

24 July 2015



The Committee Secretary
Joint Standing Committee on Treaties
PO Box 6021
Parliament House
CANBERRA ACT 2600

By email: jsct@aph.gov.au

Dear Secretary

China-Australia Free Trade Agreement (ChAFTA)

I refer to the invitation for interested parties to make submissions to the inquiry by the Joint Standing Committee on Treaties (JSCOT) on ChAFTA.

While welcoming the opportunity to make submissions on ChAFTA, the Law Council of Australia notes that submissions are being sought on a free trade agreement that has already been agreed between the Government of the People's Republic of China and the Australian Government. Accordingly, there would seem to be little opportunity, if any, for any changes to be made to the agreement. In this context, we refer to concerns raised by the Law Council in its submission dated 5 March 2015 to the Inquiry by the Senate Committee on Foreign Affairs, Defence and Trade into the Commonwealth's Treat-Making Process.

It would seem that the intention of the JSCOT Inquiry, is to consider whether the ChAFTA should be ratified, as opposed to re-opening negotiations and making amendments to the agreement. The Law Council does not oppose ratification of ChAFTA but rather, supports its ratification for the benefits it may bring to Australia, including enhancing Australia's close relationship with the People's Republic of China.

The commitment by China to include the foreign lawyer legal services market access provisions that apply in the PFTZ into ChAFTA is welcome. A right for foreign law firms to enter into meaningful forms of commercial association with local law firms in China, which the PFTZ provides, continues to be an area of interest to the Australian legal profession. The positive elements of the PFTZ related commitment include: the right to work in association with Chinese lawyers to provide legal services from the one source covering both Chinese and foreign law; the right to provide those services to clients within and outside the PFTZ; and the capacity to maintain a level of independence between the Australian and local firms, particularly in the use of firm names and the flow of liabilities.

While the PFTZ related commitment is most welcome, it is disappointing that the unnecessarily burdensome provisions that currently apply to foreign lawyers have not been eliminated in full or in part and therefore will continue to apply to lawyers wishing to establish outside the PFTZ and within it. These include minimum residency and post-admission experience requirements, and lengthy prior establishment of offices in China as a pre-requisite to qualify for the establishment of a 'commercial association' office in the PFTZ. This latter restriction prevents potential new law firm entrants from taking immediate advantage of the benefits provided by the FTA and PFTZ. It is unfortunate that these restrictions apply in the PFTZ as they are contrary to China's own aspirations to lighten the regulatory burden on foreign service suppliers as a means to facilitate the establishment of Shanghai as an international centre for trade and use the PFTZ as a pilot zone for the next round of economic reform in China.

The Law Council does not see ChAFTA as an end in itself, although it is clear that it will bring benefits to both countries once it comes into force, but as a platform for future discussions and negotiations to further enhance the relationship between the People's Republic of China and Australia. In this context, we welcome the mechanism provided via the Annex IV side letters for the Law Council to engage with the All China Lawyers Association under the auspices of the ChAFTA to address barriers and promote two-way professional mobility of lawyers between Australia and China. We expect that these discussions will involve expanding upon, developing, refining and, indeed, feeding into amending provisions in ChAFTA for the mutual benefit of both countries.

In the context of Australia's offer, we note that the restriction in South Australia on the right of foreign lawyers to work in association with local lawyers only as consultants has not been included in ChAFTA. The Law Council understands this restriction has not been removed and is currently in place in South Australia. It is also likely that the Law Council would lodge a more detailed submission on ChAFTA to the inquiry being undertaken by the Standing Committee on Foreign Affairs, Defence and Trade. We will provide JSCOT with a copy of that submission as it is likely to contain a more detailed examination on particular issues.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Hagan', written in a cursive style.

MARTYN HAGAN
SECRETARY-GENERAL