recipients, and generally require the data sender to take "reasonable steps"' to ensure that the cross-border recipient does not breach the APPs in relation to the information.[15] For example, an APP entity could satisfy this requirement by entering into an enforceable contractual arrangement with the foreign entity. Such a contractual arrangement may include for instance a

requirement that the overseas recipient handles the personal information in accordance with the APPs (other than APP 1) and that it takes steps to ensure compliance with the APPs.[16]

In addition, section 16C of the *Privacy Act 1988* makes the APP entity accountable for breaches of the APPs by the overseas recipient. This mechanism is intended to help the data subject seek redress in Australia if the personal information is mishandled abroad. There are also some exceptions to APP 8.1 of taking "reasonable steps" and to the accountability principle in Section 16 C of the *Privacy Act 1988*. For instance, the exception applies if a) the data subject consents to cross-border disclosure after being duly informed; b) the cross-border data flow is authorised or required by an Australian law or a court/tribunal order; c) there are mechanisms that the individual can access to take action to enforce that protection of the law or binding scheme; d) the APP entity reasonably believes that the overseas recipient of the information is subject to a law, or binding scheme, that will protect the information in a way that substantially similar to the way in which the APPs protect personal information.

While some of these safeguards can entail additional compliance costs for firms (e.g. in cases requiring a specific enforceable contractual agreement), the data transfer mechanism also ensures that adequate safeguards remain in place for the protection of personal information. Proportionate privacy safeguards are important factors in promoting consumer trust in online transactions, and hence they are important for enabling cross-border trade in a digital environment.

Nonetheless, various countries restrict cross-border data flows by requiring the data to be stored, and in some instances processed, locally. Limitations to cross-border data flows add to companies' operational costs and can severely affect business models. As data transfer has become a key enabler of services exports in many other sectors, restricting the free flow of data across borders might also have considerable implications for trade, particularly in sectors where the collection and processing of personal data is essential (e.g. data flows accompanying international transactions or between MNE headquarters and local affiliates, or collection of client information for marketing purposes). Harmonising the standards and principles for cross-border data transfer would require co-ordinated action at the international level to ensure that inconsistencies among various regulatory frameworks are removed or at least reduced as much as possible.[17] Australia has already sought to facilitate cross-border information flows by including specific provisions in its FTAs. Recent FTAs already include significant provisions on cross-border information flows, disclosure of source codes, localisation of data and computing facilities and a set of factors facilitating e-commerce (e.g. electronic authentication, paperless trading, customs duties moratorium, and domestic regulatory frameworks for electronic transmissions).[18]

Sector specific regulation

Turning to sector-specific restrictions, Australia is more restrictive than the STRI average in *Courier and postal services* and close to the average in some *Logistics services*. *Transport* and *Professional services* are also among the most regulated sectors in Australia, with relatively restrictive STRI indicators compared to best practice, although still below average. These services are used throughout the manufacturing process and contribute to improving not only domestic production but also Australia's integration into global value chains. Efficient logistic, transport and courier services are essential for bringing intermediate inputs and final products to their final consumer in domestic or

foreign markets. Well-functioning transport and logistic services also help to improve the competitiveness of manufacturing sectors as well as mining and quarrying activities. For instance, in commodity-based industries, cost-effective bulk transport, specialised ports, along with insurance and merchanting services, are essential for bringing raw materials from the mines to their clients. Professional services also support the production value chain at different stages; firms need engineers during the development phase of highly technical and specialised products, and mines need specialised engineers to design and plan mining projects. Firms typically use legal advice and accounting services throughout the production process. These services enhance trade by establishing and enforcing contracts across borders and disseminating information on the financial state of prospective trading partners. Finance and communication play also an important role in coordinating production along the value chain.

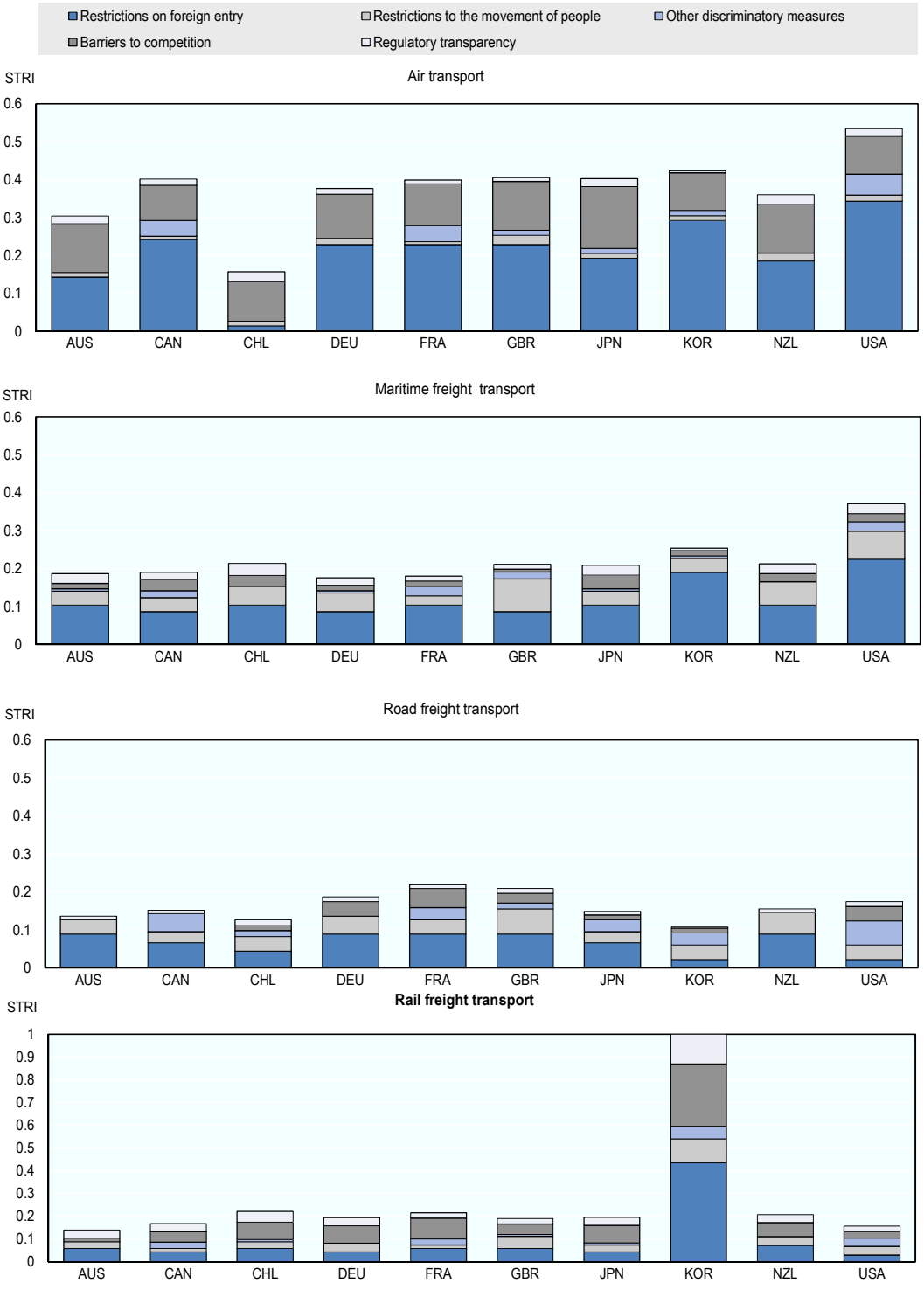
The following cross-country comparison of sector-specific regulations offers further insights into the degree of openness of Australia's regulatory environment for each of these services sectors, highlighting, where possible, best-practice regulation among peers. The countries chosen for the comparison share similar characteristics in terms of level of economic development, common language and institutional settings, the economic importance of services, remoteness and relevance of commodity-based markets.

Transport

Figure 2.3 reports the STRI indices for all modes of transport services for Australia and a selected number of countries. In *Air transport*, the level of restrictiveness is relatively high across the board, with the notable exception of Chile, which is considerably more open towards the establishment of foreign air carriers.[19] Australia's regulatory framework is the second most liberal. Contributing to the results are foreign equity limitations for both domestic and international traffic. Australia and New Zealand are the only two countries allowing full foreign ownership of domestic airlines for the purpose of carrying domestic cargoes and passengers.[20] However, Australia limits foreign participation to 49% in locally incorporated air carriers operating international traffic.[21] This means that foreign investors wanting to acquire an existing Australian international airline to operate international flights cannot own more than 49% of the share capital. This is a common restriction across OECD countries, with the exception of Japan and Chile, where foreign airlines can establish a fully foreign-owned company in the country and provide international transport services. The lease of foreign aircraft also remains subject to prior approval in Australia. Moreover, Australia's non-competitive slot allocation (entitlements to use a runway at a given time) in high demand airports favours incumbent air carriers over new entrants.[22] Non-competitive slot allocation schemes, coupled with the prohibition of commercial exchange of slots, are important entry barriers for new airlines, as they cannot access the basic airport infrastructure under the same conditions as historic operators.

In *Maritime freight transport*, Australia is relatively liberal compared to the other selected economies (Figure 2.3). Much of Australia's STRI indicator in this sector is due to restrictions to foreign entry. Only Australian-owned vessels (entirely or majority-owned), or vessels on demise charter to Australian-based operators, can be inscribed in the Australian General Shipping Register (AGSR) and fly the national flag.[23] Since only vessels inscribed in such a registry can perform unlimited coastal and intra-state trading, de facto these registration requirements prevent foreign-flagged and owned vessels from accessing this segment of the market, which is not negligible considering the length of Australian coastline.

Figure 2.3. STRI Transport services



Source: OECD STRI database (2017).

Vessel registration is relevant as it can be a way of enforcing restrictions to cabotage. Foreign-flagged and owned vessels are partially allowed in coastal trading if they have a temporary license.[24] Such licenses are valid for a limited authorised number of voyages in a 12-month period, allowing foreign vessels to hire foreign crew, conditional on complying with certain Australian employment conditions. A temporary license applicant is also subject to a number of other requirements, including a 'notice in response system'. The current cabotage regime effectively implies that Australian-owned and operated vessels, as well as domestic crews, enjoy priority status in many areas of operation. Therefore, shipping costs increase due to lack of competition with potential knock-on effects on industries relying on coastal trading.

In addition, the *Shipping Reform (Tax Incentives) Act 2012*, grants a more favourable taxation treatment to operators of Australian registered vessels.[25] Part X of the *Competition and Consumer Act 2010* grants an anti-trust exemption for international liner shipping services upon registration of the shipping agreement. Under these provisions, international liner shipping companies enjoy immunity from prosecution for some forms of anti-competitive conducts (e.g. exclusive dealing and price fixing).[26]

In *Road freight transport*, Australia is relatively liberal and roughly in line with the other countries considered in Figure 2.3.[27] Australia applies few barriers to commercial establishment and the accompanying movement of foreign professionals providing these services. Australia's STRI result largely reflects general regulations that apply equally across all sectors, with very few sector-specific restrictions. One of these is the non-recognition of foreign truck driving licenses for certain vehicles. For instance, New South Wales does not recognise foreign professional qualifications, and drivers of large freight vehicles must undergo a Heavy Vehicle Competency Based Assessment (HVCBA) with an Accredited Training Provider.

In *Rail freight transport*, Australia has a similar regulatory framework to those observed in the other countries. Korea is an exception, with a regulatory regime reflecting a de facto monopoly of the provision of rail freight transport services and no transit/access rights, which results in the sector being completely closed to foreign investment and trade. Conversely, Australia has very few barriers to the establishment of foreign rail undertakings and the movement of providers of rail freight transport services (e.g. freight train drivers, rolling stock technicians, machinists). Australia has an open-access regime, no barriers to entry and allows third parties (whether privative or state-owned undertakings) to use existing railway infrastructure in exchange for a regulated track access charge. Australia's very liberal approach towards rail freight transport services results in a very low score, almost exclusively due to horizontal regulation that applies to all sectors.

Logistics

Logistics services complement air cargo, shipping and trucking in serving the supply chain. Regarding international trade in goods, the process of bringing goods from factory gates across borders and to foreign markets relies heavily on the efficiency of auxiliary services and the speed of clearing customs procedures. The same holds true for agriculture and agro-food exports.

Australia's STRI indicators for the four logistics services covered by the STRI (cargo handling, storage and warehousing, freight forwarding and customs brokerage) are not low, but are on par with those observed for the other economies (Figure 2.4). Logistics services in Australia are affected by various administrative procedures related to

obtaining licenses/authorisations and business visas. For instance, only Regulated Air Cargo Agents (RACAs), holding an authorisation from the Department Infrastructure and Regional Development in the form of a regulatory notice, can clear, handle and arrange for the transport of international and domestic air cargo.

Customs brokers also need a local license to operate in Australia. Recent policy changes have increased fees and introduced new charges for obtaining, renewing and modifying custom broker licenses. In January 2016, the government introduced an application fee for custom broker's licenses of AUD 300 to AUD 1 300, depending on the specific broker category. Foreign customs brokers, whose foreign qualifications and licenses are not recognised in Australia, are particularly affected by the need to duplicate licensing requirements and pay increasingly burdensome and costly licensing procedures.

Opening a depot or a bonded warehouse in Australia also requires a specific license. An application fee was also recently introduced for a bonded warehouse license. The fee is about AUD 3 000, and is non-refundable if the application is not successful. These recent changes to licensing charges might raise costs for foreign but also domestic, and especially small, businesses, thereby complicating supply chain management.

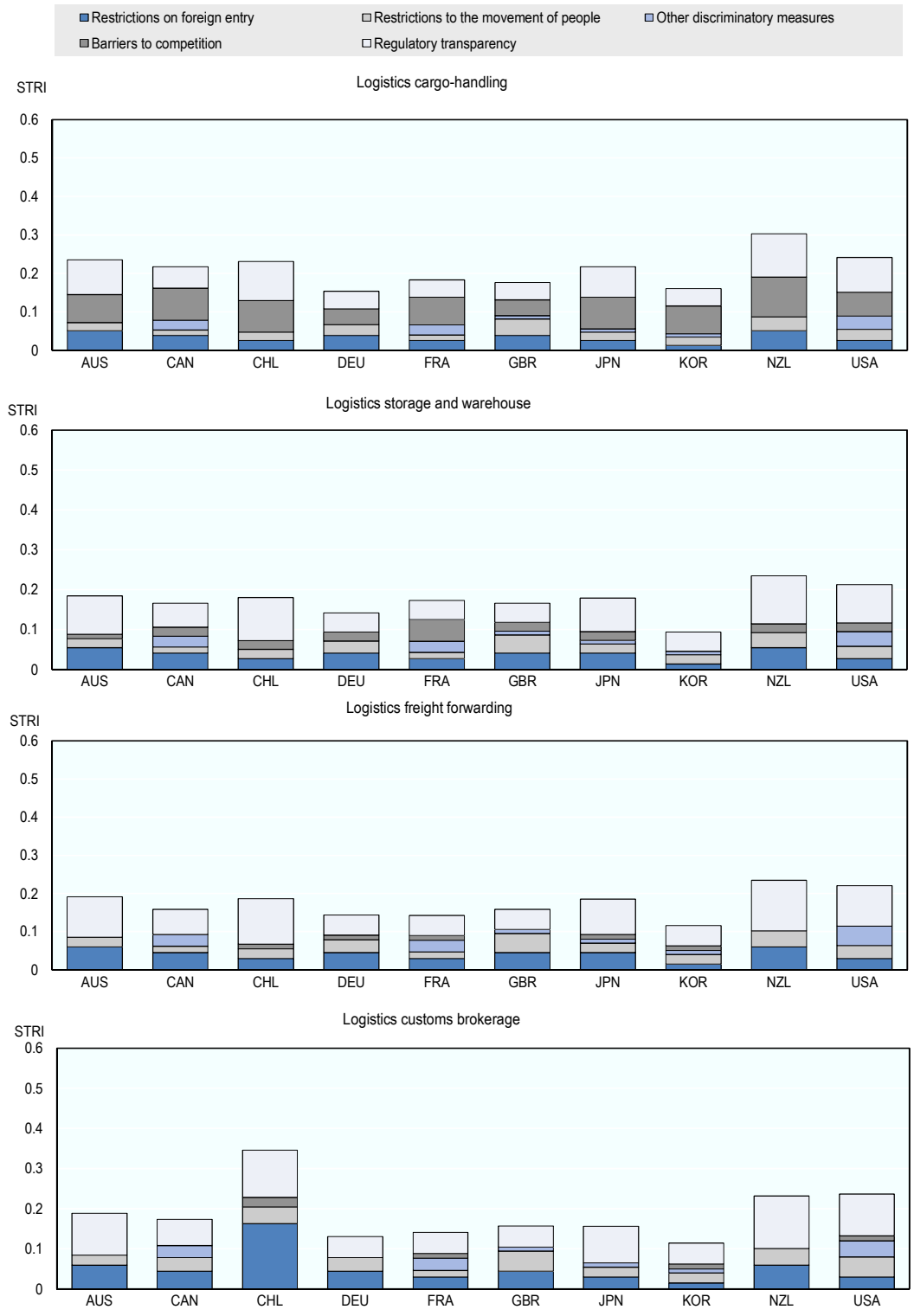
Postal and courier services

Greater use of modern information and communication technologies, and changes in consumer behaviour have led to a decline in demand for letters services, at least as means of communication. There is still however an important market for business-to-consumer and business-to-business letter mail, including hybrid mail, and delivery of printed materials, newspapers and periodicals. In addition, the rise of e-commerce has expanded parcel delivery, which, together with the increasing importance of global production networks and just-in-time delivery, requires fast and reliable shipments. Courier services, and in particular express delivery services, play a crucial part in modern logistics chains, creating strong complementarities and linkages between courier and transport services.

Postal and courier services have been opened in many countries to private companies, transitioning from statutory postal monopolies to regimes that are more competitive. This has not yet happened for some OECD countries and that explains the relative STRI scores on *postal and courier services* observed in Figure 2.5.

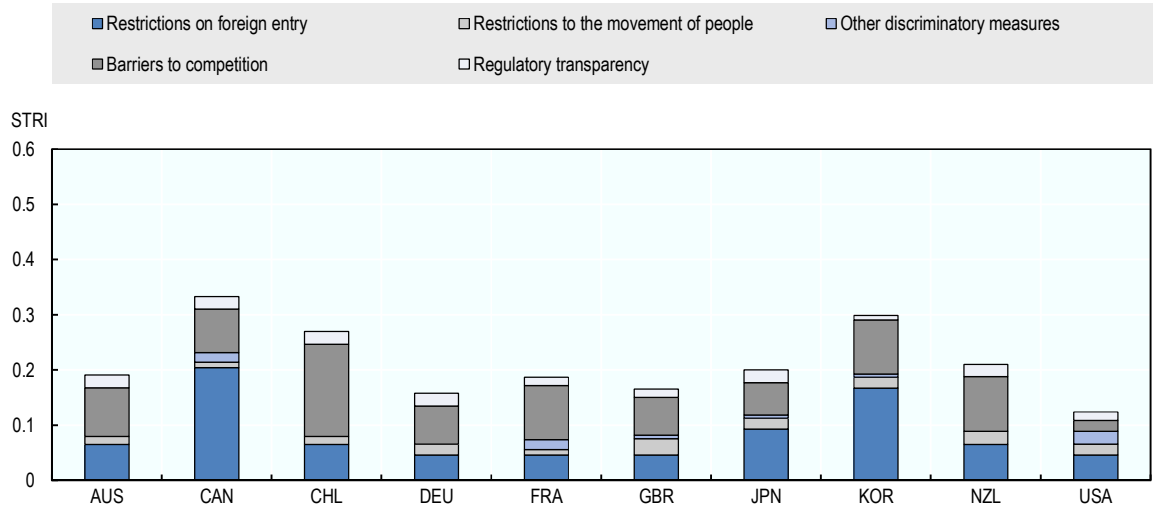
Australia's STRI score mainly reflects the presence of a state-owned postal service monopoly on letters and small packages weighing up to 250 g. In addition, the *Australian Postal Corporation Act 1989* partially exempts the government-owned enterprise Australia Post from applying the general competition law in relation to access to bulk mail services (mostly business related) and incoming overseas mail services. Nevertheless, Australia Post is still subject to the regulatory oversight of the Australian Competition and Consumer Commission (ACCC).[28] In addition, being the designated postal operator, Australia Post enjoys a more favourable tax treatment, for instance with respect to stamp duty tax, and is exempt from transport bans.

Figure 2.4. STRI Logistics services



Source: OECD STRI database, 2017.

Figure 2.5. STRI Postal and courier services



Source: OECD STRI database, 2017.

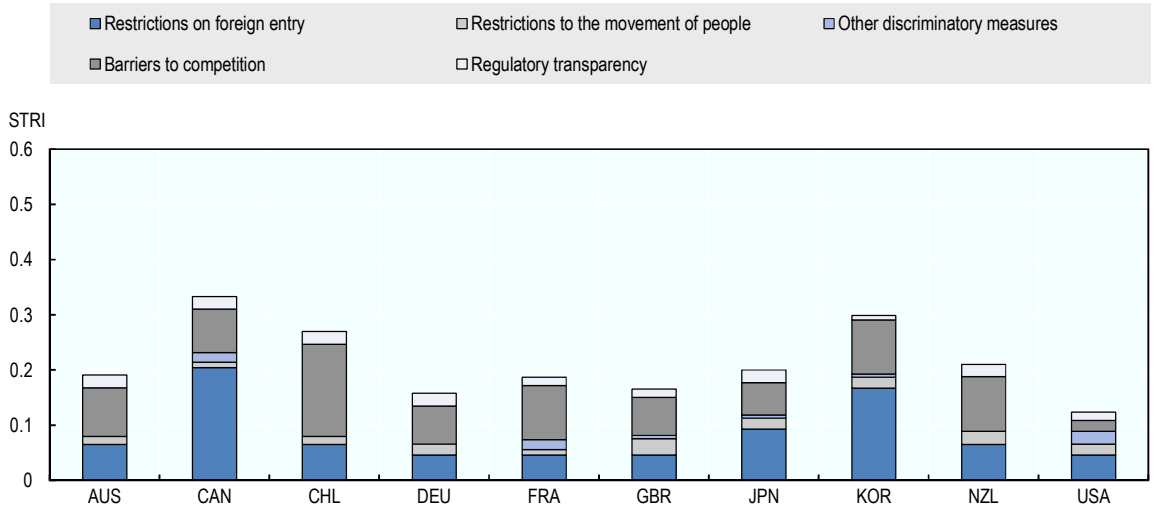
Telecommunication

Telecommunication services comprise voice and data transmission over fixed and mobile networks. Telecommunications are at the core of the information society and provide the network over which other digitized products are traded. Australia's score on the STRI in telecommunication services compared to some of its international peers is presented in Figure 2.6.

Australia's score mainly reflects restrictions on foreign entry and barriers to competition. Most of the restrictions on foreign entry are attributable to the general regulation related to investment screening, restrictions on board members and acquisition of land. In addition, the National Broadband Network (NBN) Corporation, a statutory state-owned wholesale only broadband network, has a strong market position in wholesale broadband services supply. Several of the other countries also have significant restrictions on foreign entry. Canada and Korea cap foreign equity at 20% and 49% respectively; the United States limits ownership by foreign entities in a common carrier radio station licensee to 20%; Japan and New Zealand limit foreign equity participation in a state-owned supplier and all the countries included in the chart, except Chile, screen foreign investment in telecommunications.

Barriers to competition reflect the extent to which best practice pro-competitive regulation is in place. In cases where one supplier or several suppliers jointly have significant non-transitionary market power regulated access to the incumbent's network may be necessary. The purpose of such regulation is to lower barriers to entry for newcomers. Imposing similar access regulation on small and new companies could be overly burdensome for them and offset the pro-competitive effect of access regulation. Symmetric access regulation on the NBN and small entrants contribute to Australia's STRI results in this sector.

Figure 2.6. STRI Telecommunication services



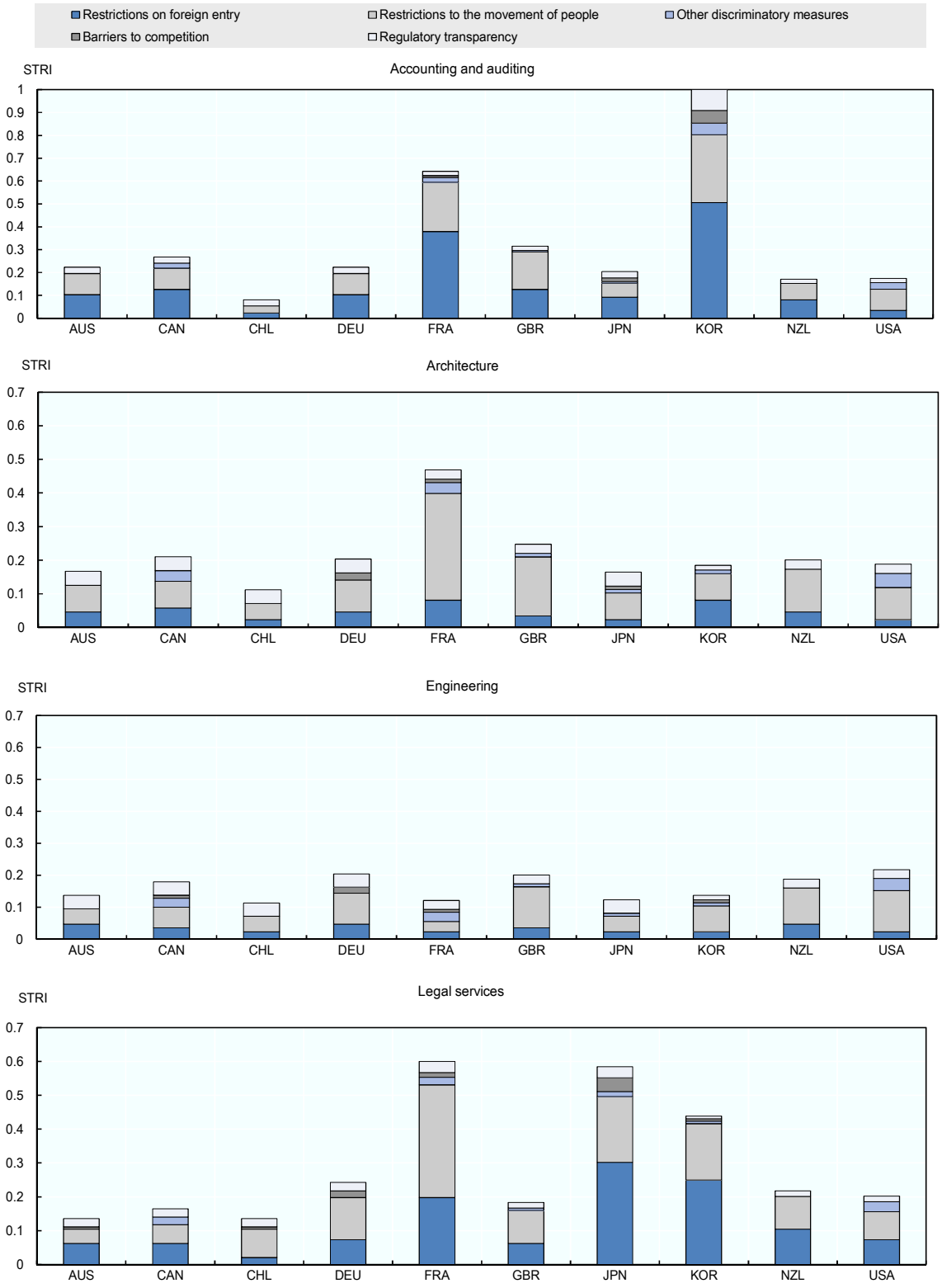
Source: OECD STRI database, 2017.

Professional services

Professional services are relatively open and well regulated (Figure 2.7). Professional services, such as accounting and auditing, legal services, architecture and engineering, are typically highly regulated through professional bodies and organisations that issue licenses and set standards against which they monitor the conduct of professional providers. Non-recognition of foreign qualifications, certificates and previous experience is still widespread and presents major obstacles to foreign professionals' mobility. Nevertheless, Australia encourages and facilitates recognition of qualifications through its FTAs, including by establishing Working Groups on Professional Services.

For *Auditing and accounting services*, Australia's STRI results are more or less on par with those observed in other selected economies (except Chile and Korea). Chile does not regulate accounting and auditing, while Korea is closed to foreign investment and trade.[29] Australia's score is due partly to horizontal regulation and partly to sector-specific measures related to licensing procedures and recognition of foreign qualifications. To qualify as an auditor in Australia, registration in the Australian Securities & Investments Commission (ASIC) is required. Foreign qualifications may be recognised by the ASIC on a case-by-case basis, but one year of local practical experience might be required. For accountants, membership in one of three major legally recognised professional accountancy bodies is compulsory to practice.[30] Only foreign accountants that are members of a selected number of eligible foreign professional bodies qualify as accredited accountants in Australia.[31] Foreign professionals that are members of non-recognised professional bodies must be assessed to ensure that they hold equivalent education, training and experience by one of the recognised Australian professional accounting bodies. This might add delays and limit market access for these foreign professionals. Further impediments to foreign investment in auditing businesses come from restrictions on board members and managers, whose majority need to be resident and registered auditors. In addition, foreign accountants and auditors cannot obtain limited or temporary licences to provide accountancy and auditing services in Australia. A fully locally recognised license is required.

Figure 2.7. STRI Professional services



Source: OECD STRI database, 2017.

Conversely, the criteria for recognition of foreign qualifications in *Architecture* are clear and transparent, although a local exam and local practice of one year are required to obtain a license in architecture. Foreign professionals may also provide services based on a temporary license. *Engineering* is not a regulated profession in Australian states except Queensland. Therefore, the STRI score for Australia in this sector reflects the general regulatory framework common to all other services sectors. Architecture and engineering services are less restrictively regulated than legal and accounting services.

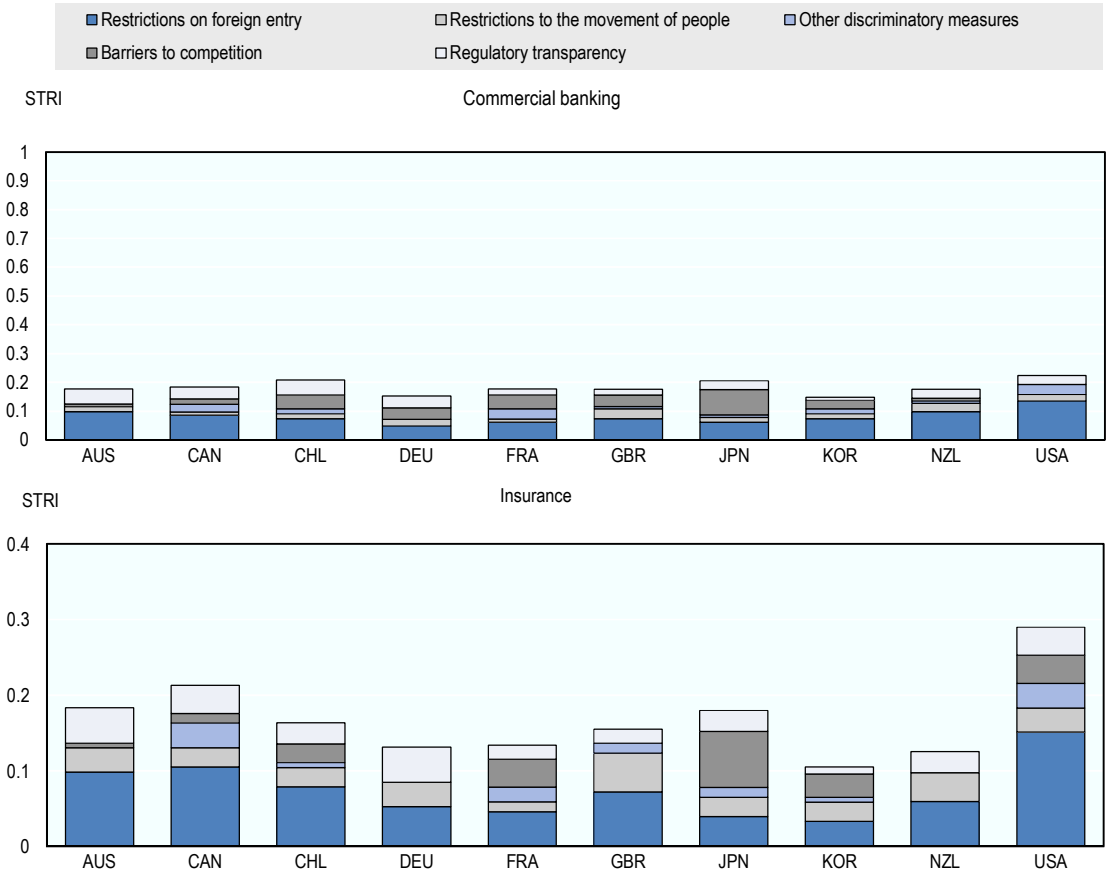
Australia has a relatively low STRI score for *Legal services*, compared to those of the selected countries reported in Figure 2.7. The provision of legal advice in Australia requires a license. More specifically, an Australian Practising Certificate (APC) is necessary to practice domestic law as a solicitor. The relevant professional body must issue this APC; for example, legal practitioners in New South Wales, must hold a current practising certificate issued by The Law Society of New South Wales (NSW). Other states have similar requirements.[32] Registration with the Law Society of New South Wales is required to practice the law of a foreign jurisdiction in NSW.[33] Requirements of local certificates and registrations also influence the composition of a law firm's board of directors. In firms practicing domestic law, at least one director must be a resident Australian legal practitioner holding an unrestricted practising certificate. If the law firm specialises in international or foreign law, then at least one of the directors has to be an Australian-registered foreign lawyer. Finally, Australia allows foreign lawyers to visit the country for a temporary period on a fly-in-fly-out basis, to give legal advice on foreign law. The foreign lawyer is not required to be registered in Australia or to have an office in the state or becoming a partner/director of a law firm. Competition between lawyers is influenced by regulations prescribing specific fees that can be charged for the provision of certain types of legal services.

Financial services

Financial services are one of the most heavily regulated sectors around the world. In this environment, it is difficult to disentangle prudential regulations and consumer protection measures from trade-restrictive policies. In many cases, prudential regulation and trade-relevant policies can overlap, requiring the GATS and preferential trade agreements to include a "prudential carve-out".[34] The OECD STRI for financial services comprises commercial banking and insurance services as depicted in Figure 2.8.[35]

Australia's STRI in *Commercial banking services* is among the highest in the group of ten benchmark economies. The score largely reflects restrictions to foreign entry and barriers related to regulatory transparency. Australia's main restrictions on foreign entry relate to cross-border trade in commercial banking services. According to a letter of clarification by the Australian Prudential Regulation Authority (APRA) on offshore banking operations, foreign banks are only allowed to conduct business with Australian counterparts from their offshore offices, if the foreign bank is not actively soliciting business from retail customers in Australia.[36,37] This condition imposes a restriction on the operations of foreign banks, though a common one among OECD economies, as it implies that cross-border trade in some core banking services is virtually closed for foreign companies without a local establishment in Australia.

Figure 2.8. STRI Financial services



Source: OECD STRI database, 2017.

Australia's regulation in the insurance sector is only slightly more restrictive than for commercial banking services. Nevertheless, Australia's STRI results in *insurance services* are among the three most restrictive economies of the comparative sample. Among the main restrictions to foreign entry, Australia allows cross-border supply only for the reinsurance segment, and for marine, aviation and transport (MAT) insurance services. Moreover, while foreign branches are allowed for non-life insurance, only branches of foreign companies established in New Zealand, the United States, Japan, Korea and the People's Republic of China (hereafter "China") are authorised to offer life insurance services in Australia. Companies from all other countries have to establish a local affiliate in Australia. In addition, APRA imposes a residency requirement for board members and senior managers of Australian insurance companies. Appointed actuaries must be resident in Australia and the recognition of qualifications acquired abroad is limited. Mutual recognition agreements allowing for simplified accession procedures after six months of local practise exist for members of the Actuarial Society of South Africa (ASSA), Canadian Institute of Actuaries (CIA), Casualty Actuarial Society (CAS), Institute of Actuaries of India (IAI), Institute of Actuaries of Japan (IAJ), Institute and Faculty of Actuaries (IFoA), New Zealand Society of Actuaries (NZSA), Society of Actuaries (SoA) and Society of Actuaries in Ireland (SAI). Otherwise, foreign qualified

actuaries are required to practise in Australia or New Zealand for at least three years before being eligible for accredited membership in the Actuaries Institute.

Several policies affect commercial banking and insurance services simultaneously. In a market like the financial services sector with relatively high concentration rates, the enforcement of competition could not be stressed more.[38] Australia has good pro-competition practices in the sector, but the full independence of the supervisory authority could be jeopardised by its discretionary funding. According to the *Australian Prudential Regulation Authority Act 1998*, APRA is funded by levies, which must be paid by businesses in the financial services sector. However, the size of these levies in each financial year is determined by government discretion.

According to the *Financial Sector (Shareholdings) Act 1998* a person can generally not own more than 15% of a financial sector company, irrespective of nationality or residence.[39] Moreover, the four pillars policy of the Australian Government requires that no mergers or takeovers should occur among the four largest banks in the country (Note 38). Notwithstanding the detrimental effect of anti-competitive regulation, there is an important trade-off between competition in the banking sector and the corresponding risk of financial instability (OECD, 2011; Ratnovski, 2013). Analysis of this trade-off is clearly outside the scope of this study. Nevertheless, best practice suggests that the assessment of mergers and acquisitions should be within the realm of an independent competition or supervisory authority and not in the hands of governments.

APRA has established a new restricted authorised-deposit taking license in Australia, which will be open to new entrants and provide entities two years to integrate themselves in the market before requiring a full banking licence. Nevertheless, further progress in the area of regulatory transparency could be made by streamlining the requirements associated with the licensing procedures and by reducing related uncertainties. No maximum duration exists for decisions on license applications. In addition, there is no regulatory requirement to inform applicants about reasons for the denial of licences. These limitations do not only complicate entry of new competitors, potentially creating rents for incumbent firms, but also represent a possibility for discretionary treatment of foreign suppliers applying for a license to provide services in Australia.

Recently, the government announced its intention to roll out a comprehensive package of reforms to strengthen accountability and competition of the banking system. The package will include, *inter alia*, measures aimed to bolster the surveillance and enforcement powers of the banking regulator (APRA), streamline procedures related to financial disputes, and establish an enhanced regulatory sandbox ("trial environment") to address barriers to innovation in the financial market. The government has also requested an inquiry into the state of competition of the financial system, due in July 2018. This initiative could result in greater benefits to Australian consumers, but even more so to Australian businesses, whose productivity and international competitiveness could be boosted by having access to a wider variety of financial products of better quality and at lower prices.

Businesses also mentioned the importance of the Asia Region Funds Passport, which has been discussed through the APEC Finance Ministers' Process (FMP) in recent years and is currently being implemented in Australia, Japan, New Zealand, Korea and Thailand. This initiative is supposed to harmonise regulatory requirements for funds management in participating economies, in order to facilitate cross-border offerings of retail funds. It aims to increase market potential for fund managers in the region, while at the same benefiting investors by increasing choice of investment funds.

Concluding remarks

This chapter demonstrates that Australia's regulatory framework for services is a source of strength for the performance of Australian services in the global economy. After a short discussion of horizontal policies, for example with respect to foreign investment screening, temporary movement of people, cross-border data flows or company registration requirements, it delineates sector-specific regulation for transport services, logistics, postal and courier services, telecommunications, professional services and financial services. The chapter highlights how the regulatory environment for Australian services sectors is generally favourable, efficient and pro-competitive, compared to its peers. However, in each of these sectors there is scope for further improvement. A strategic national approach to targeted regulatory reforms can sustain and strengthen the competitiveness of Australian services.

The next chapter presents Australia's services advantages, considers "pull" factors by delving deeper into the geographical dimension of Australia's services trade (including a benchmarking of export performance) and presents a portrait of Australian businesses engaging in cross-border services exports.

Notes

1. Under the 457 visa, Labour Market Tests (LMTs) were not required for lower skilled occupations (i.e. not ANZSCO level 1 or 2) if the foreign worker being nominated for any given occupation was citizen/national of a group of economies consistent with Australia's international trade obligations (including WTO GATS and FTA commitments); or if the foreign worker was nominated for executive or senior management occupations. Under the 482 visa, all occupations, independently of their skill level, are subject to mandatory LMTs, unless international trade obligations apply.

2. Sponsored foreign workers, with the required skills to fill a position nominated by an approved business, were previously eligible for a Temporary Work (Skilled) visa program (subclass 457). Since April 2017, a foreign worker can stay up to two years, if the occupation is on the Short-term Skilled Occupations List (STSOL), up to four years if the occupation is on the Medium and Long-term Strategic Skills List (MLTSSL), or a period required under an international trade agreement. The foreign worker must have been sponsored and nominated by a business approved by the Department of Immigration and Border Protection (DIBP), met certain English language and skill requirements and any registration/licensing obligations for the nominated occupation (specific occupations might also require a skills assessment). Under the 457 visa, an approved business had to prove that the position had been advertised in Australia for a period set out in a legislative instrument (for applications lodged before June 2018, the period was set to 12 months). Furthermore, 457 visa holders could have worked only for the sponsoring employer, except for general managers (and some medical practitioners), who could have worked, in their nominated position for employers other than their sponsors. For the purpose of the OECD STRI, the 457 visa was considered the relevant visa type in 2017 for all services providers planning to work in Australia on a temporary basis. Box 2.2 explains what has changed with the new TSS visa program.

3. Highly skilled workers, such as managers, professionals and technicians, are also eligible for a Temporary Work (Short Stay Specialist) visa (subclass 400), valid for three months (six months in limited circumstances). This visa requires a letter of job offer or an employment contract, specifying the details of the position, duration, role and reason for recruitment. Freelance workers are eligible for this visa too. The application process requires also

evidence that the work or activity will not have an adverse impact on Australian workers. Unlike the 457 visa, the 400 visa is only valid for non-ongoing work.

4. The OECD STRI does not cover employment in local firms, but only temporary movement of professional services providers (e.g. trade through Mode 4). Labour market legislation still applies in countries where there is no distinction in the law between employees and services suppliers.

5. For instance, LMTs foreseen under the TSS visa program require sponsors to provide evidence that a suitably qualified Australian worker is not available for the nominated position. Such evidence would include at least two advertisements in English of the position in Australia, placed within six months for minimum period of 21 days, providing adequate information about the job, the employer and the pay. In addition, sponsoring businesses will be required to pay in full a SAF levy, at nomination stage, per application and covering the entire visa period.

6. The threshold above which screening is required for acquisitions by all foreign investors was recently raised to AUD 261 million, and for some FTA partners to AUD 1 134 million (indexed annually) for acquisitions in non-sensitive business. There is also an AUD 57 million threshold for investment in agribusinesses, and an AUD 15 million (cumulative) threshold for agricultural land, which is not indexed. Sensitive sectors are media; telecommunications; transport; defence and military related industries; encryption and securities technologies and communications systems; extraction of uranium or plutonium; or the operation of nuclear facilities. Investment by foreign state-owned enterprises is subject to screening irrespective of the value. However, notification requirements for green-field investment have been lifted.

7. As part of the revision of the 2015 foreign investment regime, the thresholds above which screening was required for acquiring agricultural land and investing in agro-business were significantly raised. Nonetheless, acquisition of land and real estate by foreigners is still subject to government authorisation. In the Australian Government budget 2017-18, the government will streamline the commercial fee framework, introducing a new business exemption certificate to allow foreign investors to attain pre-approval for multiple investments in the one application in lieu of applying separately for each investment. This would reduce the compliance cost of foreign investors planning to open up multiple branches in Australia.

8. In doing so, the government considers factors such as the impact on competition and the firm's market share, particularly in sensitive sectors (including investment in media and telecommunications, transport, and defence), and whether the investment brings economic benefits. The investment is also assessed to establish it does not raise national security issues. National security considerations are important to protect Australia's strategic and security interests, but certain other criteria might shield large local firms, with market power, from foreign competition.

9. See https://www.homeaffairs.gov.au/trav/visa-1/651-#tab-content-1 and https://www.homeaffairs.gov.au/trav/visa-1/601-#tab-content-1.

10. Australia's Visitor visa generally provides three months stay per visit (multiple entry) and the visa validity may range from 12 months, to 3 or 10 years (depending on individual circumstances).

11. https://www.homeaffairs.gov.au/busi/trav/apec/for-foreign-applicants#.

12. An entrepreneur has to apply for registration as an Australian company and obtain a certificate of incorporation with an Australian Company Number. Certain companies are also required to register with the Australian Tax Office to obtain an Australian Business Number.

There is also a registration requirement with an insurance agency for worker compensation insurance if the new business has or plans to hire employees.

13. The Federal Government created an Office of Best Practise Regulation in 2007, issuing the Australian Government Guide to Regulation. As a result all regulatory costs, whether arising from new regulations or changes to existing regulation, have to be quantified using the Regulatory Burden Measurement framework. This framework takes into account compliance costs, delay costs and administrative costs. See Australian Government, Department of the Prime Minister and Cabinet Office of Best Practice Regulation (2016).

14. The term "data", here and in the following, refers to "personal data" or "personal information" (i.e. information that identifies or could reasonably identify the data subject. Some types of personal information are "sensitive information" (e.g. health records, race or ethnicity, religious beliefs, political opinions, etc.) and subject to a higher degree of protection. In this specific context "data sender" refers to domestic Government agencies, all private sector and non-profit organisations with annual turnover above AUD 3 million, all private health service providers and some small businesses, collectively referred to as "APP entities", as defined in s 6(1) of the *Privacy Act 1998*.

15. The APPs, including APP 8, are similar to the *OECD Guidelines on the Protection of Privacy and Trans-border Flows of Personal Data* (OECD, 2015) in that they promote the free flow of personal data when the recipient country (OECD Member Country or not) substantially observes the APPs, or when there are sufficient private sector safeguards put in place by the data sender to ensure a level of protection consistent with the APPs.

16. "Reasonable steps" under APP 8 depend on factors including the sensitivity of the personal information, the relationship between the disclosing and recipient entities and existing safeguards implemented by the recipient. See OAIC's Privacy business resource 8: Sending personal information overseas.

17. Recent initiatives include an APEC project on the Harmonisation of Standards (HoSt) for data flows across APEC economies, bringing together national standards bodies, SMEs, governments and regulators to encourage APEC member economies to participate in developing and adopting international cross-border data transfer standards. Australia launched the project at the November 2015 APEC HoST workshop, which produced a set of recommendations for developing and implementing proposed standards (APEC 2015). In November 2017, Australia announced its intention to participate in the APEC Cross Border Privacy Rules (CBPR) system, which aims to build consumer, business and regulator trust in cross border flows of personal information by asking participating businesses to develop and implement data privacy policies consistent with the APEC Privacy Framework. The latter is consistent with the core values of the OECD's *Guidelines on the Protection of Privacy and Trans-Border Flows of Personal Data* (OECD, 2015).

18. More progressive agreements such as the amended SAFTA and the CPTPP cover a wider range of provisions aimed at enabling digital trade. See also Australia's International Cyber Engagement Strategy, which outlines provisions in Australia's FTAs on digital trade: http://dfat.gov.au/international-relations/themes/cyber-affairs/aices/chapters/part_1_digital_trade.html.

19. Air transport services include passenger and cargo traffic carried domestically or internationally. Moreover, the OECD STRI indices for air and road transport services cover commercial establishment abroad only, as cross-border trade in these sectors is typically addressed through bilateral agreements.

20. A special regime operates for Qantas, a privately owned flag carrier, where foreign investors may only own up to 49% of its equity shares. In 2014, an amendment to the *Qantas Sales Act 1992* lifted the foreign equity cap was lifted from 35% to 49% in an attempt to facilitate

access to foreign capital and address the company's outstanding losses; nevertheless, the majority of the national carrier remains domestically-owned.

21. This is without prejudice to different conditions that might apply through bilateral air services agreements to which Australia is a party.

22. For instance, at Sydney airport, landing and take-off slots are allocated through grandfathering, e.g. the airport slot manager must offer a slot series to an existing operator with historical precedence. Only then is the remaining slot pool allocated to new entrants. This practice is not unique to the Australian context, but rather common in countries with congested airports. In 2017, the Australian government announced its intention to build a second international airport in Sydney, to be completed by 2026, which could help address congestion and inefficiencies arising from the increasing number of international flights, but also allocate new slots in a way that provides more opportunities for new entrants to compete.

23. The Australian International Shipping Register (AISR) provides a competitive registration alternative for Australian ship-owners and operators who predominantly engage in international trade. While registration in the AISR grants access to a more favourable taxation regime (including income tax exemption and mixed crewing arrangements), it is mainly intended for international trade and does not grant unrestricted access to coastal or intra-state trading. Vessels registered in the AISR can, however, apply for temporary licenses.

24. Australia's current cabotage system is organised around a 3-tier licensing regime, comprising General Licenses, granting unrestricted coastal trading for a period of five years to Australian vessels registered in the AGSR; Temporary Licenses, available to foreign-flagged vessels and those registered in the AISR, restricted to a specified number of authorised routes over a 12-month period, and subject to more stringent requirements; and Emergency Licenses, allowing coastal trading for a period no longer than 30 days and design to respond to national emergencies.

25. In particular, the *Shipping Reform (Tax Incentives) Act 2012* grants a Shipping Exempt Income certificate to operators of Australian-registered vessels that comply with a set of conditions. Eligible certified vessels can also claim additional tax rebates. For instance, shipping companies employing Australian resident seafarers for overseas voyages on any certified vessel can benefit from a refundable tax offset for salaries, wages and allowances paid to such seafarers. Moreover, Australian corporate owners of Australian registered eligible vessels can claim accelerated depreciation and rollover relief, while foreign owners of eligible vessels leased under a bareboat or demise charter to an Australian resident company are eligible for an exemption from royalty withholding tax. The conditions attached to these benefits clearly favour Australian (majority-owned and operated) vessels with obvious impacts on vessels owned and operated by foreign shipping companies.

26. *Part X of the Competition and Consumer Act 2010* ensures that Australian exporters and importers have continued access to frequent and reliable liner cargo shipping services at internationally competitive freight rates. Nevertheless, these provisions still limit competition by allowing some forms of cartel. Moreover, every liner shipping company providing international liner cargo shipping services to or from Australia must have an agent in Australia.

27. The OECD STRI for Road Freight Transport does not include international traffic, which is typically covered by bilateral agreements, and captures only barriers to commercial establishment and accompanying movement of natural persons providing road freight transport services.

28. In particular, the ACCC assesses notifications about prices for Australia Post's reserved services, deals with disputes about the terms and conditions for its bulk mail services, and monitors Australia Post for cross-subsidies between reserved and non-reserved services.

29. Korea requires a local license to provide services and to own shares in auditing or accounting firms. To obtain a license auditors and accountants must have the required qualification from a Korean university. Recognition of foreign qualification is only available to FTA partners, and there is no temporary licensing in place, which means that the market is effectively closed to third country services providers.

30. Australia's three recognised professional accounting bodies are the Certified Public Accountants Australia (CPAA); the Institute of Chartered Accountants in Australia (ICAA) – recently merged with the New Zealand Institute of Chartered Accountants (NZICA) to create CAANZ; and the Institute of Public Accountants.

31. The professional bodies recognised in Australia are The American Institute of Certified Public Accountants; Association of Certified Chartered Accountants (United Kingdom); Canadian Institute of Chartered Accountants; Institute of Chartered Accountants of New Zealand; The Institute of Chartered Accountants in England and Wales; The Institute of Chartered Accountants in Ireland; and The Institute of Chartered Accountants of Scotland. Members of the three Australian accounting bodies are also eligible, through a Memorandum of Understanding (MoU) and a Memorandum of Cooperation (MoC), for membership in other professional bodies (e.g. the Institute of Chartered Accountants India (ICAI), the American Institute of Certified Public Accountants (AICPA), the Chinese Institute of Certified Public Accountants (CICPA), Institute of Certified Public Accountants of Singapore (ICPAS) and the Hong Kong Institute of Certified Public Accountants (HKCPA)).

32. The APC is not sufficient for representation at a court in New South Wales. For this purpose, membership in the bar association is required and additional restrictions apply.

33. Overseas qualified lawyers can apply for a compliance certificate to be admitted to the NSW Legal Profession Admission Board and therefore obtain an APC. In NSW, foreign law can be practiced once an Australian lawyer obtains an Australian Registration Certificate (ARC) (becoming Australian registered foreign lawyers). Foreign lawyers can also practice foreign law in Australia without necessarily holding the ARC if they are not based in Australia and only fly-in for less than 90 days per year.

34. The OECD STRI recognises that prudential rules and standards are set by national governments, regulators and international financial standard-setting bodies, to ensure the safety and integrity of financial institutions. Whether prudential regulation is in place to serve other policy objectives is beyond the scope of the STRI, which instead aims at capturing, in a comparable manner, the restrictive side of regulation in terms of additional impediments posed to foreign financial services providers.

35. The OECD STRI focuses only on the core activities of the financial services sector. Commercial banking services include deposit-taking, lending and payment services. Regulation of investment banking, non-bank investment and asset management is not taken into account. Similarly, the insurance sector only covers the services of life and non-life insurance, reinsurance and retrocession, and the auxiliary services of insurance intermediation and actuaries. Regulation of health insurance and pensions is outside of the scope of the STRI. This section focuses on the segments of financial services covered by the STRI database.

36. According to Article 5 of the *Banking Act 1959*, banking business includes both deposit-taking and lending activities.

37. For details, see: http://www.apra.gov.au/adi/Publications/Pages/Letter-to-ADIs-Operation-of-foreign-banks-in-Australia.aspx; last accessed 11 October 2017.

38. Australia's banking sector is relatively concentrated, particularly for some market segments, where the four biggest banks (Commonwealth Bank of Australia, Westpac Banking Corp, ANZ Banking Group and National Australia Bank) together control 80% of the country's lending market, which arguably reduces competitive pressure in the sector. The Government has recently commissioned an inquiry into the state of competition in the financial system, with the objective of improving consumer outcomes, productivity and international competitiveness of Australian financial services. A previous financial system inquiry, released in 2015 found, inter alia, that the banking sector was sufficiently competitive, despite the high level concentration, but that it needed to be reassessed regularly. The inquiry also stressed the importance of having stronger, independent and accountable regulators.

39. If the transaction involves a foreign investor then it must also be considered by the Treasurer under the *Foreign* Acquisitions *and Takeovers Act*, to ensure that it is not contrary to the national interest, and if the acquisition regards an Authorised Deposit-Taking Institution (ADI), the approval of APRA under the *Banking Act* is also required.

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