

AUSTRALIAN LEGAL SERVICES

EXPORT DEVELOPMENT

STRATEGY

2003 TO 2006

INTERNATIONAL LEGAL SERVICES ADVISORY COUNCIL (ILSAC)

MARCH 2003

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ABBREVIATIONS

ABS	Australian Bureau of Statistics
AEI	Australian Education International
ADB	Asia Development Bank
AGD	Commonwealth Attorney-General's Department
APEC	Asia Pacific Economic Cooperation
AusAID	Australian Agency for International Development
AustLII	Australian Legal Information Institute
Austrade	Australian Trade Commission
CALD	Council of Australian Law Deans
DEST	Commonwealth Department of Education, Science and Training
DFAT	Commonwealth Department of Foreign Affairs and Trade
DITR	Commonwealth Department of Industry, Tourism and Resources
EMDG	Export Market Development Grants
IAMA	Institute of Arbitrators and Mediators Australia
IAP	Individual Action Plans
IFLR	International Financial Law Review
ILSAC	International Legal Services Advisory Council
LCA	Law Council of Australia
NOOSR	National Office of Overseas Skills Recognition
PM&C	Commonwealth Department of Prime Minister and Cabinet
POLA	Presidents of Law Associations in Asia
SCAG	Standing Committee of Attorneys-General
SIAC	Singapore International Arbitration Centre
Treasury	Commonwealth Department of Treasury
WTO	World Trade Organisation

Australian Legal Services Export Development Strategy **2003 to 2006**

OBJECTIVE

To develop, support and implement an effective export development strategy over a three to five year period for Australia in international legal services, particularly in the markets of the Asia-Pacific region.

COMPONENTS OF THE STRATEGY AND AREAS RESPONSIBLE FOR IMPLEMENTING THE STRATEGY:

1 Trade Environment (regulatory change and removal of market access barriers)

- Department of Foreign Affairs and Trade (DFAT);
- Law Council of Australia (LCA);
- Attorney-General's Department (AGD);
- Department of Education, Science and Training (DEST) - National Office of Overseas Skills Recognition (NOOSR);
- Department of Industry, Tourism and Resources (DITR);
- International Legal Services Advisory Council (ILSAC);
- Standing Committee of Attorneys-General (SCAG); and
- Australian law firms.

2 Sectoral Profile and Capabilities (promoting Australian legal service providers and their domestic and international expertise)

- Australian Trade Commission (Austrade);
- LCA;
- DFAT;
- DEST - NOOSR and Australian Education International (AEI);
- AGD;
- Department of the Treasury (Treasury) - Financial Services and Regulation area;
- DITR;
- Australian law firms;
- Council of Australian Law Deans (CALD);
- Dispute resolution bodies such as LEADR; and
- ILSAC.

3 Market Development and Export Opportunities (winning more internationally contestable work)

- DFAT;
- Austrade;
- AGD;
- DEST/AEI;
- DITR;
- Australian law firms;
- CALD;
- LCA; and
- ILSAC

TARGET COUNTRIES

The countries identified in this strategy outline under particular headings are listed as examples only. Primary target markets are mainly in the Asia-Pacific region, but are not limited to this Region.

COMPONENT AIMS, STRATEGIES AND DESIRED OUTCOMES

1. TRADE ENVIRONMENT (REGULATORY CHANGE AND REMOVAL OF MARKET ACCESS BARRIERS)

Aim

To achieve improved market access to overseas markets for legal services (removal of barriers to the practice of foreign law (eg by Malaysia, Korea, India, the Philippines); permit profit-sharing by foreign and local firms (eg in Singapore, etc), removal of licensing restrictions (eg China) and other barriers (eg ceiling limitations on foreign lawyers in Indonesia); minimum experience (eg Japan, Taiwan) and practice of third country law restrictions (eg Japan).

Strategies	Desired Outcomes
<p>1.1 Continue to pursue liberalisation of legal services markets at the:</p> <p>i). Multilateral level (eg primarily through ‘Doha Round’ negotiations on trade liberalisation under the World Trade Organisation (WTO));</p> <p>ii). Regional level (eg through meetings of the Presidents of Law Associations in Asia (POLA), Asia Pacific Economic Cooperation (APEC) Individual Action Plans (IAPs) and Group on Services and its work program); and</p> <p>iii). Bilateral level(eg through the Market Development Taskforce initiative and general bilateral negotiations and discussions)</p> <p>(DFAT, AGD, DITR, ILSAC)</p>	<p>1.1.a Adoption of a ‘limited licensing’ system for the regulation of foreign lawyers by a greater number of trading partners</p> <p>1.1.b Improved access to overseas legal services markets:</p> <p>i). internationally;</p> <p>ii). in the region; and</p> <p>iii). particularly in countries with strong economic and trade ties with Australia</p> <p><i>Note:</i> Australia is recognised by its trading partners as playing a leading role in promoting the liberalisation of transnational trade in legal services in the current Doha Round of trade liberalisation negotiations under the WTO</p>
<p>1.2 Promote better domestic regulation (eg regulation of foreign lawyers based on Option A of the Model <i>Practice of Foreign Law Bill 1996</i> – the ‘limited licensing’ approach; and promote the National Legal Profession initiative)</p> <p>(SCAG, AGD, LCA, ILSAC, Australian law firms, DITR)</p>	<p>1.2.a An internationally competitive and highly professional legal services sector that is conducive to international trade, investment and other business activity</p> <p>1.2.b An hospitable and substantially uniform foreign lawyer regulatory environment across Australia</p>
<p>1.3 Initiatives on recognition of legal qualifications</p> <p>(LCA, NOOSR, ILSAC, DFAT)</p>	<p>1.3 Minimal regulatory impediments to the recognition of legal qualifications, consistent with the maintenance of high standards of professionalism</p>

2. SECTORAL PROFILE AND CAPABILITIES (PROMOTING AUSTRALIAN LEGAL SERVICE PROVIDERS AND THEIR DOMESTIC AND INTERNATIONAL EXPERTISE)

Aim

Improved recognition of sector capabilities by overseas governments and their agencies (potential clients); by Australian financial institutions, resource developers etc; by Austrade and Trade Commission staff (facilitators), as well as improved international awareness, particularly amongst overseas financial institutions (eg Asian Development Bank (ADB)).

Offshore Promotion

Strategies	Desired Outcomes
2.1 Inclusion of legal services exporters, including legal education and training, in Ministerially-led trade missions (<i>Austrade, DFAT, AGD, ILSAC</i>)	2.1.a Increased recognition of capabilities of the sector by international clients 2.1.b Recognition of sector capabilities by overseas officials
2.2 Organise and support legal seminars/conferences offshore (as in Indonesia, Vietnam, India, the Philippines, China and Thailand) (<i>ILSAC, Austrade, AGD; DFAT, DITR, Australian law firms, LCA, Dispute resolution bodies</i>)	2.2.a Increased recognition of capabilities of the sector by international clients 2.2.b Increased opportunities for sector to build business networks
2.3 Support Australian government and private sector initiatives designed to develop and deepen the demand for international legal services (eg contribute to Australian government initiatives to develop Australia as a Centre for Global Financial Services) (<i>Treasury, LCA, DFAT, AGD, DITR, ILSAC, Australian law firms, Austrade</i>)	2.3.a Increased recognition of capabilities of the sector by international clients 2.3.b Increased opportunities and demand for Australian legal services by international clients
2.4 Attend and present papers at law conferences in Australia and elsewhere (eg the Australian Summit [formerly National Trade & Investment Outlook Conference], Australian Legal Convention, International Trade Law conference; Presidents of Law Associations in Asia (POLA) meetings, LAWASIA etc) (<i>LCA, DFAT, AGD, Australian law firms, CALD, Dispute resolution bodies, ILSAC</i>)	2.4 As in 2.2.a & b above
2.5 Bilateral legal cooperation initiatives (<i>ILSAC, LCA, DFAT, AGD, AusAID</i>)	2.5 Closer links between Australia and other countries at government, professional and other levels
2.6 Ad hoc, Guest of Government visits and, as appropriate, calls on representatives of the Australian legal sector by visitors under the Special Visitor Program (<i>PM&C/AGD, DFAT, Austrade, ILSAC</i>)	2.6.a Building of strategically important government-to-government as well as government-to-private sector links 2.6.b Recognition of sector capabilities by overseas officials

Offshore Promotion (continued)

Strategies	Desired Outcomes
2.7 Improve internet & information technology applications (eg Australian Legal Information Institute (AustLII), Austrade's databases, special-purpose internet home pages) (<i>Austrade, Australian law firms</i>)	2.7 Development of profile and increased exposure of sector's capabilities internationally
2.8 Publication of an Australian international legal services directory (similar to Studying Law in Australia) (<i>Austrade, LCA, Australian law firms</i>)	2.8.a Development of profile and increased exposure of sector's capabilities internationally 2.8.b Readily accessible information on Australia's international legal services capabilities
2.9 Continued publication and overseas distribution of Studying Law in Australia (<i>CALD, ILSAC, DEST/AEI, DFAT</i>)	2.9.a Promotion of Australian law school capabilities 2.9.b Increased international legal education and training links and increased numbers of overseas students studying law at Australian law schools
2.10 Publication of targeted awareness kits and distribution of kits through official and private sector agencies (along lines of ILSAC's ICDR Awareness Kit) (<i>Austrade, Australian law firms, ILSAC</i>)	2.10.a Better targeted promotion of international capabilities of the sector 2.10.b Increased international demand for Australian legal services expertise in specific areas

Onshore Promotion

Strategies	Desired Outcomes
2.11 Awareness-raising seminars and other activities for Australian financial institutions, companies, government departments and agencies, etc, on capabilities : (eg the Regional Headquarters (RHQ) promotion, Austrade's Industry Export Networks) (<i>Australian law firms</i>)	2.11.a Increased local recognition at both official and private sector levels of international legal services capabilities of Australian law firms 2.11.b Increased opportunities for Australian law firms to promote international capabilities through government and other private sector agencies
2.12 Greater use by government departments and agencies, GBEs and business entities of the law of Australia as governing law in international transactions (<i>AGD, Australian law firms, ILSAC</i>)	2.12.a Increased international recognition of, and demand for, Australian legal services and Australian lawyers 2.12.b Increased international demand for Australian legal education and training services

3. MARKET DEVELOPMENT AND EXPORT OPPORTUNITIES (WINNING MORE INTERNATIONALLY CONTESTABLE WORK)

Aim

Identification of existing and potential broad export opportunities in terms of:

- i. expanding markets for foreign and domestic investment;
- ii. the demand for cross-border legal services in which Australian law firms are internationally competitive (eg energy and mineral resource projects, mergers and acquisitions; infrastructure development, privatisation, securitisation, information technology, telecommunications, environment, etc); and
- iii. scope for market development initiatives with government agencies, private clients or overseas financial institutions (eg ADB).

Strategies	Desired Outcomes
3.1 Basic research to identify target markets, services and clients (<i>Austrade, Australian law firms, DEST/AEI, CALD</i>)	3.1.a Better information on international demand for legal services 3.1.b Increased ability to target promotion of sector capabilities
3.2 Awareness raising seminars and other activities for Australian legal and related service providers (eg: ILSAC Conference on ‘Buying and selling legal service to Asia: Risks and rewards’) (<i>Australian law firms, Dispute resolution bodies, ILSAC, Austrade; AGD</i>)	3.2.a Increased know-how amongst Australian legal and related services providers on exporting legal and related services 3.2.b Increased capacity amongst Australian legal and related services providers in recognising and capitalising on export opportunities
3.3 Ministerially-led legal services trade mission to Asia to capitalise on 3.1(<i>AGD, Austrade, Australian law firms, DEST/AEI, CALD, ILSAC</i>)	3.3.a Recognition of capabilities at official levels in Asia 3.3.b Increased opportunities to gain government as well as private sector clients in Asia
3.4 Law firm and other legal service provider participation in other Ministerially-led trade missions, as appropriate, to Asian and other countries (such as the Australian Financial Services Trade Mission to China) (<i>Austrade, DFAT, DEST/AEI, AGD, DITR, LCA, ILSAC, Australian law firms and law schools, CALD</i>)	3.4.a Recognition of Australian legal services capabilities by government officials in Asia 3.4.b Increased opportunities to promote the sector’s capabilities in all trade environments and gain overseas government as well as private sector clients
3.5 Refinement of existing services, development of new (electronically accessible) market development and export opportunity services by Austrade to meet the needs of Australian law firms (eg: Austrade’s New Exporter Development Program) (<i>Austrade, AEI, DFAT</i>)	3.5.a Increased ability for Australian law firms, law schools and other legal service providers to access, and make maximum use of, Austrade services 3.5.b Austrade and bodies such as the AEI becoming very responsive to the needs of the sector 3.5.c Increased opportunities to gain government as well as private sector clients internationally

Market Development and Export Opportunities (continued)

Strategies		Desired Outcomes	
3.6	Greater use by Australian law firms and others of internet databases re: legal services export opportunities (eg ADB “Law and Development”) (<i>Australian law firms, AEI, CALD</i>)	3.6	Identification of export opportunities
3.7	Development of one or more ‘synergistic industry groups’ (eg construction/ engineering/ law) to exchange information and/or develop and pursue project opportunities (<i>Austrade, DITR, Australian law firms</i>)	3.7	Increased export development through cross referral of joint export opportunities
3.8	Australian law firms to examine the need and, if appropriate, build a capacity to provide services on a global scale (<i>Australian law firms</i>)	3.8	Australian law firms maintaining an internationally competitive edge in response to globalisation
3.9	Support the Australian Government initiative to double the number of exporters during the period from 2002 to 2006 (<i>Austrade, AGD, DITR, DFAT, ILSAC</i>)	3.9	Increased number of Australian entities exporting legal and related services

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SIGNIFICANT CONTRIBUTORS

1. PUBLIC SECTOR

- ⇒ **Austrade**: Export Markets Development Grants (EMDG) Scheme; New Exporter Development Program; and related support.
- ⇒ **Department of Foreign Affairs and Trade (DFAT)**: role in improving market access etc (in kind).
- ⇒ **Department of Education, Science and Training (DEST), Australian Education International (AEI)** and the **National Office of Overseas Skills Recognition (NOOSR)**: grants to the Law Council of Australia (LCA) on professional practice issues and recognition.
- ⇒ **Commonwealth Attorney-General's Department (AGD)**: support in funding of ILSAC Secretariat and meetings of ILSAC.

2. PRIVATE SECTOR

- ⇒ **Australian law firms** to:
 - support the work of Austrade concerning legal services export development;
 - contribute advice to trade policy development and the trade negotiations work of DFAT; and
 - contribute advice and resources (in kind) to the work of ILSAC.
- ⇒ **Law Council of Australia (LCA)**: provide advice and to collaborate with ILSAC on matters of mutual interest in the field of international trade in legal services and their cross-border regulation.

3. INSTITUTIONAL

- ⇒ **Australian law schools and other legal training service providers**: contribute advice and resources (in kind) to support the work of ILSAC, AEI, DFAT and AGD.
- ⇒ **Council of Australian Law Deans (CALD)**: provide advice and collaborate with ILSAC on matters of mutual interest in the field of international legal education and training.

INTERNATIONAL LEGAL SERVICES ADVISORY COUNCIL (ILSAC)

The International Legal Services Advisory Council (ILSAC), a part-time advisory body established in 1990 by the Australian Government to help improve Australia's international performance in legal and related services, is interested in supporting an export development strategy for Australian legal services.

ILSAC comprises private sector members from Australian law firms, commercial dispute resolution centres and university law schools, a representative of the Law Council of Australia and representation from government departments and agencies with policy and other interests in the international performance and activities of the Australian legal services sector. The Council has been chaired since inception by the Hon Sir Laurence Street, AC KCMG QC. The Council reports to the Attorney-General and other Ministers. It is supported by a small secretariat in the Attorney-General's Department. ILSAC has no program funding and members do not receive sitting fees.

LIBERALISATION OF TRANSNATIONAL TRADE IN LEGAL SERVICES

ILSAC developed the following principles as particularly relevant in guiding the liberalisation of transnational trade in legal services:

1. Formal recognition, on reasonable terms, of the right to practise home-country law, international law, and where qualified, third-country law, without the imposition of additional or different practice limitations by the host country (eg, a minimum number of years of professional experience or a refusal to recognise concurrent practice rights where the foreign lawyer's home country is a federal jurisdiction);
2. Formal recognition, on reasonable terms, of the right of foreign law firms to establish a commercial presence in a country or economy without quota or other limitations concerning professional and other staff, location, number and forms of commercial presence, and the name of the firm;
3. Formal recognition, on reasonable terms, of the right of foreign law firms and lawyers to enter freely into fee-sharing arrangements or other forms of professional or commercial association, including partnership with international and local law firms and lawyers;
4. The right to practise local law to be granted on the basis of knowledge, ability and professional fitness only, and this to be determined objectively and fairly through a transparent process;
5. Formal recognition, on reasonable terms, of the right of a foreign law firm to employ local lawyers and other staff; and
6. Formal recognition of the right to prepare and appear in international commercial arbitration.

Based on these principles Australia has tabled three Negotiating Proposals promoting the liberalisation of transnational trade in legal services in the WTO (S/CSS/W/67; S/CSS/W/67/Suppl.1/Rev.1; S/CSS/W/67/Suppl.2 or S/CSC/W/32). The second of these advances a Limited Licensing system as an appropriate means of regulating the practice of foreign law by foreign lawyers in a host-country.

The Limited Licensing model is based on providing foreign lawyers and foreign law firms access to a host-country to:

- i) practise foreign law (home-country, third-country and international) without having to satisfy unnecessarily burdensome admission requirements associated with the practice of host-country law;
- ii) voluntarily enter into commercial association with host-country lawyers and law firms; and
- iii) have the right to use own firm name.

This system "protects" the practice of host-country law for host-country lawyers. However, the capacity to form commercial association (partnership or similar) with host-country lawyers/law firms allow foreign and local lawyers to jointly provide legal services, which include elements of both local and foreign law, to domestic as well as international clients seeking fully integrated services.

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Background Information

AUSTRALIAN LEGAL SERVICES SECTOR

1. KEY DETAILS¹

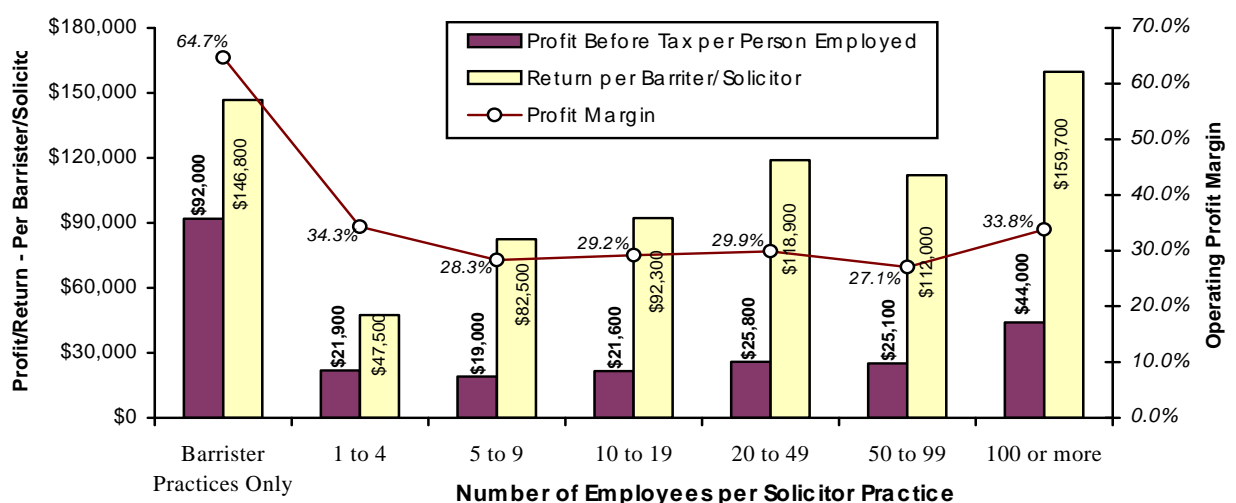
There were nearly 10,900 legal services practices in Australia employing 76,300 people as at 30 June 1999 (latest available data from the Australian Bureau of Statistics (ABS)). These practices generated \$7,400 million from the sale of services during the 1998/99 financial year². About two thirds of the practices were solicitors' practices and one third, barristers' practices. Solicitors' practices accounted for 88% of industry employment and 76% of operating profit before tax.

The legal services sector is dominated by small business with 92% of solicitor practices employing fewer than 20 people. However, these solicitor practices accounted for only 44% of employment and less than one-third (32%) of the operating profit before tax. In contrast, the 1% of practices (76 practices) which employed 100 or more persons accounted for 30% of solicitor practice employment and as much as 45% of operating profit before tax. Practices with less than 5 persons comprised more than half (56%) of the solicitor practices, but accounted for only 12% of employment and 9% of the sector's operating profit before tax.

All of the 3,704 barrister practices were also small businesses operating, on average, with less than two persons per practice. The ratio of support staff per barrister was 0.6. While the average return per barrister was \$146,800 for the 1998/99 financial year, those with more than 20 years experience at the bar had an average return of \$227,600. Those with less than ten years experience received an average of \$86,000 and those with less than twenty, but more than ten years experience receiving an average of \$153,100.

There were 25,044 solicitors working for solicitor practices in June 1999 and the average ratio of support staff per solicitor was 1.7. There was an average of 3.5 solicitors per practice across Australia with the Australian Capital Territory (4.5) and Western Australia (4.2) having the highest average number of solicitors per practice. The average income return per solicitor was highest for those in practices with 100 or more persons at \$159,700. However, the overall average return for solicitors was \$109,600 with practices of less than 5 employees gaining the lowest average return of \$47,500 per solicitor.

PRACTICE SIZE AND PROFITABILITY - 1998/99



Source: ABS Cat 8667.0 (1998/99)

The main sources of income for solicitor practices were in the areas of Commercial (29.4%); Property, mainly conveyancing (18.6%); Personal injury, including, workers compensation and motor vehicle injury (15.6%); and Banking and finance (6%). These four areas generated 70% of income for solicitor practices. The total operating profit before tax generated by solicitor practices in 1998/99 was \$1,949.8 million, an increase of 46% from the \$1,325.1 million generated in 1995/96. The main source of expenditure was labour costs (50.1%), including an average costs in wages and salaries of \$63,300 per solicitors and \$27,300 per other employee.

Solicitor practices are concentrated in New South Wales (NSW) and Victoria with just over two-thirds (68%) of Australia's practices. By way of comparison, these two states account for 59% of Australia's population. However, there is a significant difference in the employment and income levels per practice between the two states. With 34% of the Australian population, NSW accounts for 41% of the practices generating 46% of the total income and 42% of the total employment. Whereas Victoria, with 25% of the Australian population, accounts for 27% of the solicitor practices generating 25% of income and 26% of the employment.

2. REGULATORY ENVIRONMENT

Regulation of the Australian legal services market is relatively liberal. In March 1996 the Standing Committee of Attorneys-General (SCAG) unanimously agreed on the need for a clear statutory indication that there is no barrier to the practice of foreign law in Australia. Accordingly, a *Model Practice of Foreign Law Bill* was presented to Ministers setting out two options:

Option A – provides for a comprehensive framework for the regulation of foreign legal practice (a limited licence approach); and

Option B – provides for a minimalist approach simply stating that a person does not commit an offence by practising foreign law in the relevant State or Territory (neither commercial association nor employment of foreign lawyers by local lawyers is possible).

To date, Victoria, New South Wales, the Australian Capital Territory and the Northern Territory have implemented legislation based on Option A. Legislation based on Option B has been implemented in the State of South Australia. Tasmania's *Legal Profession Act 1993* (Tas) allows foreign lawyers to practise foreign law, either on their own account, or in combination with a local lawyer. The Government of Queensland expects to introduce a Bill in Parliament in 2003 reforming the regulation of the practice of foreign law (based on Option A). The Western Australian Parliament is currently (March 2003) considering a Bill addressing legislation on the practice of foreign law (based on Option A).

3. FOREIGN FIRMS PRACTISING IN AUSTRALIA

To date, only a small number of North American firms (largely US) have established a presence in Australia. This reflects the extremely competitive market in Australia for international business and commercial law services. These firms practise their home-country law, third-country and international law. Some of these firms have partners and/or employees admitted to practice in Australian jurisdictions and thus practise Australian law as well.

FOREIGN LAW FIRMS WITH A COMMERCIAL PRESENCE IN AUSTRALIA

(FIRMS NOT PRACTICING AUSTRALIAN LAW)

Name of Firm	Principal Office	Australian Office	No. of Lawyers as at 01.01.03	Total Employed as at 01.01.03
Tighe Patton Armstrong Teasdale	Washington DC, St Louis	Sydney	1	1
Jones Day Reavis Pogue	Cleveland	Sydney	3	5
Skadden Arps Slate Meagher & Flom	New York	Sydney	3	8
Stikeman, Elliot	Toronto, Montreal	Sydney	2	4
Sullivan & Cromwell	New York	Sydney, Melbourne	8	8

Source: The International Financial Law Review 1000, The Guide to the World's Leading Business Law Firms, 2002 Edition; and information provided to the ILSAC Secretariat.

4. EXPORT ACTIVITY

Australia's international services trade is expanding rapidly and is part of the fastest growing category of world trade. Legal services is a significant component in the export of professional and technical services from Australia. In terms of the balance of trade, exports of legal services has consistently produced the highest trade surplus of the professional services category (see table below).

AUSTRALIA : TRADE IN PROFESSIONAL AND TECHNICAL SERVICES

(2000/01 - A\$ millions)

Type of Service	Credits	Debits	Balance
Engineering, Architectural, Surveying and Other technical services	485	343	142
Legal services	245	81	164
Research and development	248	83	165
Advertising, market research, polling	122	110	12
Business & management consultancy	81	80	1
Accounting, auditing & tax	105	44	61
Total	1286	741	545

Source: ABS (2000/01)

Australian legal services are exported predominantly by the "fly-in, fly-out" method of service delivery which is cost-effective particularly for smaller law firms or new markets. Most larger law firms maintain branch or associated offices overseas to develop international business. Due to market access barriers, some Australian law firms maintain legal consultancy offices or second professional staff to foreign law firms in overseas countries. Exported services may be billed from overseas offices (not directly counted as an export by ABS) or by the law firm in Australia (counted as an export), although the mode of service delivery may be by means of telecommunications technology.

Many of the larger Australian law firms have been active in the export of legal services since the early 1980s. Both solicitors and barristers export legal services although most exported services are from the large solicitor firms. However, the 1994 LEK report³, "Intelligent Exports and the Silent Revolution in Services" estimated that only 1.3% of firms in the legal sector (ie. around 130 Australian legal practices based on 1996 figures) were involved in export activities but that legal

exporters tended to adopt a more strategic approach to exporting than many other service industries⁴. Some 30% of legal exporters were, at the time of the survey, exporting as a result of a specific export strategy. The majority of legal services exporters have relatively small total revenues.

Export Market Development Grant (EMDG) Scheme statistics suggest that over the past three years some 20 grants have been made to Australian legal practices. Grant claimant law firms are evenly distributed across firms with differing levels of turnover.

5. EXPORT PROSPECTS

The LEK consultant's report for Austrade, "Intelligent Exports and the Silent Revolution in Services" and a survey of exporters concluded that it is not unreasonable to expect the Australian service sector as a whole to increase its export propensity from around 5% of economic activity to 8% or 10%. It also noted that the number of firms in the legal services sector that export is exceptionally low (ie. then about 130 firms) and that the sector has a pivotal role in generating Australia's export revenue. ABS 1998/99 data (Cat 8667.0) show that there were about 560 Australian law firms which employ more than 20 persons (ie. firms that are not categorised as small businesses).

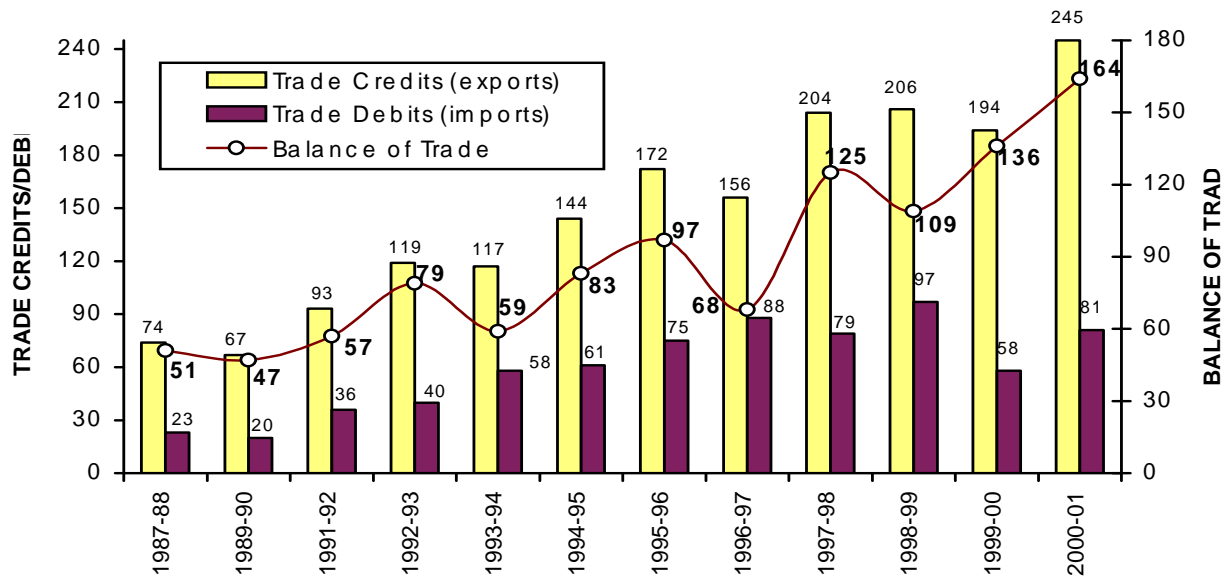
Australian legal services exports show a steady pattern of growth (see table and graphs below). Many Australian lawyers involved in export activities consider that Australia could expand legal services exports significantly with a well-structured export market development strategy. Government policy sets a whole of government target of doubling the number of Australian companies exporting within five years. Austrade is taking a lead role by working more closely with small and medium sized firms with export potential and helping more knowledge-based firms, including those in legal services, become international. The New Exporter Development Program is specifically designed to assist previously non-exporting firms into international markets. On the basis of ABS data, it seems reasonable to assume that some of the 430 or so medium to large Australian law firms presently considered as not exporting could be encouraged to do so through the existence of a targeted export market development program for legal services.

AUSTRALIA : TRADE IN PROFESSIONAL LEGAL SERVICES *(\$A millions)*

Financial Year	Credits	Debits	Balance
1987-88	74	-23	51
1989-90	67	-20	47
1991-92	93	-36	57
1992-93	119	-40	79
1993-94	117	-58	59
1994-95	144	-61	83
1995-96	172	-75	97
1996-97	156	-88	68
1997-98	204	-79	125
1998-99	206	-97	109
1999-00	194	-58	136
2000-01	245	-81	164

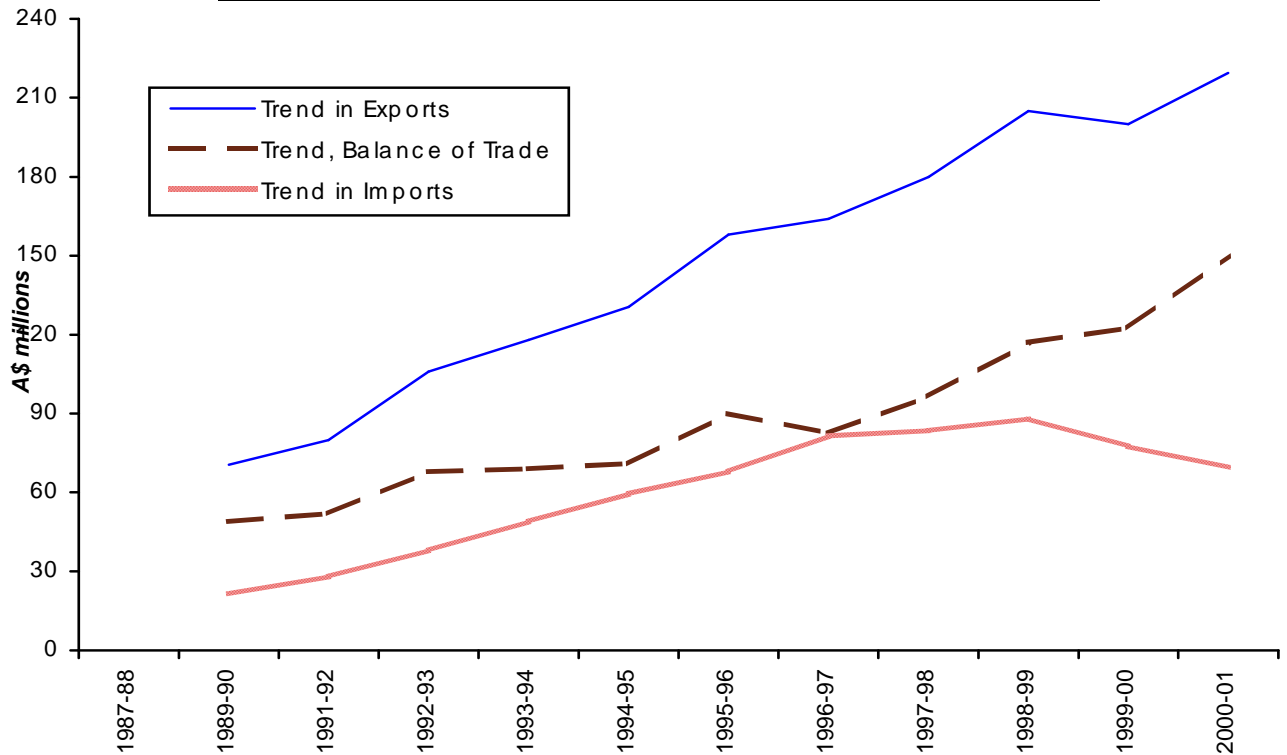
Source: ABS Cat 5363.0 (2000/01)

AUSTRALIA: TRADE IN PROFESSIONAL LEGAL SERVICES
(A\$ million)



Source: ABS Cat 5363.0

TREND - TRADE IN PROFESSIONAL LEGAL SERVICES



Source: ABS Cat 5363.0

Australian law firms are internationally competitive in the provision of a wide range of business and other services. Australian law firms enjoy a number of advantages which include geographic proximity to the strategically important markets of Asia and professional charge-out rates which are lower than most American and English law firms. An impediment to the export of Australian legal services is the widespread use of English or American (eg New York State) law as the governing law of contract in large international commercial and capital market transactions. Australian law firms are recognised as world class in advising on resource and infrastructure development, mergers and acquisitions, privatisation, corporate and tax structuring, and a wide range of other commercial work including intellectual property and communications law.

Commercial dispute resolution services are a business service which is often related to legal services and which are showing strong growth internationally. These are also of export interest to Australian law firms.

Legal education and training services are also an emerging area of export growth, for example in technical assistance and loan-financial projects by the international development and financial institutions. The Asian Development Bank has a Law and Development program amongst Technical Assistance and other programs which have been of interest to Australian legal services exporters. Austrade provides services to access some of this work. Australian law firms have won World Bank and Asian Development Bank work in Vietnam, China, Indonesia, Pakistan, and the Central Asian republics and other countries.

The markets of greatest export earnings significance to the Australian legal services sector are the United States, United Kingdom, Japan, New Zealand and China (including the Hong Kong Special Administrative Region) in that order, although there are no detailed data available to confirm this ranking. Asian countries are of growing significance. Indonesia, Singapore, Malaysia and Thailand, in particular, are markets for international legal services which present different challenges and are receiving active attention by a range of Australian law firms.

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THE INTERNATIONAL LEGAL SERVICES MARKET – AN OVERVIEW

No reliable data is available on the size of the global international legal services market. World services trade in 2001 was estimated at US\$2,905 billion or 19.4% of total world trade, compared to 16% of total world trade in 1985.

The International Financial Law Review 1000 (IFLR)⁵ indicates that, of the world's 50 largest law firms (based on the number of lawyers), 27 are from the US (31 listed in 1998 – a drop of 13%), 16 are from the UK (10 listed in 1998 – an increase of 60%), 6 are from Australia (6 listed in 1998), one is from Canada (1 listed in 1998) while none are from continental Europe (2 listed in 1998).

The large American and English law firms dominate the market for international legal services and are aided by the preference of multi-national corporations and major financial institutions for American or English law as the governing law of contract in cross-border transactions. American and English law firms undertake most international capital markets work, many large resource development and infrastructure financing projects, aircraft leasing, and other specialised advising. Given the size and resources of the large American and English firms, most support an extensive international network of branch and other offices.

Current trends suggest that there is much competitive pressure on the bigger law firms to become international and to keep expanding those operations. An increasing number of clients with globalised operations are demanding legal and other professional services that can also be delivered on a global scale at predictable standards throughout the world.

The demarcation between national law firms is becoming less clear as American law firms employ English lawyers, English firms employ American lawyers, and so forth. In Australia, two international law firms that have their origin in the United States, Baker & McKenzie and Coudert Brothers, practise the law of Australia as well as the law of the United States and other jurisdictions. Australian firms are also emulating this practice, either by employing lawyers admitted to practice in overseas jurisdictions, establishing alliances or forms of profit-sharing with other international firms, or by seconding professional staff to law firms overseas.

A new feature of the market for international legal services is the growth and emerging export activity of Asian law firms, particularly from Hong Kong and Singapore, but also from other countries. This trend will accelerate. The Government of Singapore has also initiated an export strategy for the Singapore legal services sector as far back as 1987 and has played a successful catalytic role in the establishment of the Singapore International Arbitration Centre (SIAC) which is now recognised as an important centre in the Asia-Pacific region for commercial dispute resolution.

As already noted, Australian law firms are internationally competitive in a wide range of corporate and business law services and enjoy some cost and geographic advantages in respect of the major growth markets in Asia for legal services. Australian firms have also demonstrated an ability to establish operations in new and difficult markets.

On the other hand, trade in international legal services is inhibited by a range of regulatory and other barriers, many of which have been put in place relatively recently as cross-border services trade has developed. The work of the World Trade Organisation (WTO) in multilateral trade negotiations and APEC in trade liberalisation is important, and will continue to be so, to reducing these market access barriers. The International Legal Services Advisory Council (ILSAC) is a regular source of advice to the Department of Foreign Affairs and Trade on legal services market access issues.

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USEFUL WEBSITES

Asia Pacific Economic Cooperation (APEC)

<http://www.apecsec.org.sg/>

Asia Development Bank (ADB)

<http://www.adb.org/>

Australian Agency for International Development (AusAID)

<http://www.ausaid.gov.au/>

Australian Bureau of Statistics (ABS)

<http://www.abs.gov.au/>

Australian Legal Information Institute (AustLII)

<http://www.austlii.edu.au/>

Australian Trade Commission (Austrade)

<http://www.austrade.gov.au/home/>

Commonwealth Attorney-General's Department (AGD)

<http://www.ag.gov.au/>

Commonwealth Department of Education, Science and Training (DEST)

<http://www.dest.gov.au/>

Commonwealth Department of Foreign Affairs and Trade (DFAT)

<http://www.dfat.gov.au/>

<http://www.dfat.gov.au/geo/> (For Country Profiles)

Commonwealth Department of Industry, Tourism and Resources (DITR)

<http://www.industry.gov.au/>

Commonwealth Department of Treasury (Treasury)

<http://www.treasury.gov.au/>

Council of Australian Law Deans (CALD)

<http://www.law/newcastle.edu.au/cle/cald>

Commonwealth Department of Prime Minister and Cabinet (PM&C)

<http://www.dpmc.gov.au/>

Institute of Arbitrators and Mediators Australia (IAMA)

<http://www.iama.org.au/>

International Legal Services Advisory Council (ILSAC)

<http://www.law.gov.au/ilsac>

Law Council of Australia (LCA)

<http://www.lawcouncil.asn.au/>

World Trade Organisation (WTO)

<http://www.wto.org/>

¹ Statistics used in the “Key Details” section of this paper, unless otherwise identified, were derived from the Australian Bureau of Statistics publication Legal Services Industry Australia (Catalogue No. 8667.0 of 1998-99).

² In addition to the 7,115 solicitors’ practices and 3,704 barristers’ practices, included in these figures are 39 patent attorney business and 9 Government solicitor practices.

³ LEK report “Intelligent Exports and the Silent Revolution in Services” published by Austrade in 1994.

⁴ Ibid - Unpublished research associated with the LEK report.

⁵ International Financial Law Review 1000 (2001 edition)