



Submission to the Department of Foreign Affairs and Trade: Australia-India  
Comprehensive Economic Cooperation Agreement

October 2011

Prepared by  
NSW Department of Trade and Investment, Regional Infrastructure and Services  
Innovation and Industry Policy Division

Phone: 02 9338 6666  
E: [Alok.Ralhan@business.nsw.gov.au](mailto:Alok.Ralhan@business.nsw.gov.au)

Web version

## Table of Contents

<b><i>I</i></b>	<b><i>EXECUTIVE SUMMARY</i></b>	<b>3</b>
<b><i>II</i></b>	<b><i>INTRODUCTION</i></b>	<b>5</b>
<b><i>III</i></b>	<b><i>TRADE IN GOODS</i></b>	<b>6</b>
<b><i>IV</i></b>	<b><i>TRADE IN SERVICES</i></b>	<b>12</b>
<b><i>V</i></b>	<b><i>INVESTMENT</i></b>	<b>17</b>
<b><i>VI</i></b>	<b><i>PEOPLE-TO-PEOPLE LINKS</i></b>	<b>20</b>
<b><i>VII</i></b>	<b><i>AGREEMENT FRAMEWORK</i></b>	<b>26</b>

## I EXECUTIVE SUMMARY

---

The NSW Department of Trade and Investment, Regional Infrastructure and Services (DTIRIS) welcomes the opportunity to provide comment to the Department of Foreign Affairs and Trade (DFAT) on issues relevant to the Australia-India Comprehensive Economic Cooperation Agreement.

This submission identifies the following key issues raised in consultations with NSW businesses, and education institutions, with a market or interest in India.

### **Trade in goods**

- A number of Indian subsidies and tariffs provide an unreasonable level of protection to local manufacturers disadvantaging Australian exporters.
- Multiple and cross border taxes create barriers for foreign exporters particularly small to medium sized enterprises (SMEs).
- Non-tariff barriers such as complex regulatory framework can result in delays in achieving market entry and registration of Australian products in India, and restrict use of Australian technology e.g. in India's mining sector.
- Difficulty in accessing information on Indian regulations, customs procedures, tender processes and state/federal taxes, combined with perceived complexity of processes, impacts Australian SME access.

### **Services**

- NSW has capability to provide services in many areas including architecture, infrastructure, engineering (including green technologies), finance and insurance, audio-visual, agribusiness, information and communication technology, education and tourism.
- Barriers to service provision in India result from:
  - Visa issues – in Australia and India
  - Lack of recognition of Australian university qualifications in India
  - Regulatory barriers particularly delays in processes and approvals in mid-level bureaucracy, the complexity of administrative and approval processes and lack of information for Australian businesses.

### **Investment**

- Factors identified as impinging on investment activities in India include:
  - Issues around obtaining long term multiple entry visas and Permanent and Deemed Permanent Establishment status and associated taxation rules
  - The Australia-India Tax Treaty and Indian taxation levels
  - Lack of easily accessible and current information on permissible levels of foreign equity participation
  - Lack of quick contract dispute resolution assistance or legal services for Australian businesses in India
  - India's protection of a range of industry sectors e.g. through the regulation of entry and operation of foreign educational institutions.

### **People to people links**

- People-to-people links are important in underpinning trade and investment with India. NSW government and non-government organisations are enhancing linkages through cultural activities, tourism, education, academic, research and Alumni networks.

### **Agreement framework**

- **Indian State participation** in the Agreement - DTIRIS supports the broadening of the negotiations to include undertakings relating to measures on participation by individual Indian States.
- **Procurement** – In the event that the Australian Government agrees to the inclusion of the Government Procurement chapter in the Agreement, this should be done in a manner consistent with Australian (and NSW) Government obligations under signed free trade agreements, e.g. the Australia-US Free Trade Agreement (AUSFTA). The Australia-India Agreement should not expand the coverage of Australian obligations.
- **WTO-plus agreement** - DTIRIS supports the Agreement being a WTO-plus agreement that can serve as a template for other agreements with developing/emerging economies.
- **Agreement consultation** - DTIRIS would welcome the opportunity to provide further comment as the Australia-India trade agreement negotiations continue and supports a review of the operation of the Agreement after four years in order that the Agreement can be refined as the bilateral relationship evolves.

## II INTRODUCTION

---

DTIRIS was established in April 2011 to support a diversified state economy that creates jobs for the people of NSW and attracts investment and supports development of innovative, sustainable and globally competitive industries. DTIRIS works closely with business and industry bodies across NSW in delivering its programs.

The India desk within DTIRIS is dedicated to attracting inward bound investment from India and supports the growth of Indian companies which already have a presence in NSW. DTIRIS established an Office in Mumbai in November 2009 to strengthen its trade and investment ties with India. An in-market presence gives NSW the capacity to build awareness of Sydney's and NSW's strengths.

India is an important source of skilled migrants for NSW. In 2009/10, NSW had a skilled migrant intake of 27,408, with 4,494 or 16.4%<sup>1</sup> coming from India. This was higher than NSW's skilled migrant intake from any other country.

In May 2011, the NSW Government announced the establishment of a Multicultural Business Advisory Panel and the Export and Investment Advisory Board to guide the NSW Government on how to build stronger international trade and investment relations for NSW. India will be a key focus area for these bodies.

The Panel focus will be on harnessing NSW's cultural diversity, language skills and overseas links as part of the NSW pitch for business and increased engagement with international markets and advise on specific impediments to doing business in global markets. The Board will leverage the skills and experience of our business and non-government organisations in order to grow trade and investment with international markets.

India will continue to be a key driver for the NSW economy over the next decade, particularly in the areas of energy and mining, financial and professional services, agribusiness, infrastructure, information and communication technology, education and tourism. Diversification of the trade relationship to include a greater range of commodities, goods and services is an important opportunity for NSW businesses.

In preparing this submission and identifying barriers to trade and investment, DTIRIS has sought the views of a large range of stakeholders including NSW companies in metropolitan and regional NSW which are engaged or have indicated an interest in trade or investment with India, and NSW-based companies active in India. A statement made by a number of these SMEs was that the Indian Government could encourage further trade and investment in India by simplifying custom and regulatory processes and making easy to follow information readily available to Australian goods and services exporters and investors.

---

<sup>1</sup> Source: Department of Immigration and Citizenship. Population Flows: Immigration Aspects 2009-10 Edition Chapter 5 – Migration flows to the states and territories.

### III TRADE IN GOODS

---

#### Bilateral Trade

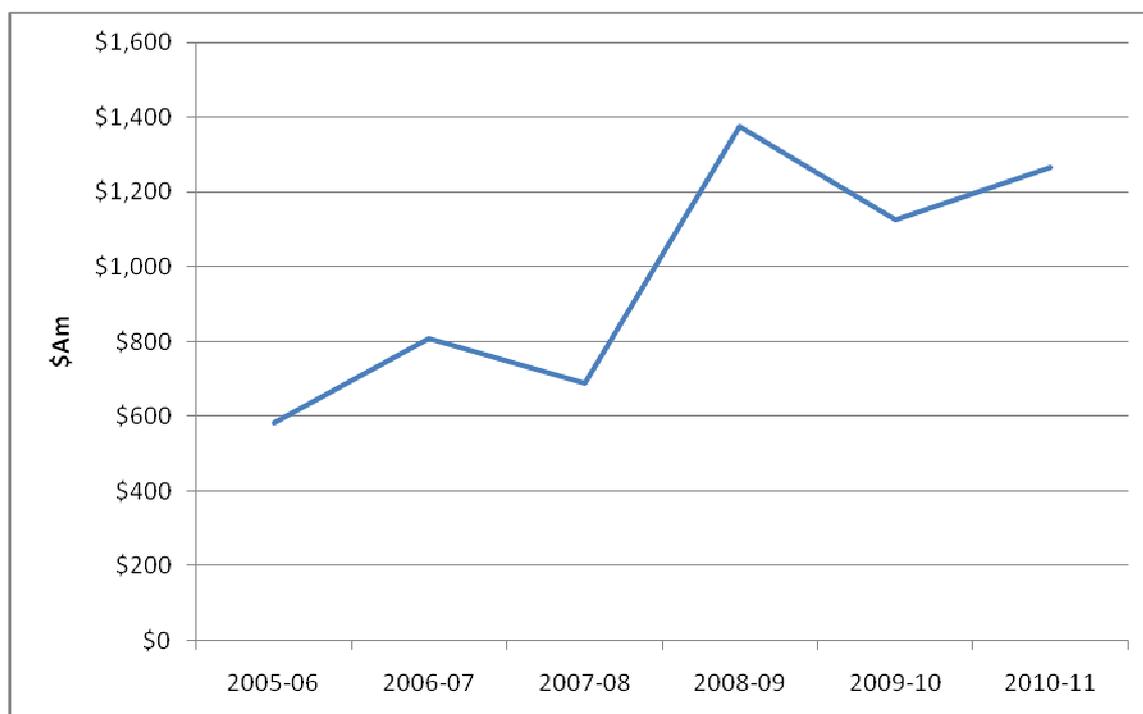
India is NSW's 14<sup>th</sup> largest trading partner. Bilateral trade between NSW and India was valued at \$1.93 billion in 2010-11. NSW exports to India were valued at \$1.26 billion in 2010-11 and ranked 7<sup>th</sup> for NSW exports by country. Over the past 5 years, NSW exports to India have grown at an average rate of 17% per annum.<sup>2</sup>

#### Merchandise Exports

Exports are driven by coal. From 2005-06 to 2010-11, NSW exports to India have grown by 116 per cent (see graph below). NSW accounts for around eight per cent of Australia's exports to India.

The State's top ten export commodities to India in 2010-11 were:

- coal, coke and briquettes \$781m
- non-ferrous metals (mainly copper and aluminium) \$145m
- metalliferous ores and scrap \$93m
- combined confidential items of trade \$85m
- textile fibres and their wastes \$24m
- miscellaneous manufactured articles \$21m
- essential oils and resinoids \$16m
- vegetables and fruit \$11m
- specialised machinery \$11m.



---

<sup>2</sup> ABS unpublished trade data, 2010-11 (preliminary).

## Merchandise Imports

Imports from India to NSW in 2010-11 were valued at \$668 million, ranking 22nd of NSW imports by country.

The top imports into NSW from India in 2010-11<sup>3</sup> were:

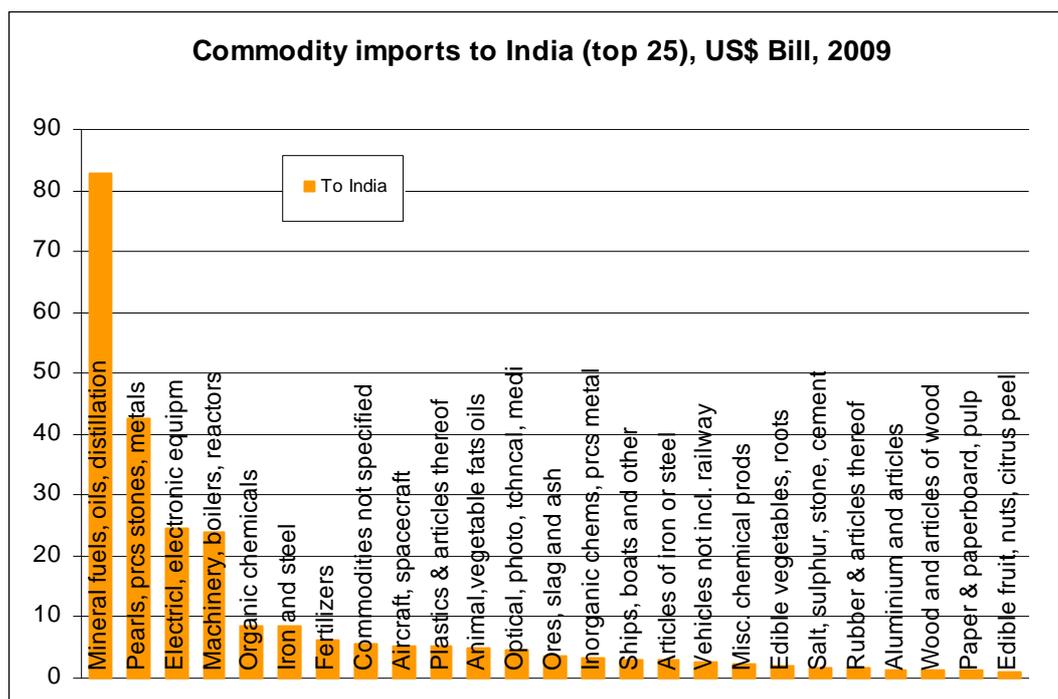
- medicinal and pharmaceutical products \$94m
- non-metallic mineral manufactures \$75m
- electrical machinery, apparatus \$63m
- miscellaneous manufactured articles \$51m
- textile yarn, fabrics and made-up articles \$43m.

The following table outlines NSW merchandise trade with India over the period 2005/06 to 2010/11.

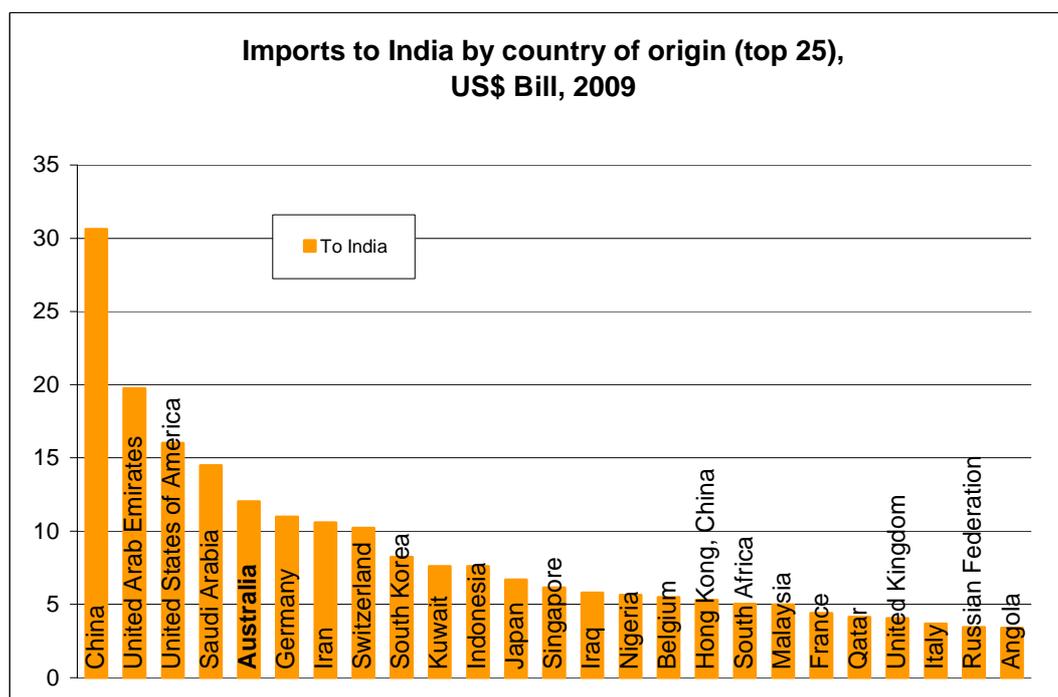
<b>NSW - India Relations</b>									
<b>NSW merchandise trade with India (A\$m)</b>									
	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	% change from 2009/10	% change from 2005/06	
Exports	\$584.1	\$808.8	\$688.5	\$1,373.4	\$1,124	\$1,264	12.6%	116.5%	
Imports	\$401.3	\$427.1	\$492.1	\$755.5	\$609.2	\$668.1	9.7%	66.5%	
Total bilateral trade	\$985.5	\$1,235.9	\$1,180.6	\$2,128.9	\$1,733.3	\$1,932.7	11.5%	96.1%	
Balance of trade	\$182.8	\$381.7	\$196.4	\$618	\$514.8	\$596.6	15.9%	226%	
Rank in NSW exports	12	8	12	7	7	7	n/a	n/a	
Rank in NSW imports	29	27	26	21	23	22	n/a	n/a	
<b>NSW % of Australia :</b>									
Bilateral trade	10.0%	10.0%	12.1%	9.6%	9.6%	10.8%			
Exports to India	8%	7.4%	8.9%	6.9%	6.9%	8%			
Imports from India	32.5%	30.6%	35.7%	33%	33%	32.1%			
<b>Major NSW exports to India, 2010/11 (A\$m)</b>									
Coal, coke and briquettes							\$781		
Non-ferrous metals							\$145		
Metalliferous ores and metal scrap							\$93		
Combined confidential items of trade *							\$85		
Textile fibres and their wastes							\$24		
<b>Major NSW imports from India, 2010/11 (A\$m)</b>									
Medicinal and pharmaceutical products							\$94		
Non-metallic mineral manufactures							\$75		
Electrical machinery, apparatus							\$63		
Miscellaneous manufactured articles							\$51		
Textile yarn, fabrics, made-up articles							\$43		
* Combined confidential items of trade includes all commodities for which the ABS has restricted the release of data, in order to protect the confidentiality of importers, exporters, and other interested parties.									

<sup>3</sup> ABS unpublished trade data, 2010-11 (preliminary).

The charts below provide details of global commodity imports to India. They suggest that there are significant opportunities to develop the trade relationship including by expanding the base into a greater range of areas.



Source: International Trade Centre database [http://www.intracen.org/exporters/Stat\\_import\\_country\\_product/](http://www.intracen.org/exporters/Stat_import_country_product/)



Source: International Trade Centre database [http://www.intracen.org/exporters/Stat\\_import\\_country\\_product/](http://www.intracen.org/exporters/Stat_import_country_product/)

## BARRIERS

According to the International Monetary Fund (IMF), Indian tariff rates and trade barriers generally remain the highest in the world with India also imposing duties such as safeguard and antidumping duties, and non-tariff restrictions such as import bans and standards or certification agreements. This reflects the experience of NSW companies surveyed by DTIRIS which have provided examples of non-tariff barriers, subsidies, tariffs, and cross

border taxation. A lack of ease of access to information and difficulties related to contracts, have also been identified as issues, especially for small to medium sized enterprises. Examples are below.

#### *Non-tariff barriers*

A NSW exporter of manufactured biological agricultural fertilizers has advised that due to the complex regulatory framework under the Fertiliser (Control) Order (FCO) 1985, product registration and market entry can take between two and three years. The process for granting an FCO – which is required before fertiliser can be sold in India - includes in-country field trials, spanning at least two seasons, and undertaken in several states. Central and State Government registration may be required depending on the classification of the products.

Another exporter advised that it can take up to three years to obtain the necessary approval from the Indian Government to use foreign technology (e.g. mining and communications) in India. The approval must be held by an Indian company. This delay in the approval process can inhibit Australia's ability to provide the goods, services and expertise that are available to assist in the development of the Indian mining sector. This concern reflects an issue stated in the Australia India FTA Feasibility Study section on investment in mining which acknowledges that challenges facing the Indian mining industry include a lack of investment in technology.

#### *Subsidies and Tariffs*

Companies across a range of sectors have argued that subsidies and high tariffs for foreign suppliers provide an unreasonable level of protection to local manufacturers, thereby disadvantaging exporters. Examples have been provided relating to subsidies on fuel and fertiliser; pricing structures for wine; and high tariffs on items including wine, cheese, building products, manufactured products (including diagnostics and fireproofing equipment), essential oils, and consumables.

One exporter of fireproofing material commented:

*“The cost of the charges for goods exported to India are high and the increase makes the product less competitive - no matter how good our product is ...for goods worth \$40k (CIF) of landed value, our clients will have to pay around \$11K for tariff, or 27.5% of the CIF value.”*

A NSW tea tree oil exporter and the Australian Tea Tree Industry Association have advised that Indian tariffs on NSW Tea Tree Oil are 38.664%.

It has also been suggested that the high tariff in tea tree oil is the result of an incorrect classification and that it should be re-classified as per the Australian Harmonised Export Code 3301 29 60, with a free duty and tax classification. It was noted that tea tree oil is not grown in India so the Australian product is not competing with a local product and would be a valuable input to the local pharmaceutical industry.

A NSW exporter of security and video analysis equipment has stated that multiple taxes are charged on temporary imports of equipment and products for use at trade fairs, equivalent to those levied on imports, despite the re-export of the equipment from India after a short period. This is an example of customs procedures that act as a non-tariff barrier for exporters developing the Indian market for their goods and services.

#### *Cross border taxes*

The practice of States levying duty on cargoes transiting across them to other states places exporters at a disadvantage to local manufacturers. A NSW company exporting biofertilisers to India was advised by local business contacts that it may be more economic to establish manufacturing plants in the States in which they wish to sell their products rather than pay the transit duty on the cargoes.

#### *Access to information/ Complex processes*

Difficulties in accessing information combined with perceived complexity of processes has been raised by several companies including in relation to tender processes, state and federal taxes and customs procedures. This issue was also raised by companies who had engaged a local agent to assist them to establish business links with India. If these issues are not addressed, they may develop into non-tariff barriers which discriminate against small Australian firms.

The NSW Government supports the putting into place of systems whereby Australian firms can carry out basic research on regulations (Central, State and Territory), and engaging in-country consultants or Government advisory services for more detailed advice.

Examples are:

- Several companies have raised the following with the NSW Office in Mumbai (i) the difficulties in setting up a bank account due to the amount of documentation required; and (ii) the long time period and number of approvals required to set up a business.
- A number of companies have reported difficulties or a lengthy process in obtain a Permanent Account Number (PAN) from the Indian Government. This number is needed as ID for business and taxation purposes and a delay in the approval process can be associated with delays in payment from Indian clients.
- A tea tree oil exporter reported difficulty getting tea tree oil cleared through customs including delays, and goods going missing, as well as possible tampering with products during the customs process. Tea tree oil is exported from NSW in bulk and is bottled after arrival in India. Issues stemming from the customs process restricted the Indian agent's ability to market the product in India. The industry has suggested that a certification arrangement be put in place.

- An exporter of fresh food reported reluctance to export to India due to the perceived risk that products would spoil due to delays in customs clearances and delays linked to inland transportation.
- A company engaged in work relating to the 2010 Commonwealth Games experienced issues with the timely release of goods by customs, even with local interventions. There were also issues with delays and impoundment related to goods being shipped back to Australia. The reason provided was an official intervention but no information could be obtained about the source or reason for the intervention.
- Complexity of customs procedures was referred to by several companies, again pointing to the need for increased access to information. The tariff classification procedure should also be made clear and be objectively based.
- Another issue raised by several companies was the need to clarify what are the rules of origin that apply to products that are designed and developed in Australia, manufactured in a third market and then sold to India. The rules of origin under the Agreement should be WTO-plus and - consistent with WTO obligations - the information should be readily available to exporters so that they can plan their trading activities.

### *Contractual issues*

Some of the issues raised by companies related to contractual issues and included:

- Demurrage. One company made the point that many Indian clients request the inclusion in contracts of periods of 14 days or longer demurrage at destination to cater for the time needed to clear goods through customs and quarantine. As most of the shipping lines do not provide demurrage of this length, this adds to the exporter's costs.
- Quality Assurance. Companies have raised the need for improved quality assurance and quality evaluation processes. A mining equipment manufacturer has for example found that it is difficult to identify real capacities and capabilities in India and that product quality does not always correlate to price.
- Several companies, including a manufacturer of audio-visual products, have expressed concern about the lack of protection in India against products or technology being copied and then sold at a cheaper price in the local market.

These issues suggest that Australian businesses might benefit from access in India to low-cost dispute resolution mechanism catering to SME needs and greater availability of Australian legal services.

## IV TRADE IN SERVICES

---

In 2009/10, the services sector accounted for 70.9 percent of the NSW economy and 33.6 percent of national services output<sup>4</sup>. NSW's main services exports to India are education and tourism. Other growing areas of services exports are financial and professional services; architecture, construction and engineering services; and audio-visual services.

Description of key services sectors

### **(i) Education**

Indian students account for the second largest number of international enrolments in NSW with nearly 22,000 enrolments across all sectors in 2010 or around 9 per cent of total international student enrolments in the State. NSW VET and higher education sectors have reported a decline of 32 percent in enrolments of Indian students in 2011 compared to the previous year.

The increasing middle classes in India are expected however to increase demand for education services in the longer term, especially in the university sector. Other areas with potential for expansion are corporate education services and specialist training in areas such as agricultural production systems and technologies. Education services also generate spin-off demand for other sectors of the economy, including the retail trade, and hospitality sectors.

Examples of current education services projects with India are at Tab A.

### **(ii) Tourism**

In 2010/11:

- NSW received 69,000 overnight visitors from India, an increase of 17 percent on the 2009/10 figures.
- India contributed 2.5 percent of the visitors to the State, an increase of 0.4 percentage points on the previous year.
- Visitors from India spent 3.3 million nights in NSW – up by 54 percent on the previous year.
- India contributed 4.9 percent of visitor nights in the State – up by 1.5 percentage points on the previous year.
- NSW received 50.7 percent of visitors and 35.5 percent of nights by Indian travellers in Australia.
- In 2010/11 Indian overnight visitors spent \$219 million in NSW. In total they spent \$677 million in Australia.

---

<sup>4</sup> ABS Cat No 552.0 State accounts 2009/10

Destination NSW is organising an inbound mission (workshops and familiarisations) of twenty key Indian wholesale and retail travel agents to Sydney in November 2011.

### **(iii) Financial and Professional Services**

Financial and insurance services is the State's largest industry accounting for 14.2 percent of the NSW economy in 2009-10. Sydney's strong financial sector ensures NSW is able to provide an economic environment conducive to expansion in financial services exports to emerging economies, including India, while their own sectors mature.

This sector is experiencing growth as a result of the establishment of Indian bank operations in Sydney and Australian bank operations in India.

The Indian financial services companies currently operating in Sydney are:

- State Bank of India - In 1998, a representative office was opened in Sydney and in 2004 this office was transformed into a branch. SBI is the only Indian bank established in Australia to undertake branch operations.
- Bank of Baroda - The Bank of Baroda, the third largest bank in India, has set up a representative office in Sydney. The presence of Baroda will help to attract their India-based clients who are considering investing in Australia
- Union Bank of India - one of India's largest state-run banks set up a representative office and plans to open a branch office later in 2011.
- Punjab National Bank (PNB) announced in September 2011 that it is opening a representative office in Sydney.

Australian banks, including Macquarie Bank, Commonwealth Bank, ANZ and Westpac and National Australia Bank have established operations in India. NSW welcomes measures to support financial services operations by Australian banks in India and Indian banks in Australia under the Agreement as this will facilitate efforts by companies to invest in both countries.

### **(iv) Architecture, construction and engineering services (including green technologies)**

There is potential for NSW construction and building services professionals and firms to use their expertise to meet Indian infrastructure requirements. For example, in 2010 the NSW Government engaged closely with the Indian Government and the Government of New Delhi to support the 2010 Commonwealth Games and to promote NSW industry knowledge and expertise. Several NSW companies were involved in design and delivery consortia for the Commonwealth Games athlete's village, training venues, the archery venue and a number of other sports training venues.

## **(v) Audio-visual services**

Sydney is a popular filming destination for Indian films and two major Indian feature films were shot in Sydney in 2009/2010. Screen NSW is in discussions with both Screen Australia and the Screen Producers Association of Australia (SPAA) about a coordinated Australian presence in 2012 at FICCI FRAMES, India's major screen industry event held in Mumbai every year (Screen Australia and SPAA attended FICCI FRAMES 2011 in March to research its effectiveness).

## **BARRIERS**

The following barriers have been identified by NSW companies and educational institutions working in the services sectors.

### **Movement of people**

#### *Australian Visas*

Australian Government immigration policies have a significant impact on the export of education services.

The reforms to Australia's student visa program announced on 22 September 2011 are welcomed by the university sector. The introduction of streamlined visa processing arrangements for all university students at or above bachelor degree level and the introduction of two years work rights for graduates of Australian universities after at least two years study in Australia will make Australia a more attractive place to study for Indian students. These reforms should lead to sustainable growth in the number of overseas students from India studying at universities in Australia. This follows the release of the *Strategic Review of the Student Visa Program* by Michael Knight.

While these reforms are welcome, there has been no liberalisation of student visa program requirements for overseas students studying at VET institutions or for overseas students who seek to complete qualifications below bachelor degree level. These matters are the subject of further reviews not expected to report until mid 2013.

This could lead to a reduced number of Indian students gaining much needed technical skills to take back to India to assist in developing their growing economy.

#### *Indian visas*

Several companies made reference to the time and documentation required to obtain a visa for business travel to India, including in cases where there was an urgent need to travel.

#### *Mutual Recognition of Qualifications*

The lack of recognition of Australian university qualifications in India has led to difficulties in developing student exchanges, articulation of degrees or in any programs where Indian universities need to recognise university study

undertaken in Australia. NSW universities have commented that Indian universities are unwilling to recognise research-based PhDs, as opposed to those based on course work and that they are more likely to recognise the American accreditation system (including for medical professionals) than the Australian system. Education providers have also referred to the lack of transparency in the process.

One academic institution has suggested that in order to effectively engage with Indian universities, a qualifications framework is required, which aligns and provides mutual recognition of qualifications, as well as a commitment to transferring credit between universities in each country to facilitate student mobility. This might include a register for professional recognition of degrees in engineering, law, medicine, accounting, science where degrees from G08 Universities are automatically accredited and recognised in India and vice versa.

NSW supports mutual recognition of qualifications on a select risk management basis and across certain groups, starting with a small cohort which can be grown over time. This includes NSW government school curriculum and nationally accredited vocational qualifications.

#### *Regulatory barriers*

Complicated and time-consuming approval processes in mid-level bureaucracy have been identified as a barrier to the delivery of education training programs in India, as well as government-to-government exchanges of personnel.

The difficulty in developing and implementing collaborative projects with partners in India has been evident in comments made by NSW recipients of grants under the Australian Government's Australia-India Strategic Research Fund (AISRF).

One education institution commented:

*"India still presents significant internal bureaucratic hurdles. This limits the number of opportunities for Australian researchers. You either need a very high ranking collaborator, or a collaborator outside the major channels. "Proper channels" is still an issue in India."*

Other comments related to: the significant administrative workload linked to projects; the need for support in negotiating with the Indian bureaucracy; and difficulties in identifying an Indian partner.

Other points raised in relation to research collaboration (outside the AISRF) were:

- There can be both high level and on the ground support for initiatives, however implementation is often difficult because the process is slowed in the middle layers of bureaucracy; and
- Research collaboration with smaller institutes in India is perceived as likely to be more successful because there is less red tape involved in organising activities.

### *Access to Information/ Complex Processes*

Access to information and the need for simplification of processes was also raised by service providers with issues including:

- The process for issuing of multiple entry visas.
- Difficulties in obtaining bank branch licences due to restrictions on licence numbers across all foreign banks put together. The comment was made that the relatively small scale of new foreign entrants also made it difficult to attract and retain talent.
- Challenges faced by NSW universities arising from the liaison office limitations and branch office compliance requirements.
- Local businesses being given more information about projects or informal earlier advice about impending tenders.
- Advantage through local knowledge as to deliverables and standards relating to tender processes.
- A requirement that local companies be engaged in or lead tender bids, coupled with insufficient timeframes to secure appropriate partners.

One company advised that it has a virtual office in India but was reluctant to register a branch office or to employ local staff due to perceived administrative burdens exacerbated by the lack of available information.

These issues highlight the need for accurate and reliable information provision by the Indian Central and State Governments to enable Australian business to do their homework before engaging local/ in-market advisers for targeted advice.

### *Contractual Issues*

Developing appropriate costings for projects involving local personnel was identified as a challenge due to the direct costs and the need for extra staff to reach expected standards.

## **BILATERAL AGREEMENTS**

It is noted that issues in this sector will also be the subject of bilateral agreements including:

- The continued negotiation of aviation access issues through existing bilateral air services arrangements; and
- Negotiations on a bilateral film co-production agreement. The NSW Government has provided input through the Australian Government screen agency, Screen Australia, related to its work with Indian Authorities on a potential Australia/India Co-Production Treaty for Film and Television Production.

NSW supports measures to encourage increased two-way investment between Australia and India.

Since 2009, Indian companies have announced investments of A\$615 million in NSW. These include:

- MphasiS, a subsidiary of Hewlett-Packard and India's sixth largest ICT company, is establishing a centre of excellence in Wollongong, investing \$1.5 million and creating 256 highly skilled jobs over five years.
- The SP Jain Centre of Management a leading Indian provider of business management programs is investing \$45 million in a campus at the Sydney Olympic Park creating 50 full-time and 100 part-time jobs over five years.
- Riverina Oils and BioEnergy is investing \$63 million in an oilseed plant in Wagga Wagga creating 65 jobs.
- Gujarat NRE Coking Coal Limited is expanding its coking coal mines in the State planning to spend \$500 million and create 150 jobs.
- One of India's largest state-run banks, the Bank of Baroda has established a representative office in Sydney and is applying for a branch licence. They will be investing over half a million dollars in setting up the office and creating 10 jobs. Punjab National Bank is opening its representative office in 2011, investing \$20 million and creating 10 jobs.
- Allied Digital is a global IT solutions and technology services provider, is expanding its international offices to Sydney, NSW and will be investing \$2-3 million and creating up to 25 jobs.

There has also been substantial investment by NSW companies in India, including FAT Systems Pty Ltd (biofuels); GHD (engineering services); Leightons (oil and gas projects); ResMed (sleep apnea equipment); and Woolworths (electronic stores).

### **OPPORTUNITIES**

Opportunities for Indian investment in NSW exist in the many active coal projects currently under development in NSW, including 12 open-cut mines, 7 underground mines and 8 gas wells. One Indian mining firm which already operates mines in the Illawarra has announced plans to invest a further \$500 million in NSW coal mines. According to Indian mining firm Gujarat NRE Coking Coal the demand for coking coal in India could double over the next 10 years.

The Australia-India Joint Feasibility Study notes the potential for enhancing bilateral links in the audio-visual sector in areas such as post production, animation, visual effects and potentially games. The reduced thresholds for the Commonwealth Government's Post/Digital/Visual effects Offset to \$500,000 and the increase in the rate to 30% creates the conditions for enhanced collaboration in this area. However the Location Offset, available to foreign projects filming in Australia, is not available to projects spending less

than \$15m in Australia. Although the budgets of Indian films are growing they are still invariably under this threshold.

Bilateral and regional free trade agreements signed by Australia in recent years have included measures that preserve Australia's capacity to introduce and adapt policy measures assisting the Australian audiovisual sector. These range from broad cultural carve outs such as those included in the bilateral agreements with Singapore and Chile through to more targeted reservations in AUSFTA. Given the precedent setting capacity of free trade agreements it is expected that the Australia-India Free Trade Agreement will incorporate such a reservation.

In view of this, the most promising avenue for expanding bilateral links in the area of film and animation is the film co-production agreement currently under consideration. This would allow official Australia-Indian coproductions to access the Producer Offset.

The increased focus by the Indian government on infrastructure and incentives, including an outlay of over \$US 1 trillion over in the period 2012-2017, presents significant opportunities for private sector investment in infrastructure projects, as well technical support and other associated industries.

## **BARRIERS**

NSW companies investing in India have identified the following factors as impinging on investment activities.

### *Visas*

A large Sydney-based consultancy firm which has established operations in India has indicated that there are issues around obtaining long term multiple entry visas and Permanent and Deemed Permanent Establishment status and taxation rules.

### *Taxation*

One company has noted that:

- The terms of the Australia-India Tax Treaty are not favourable for the services being provided by Australian companies in India where this is largely from home base but with limited inputs in India;
- The 20% withholding tax is quite high for deducting tax at source on fees for technical services delivered from a foreign company's home /overseas offices in the absence of local Permanent Account Number;
- The taxation levels are also an issue in relation to attracting and retaining relevant skilled staff in India.

An educational institution operating in India has also raised the possibility of double taxation arising from withholding tax requirements.

These issues might be considered in future reviews of the Australia-India Tax Treaty.

### *Protected sectors*

The extent of potential NSW investment in India is limited by the protection provided to a range of sectors including transport, power, retail and business services, education, telecommunications and primary industry.

An issue raised has been that of the impediments to the repatriation of profits for foreign universities in India. This would be assisted by changes proposed in Foreign Educational Institutions (Regulation of Entry and Operation, Maintenance of Quality and Prevention of Commercialisation) Bill 2010 - currently before the Indian Parliament - especially around quotas and funds transferred to parent company/country. The changes proposed by the Bill are expected to increase interest in foreign direct investment in the education sector in India.

### *Access to information*

Industry has pointed to the need for current information on permissible levels of foreign equity participation to be readily available for investors. While informal guidelines have been circulated in certain sectors (e.g. mining and financial services), updated information is not readily accessible.

### *Contractual issues*

Contract dispute resolution, for example over contract variations, has been identified as a challenge for Australian business involved in infrastructure project work in India. The development of a quicker, simpler, contract dispute resolution and arbitration process is a potential area for collaboration between the Australian and Indian governments.

### *Indian Investment in Australia*

In terms of Australian regulatory barriers, a company from India active in Sydney has raised with DTIRIS the difficulties in renting premises and obtaining a mobile phone account in Australia, due to the fact the credit history in India was not recognised by Australian banks. The Agreement could investigate how such concerns might be resolved.

The broad benefit of FTAs for inward investment is the “level playing field” argument, i.e. companies seeking to do business in Australia are recognised as valued investors and do not feel disadvantaged.

## VI PEOPLE-TO-PEOPLE LINKS

---

The NSW Government supports initiatives to strengthen people-to-people and cultural ties between Australia and India as an important underpinning of an expansion of the trade and investment relationship. Links through education (secondary, tertiary and vocational education and training as well as teacher education), tourism (including visiting friends and relatives of students and residents), and cultural ties all reinforce and promote trade and investment ties.

NSW supports Commonwealth activities which enhance and promote understanding between Australia and India including:

- The Australian Government's Australia-India Strategic Research Fund (AISRF). NSW research institutes have been awarded 16 grants for collaborative research projects with Indian institutions in areas including nanostructures, agricultural research, bioenergy, fuel cells, quantum electronics, oceanography, and medical research and have indicated strong support for the program. One organisation suggested that the program's scope be expanded to include independent research organisations and NGOs; and
- Activities related to the Year of Australia in India in 2012.

The NSW Government and NSW education providers are working to strengthen the ties between NSW and India. An example of initiatives is listed below:

### *Cultural activities*

- In January 2010, the Sydney Festival (with the support of the NSW Government) presented acclaimed Indian composer AH Rahman (Slumdog Millionaire) in a free concert at Parramatta Park. AH Rahman was supported by more than 40 dancers and musicians. Other state significant festivals including the Biennale of Sydney, the Sydney Writer's Festival and Sydney Film Festival have invited Indian artists to participate in these major cultural events.
- In 2010, the NSW Government (in partnership with Parramatta Council) established Parramasala, a festival of South East Asian arts, including film screenings, concerts, exhibitions and major performances, including artists from the global Indian diaspora. In November 2011, the festival will include one of India's most highly regarded Kathak dance companies, supported by the ICCR (Indian Council of Cultural Relations).
- NSW has developed strong links with India around screen production and culture. In 2009, the Australian film *The Waiting City* filmed in India, and major Indian films *Hey Baby* and Karan Johar's Hindi remake of "Stepmom" were shot in Sydney. Recognising the strong interest in Indian film culture in Australia, an Indian Film Festival was established in 2011.

- Ten NSW tourism operators attended a Tourism Australia-led trade mission to India from 25-28 August 2011 to meet with trade representatives from key Indian travel markets including the cities of Mumbai, Delhi, Chennai, Bangalore, Kolkata, Ahmedabad and Pune. The mission provided an opportunity to build on the growing Indian tourism market and showcase tourism, cultural and natural attractions in Sydney and regional areas of NSW. Destination NSW works with NSW tourism operators to provide international market intelligence and to maximise visit outcomes.
- In 2011/2012 Destination NSW is also participating in a number of cooperative consumer advertising campaigns in India. Destination NSW will be contributing A\$212,500 together with a combined contribution of A\$452,500 from various airline and trade partners.
- Destination NSW Singapore-based manager has responsibility for managing activities in India and facilitating greater links between Australia and India.
- Destination NSW is working with Singapore Airlines in the organisation of a visit to Sydney by owners, directors or senior management of the (Singapore Airlines) top 20 Indian travel agents for site inspections and networking. The Indian agents will also be accompanied by senior Singapore Airlines Indian management team. The visit will coincide with Parramasala and the Indian agents will be attending the closing night activities.

#### *Education links*

- The University of Technology Sydney (UTS) has signed a Memorandum of Understanding with the Indian Council for Cultural Relations (ICCR) to establish the Rajiv Gandhi Visiting Chair of Contemporary Indian Studies. Under the agreement, UTS will appoint an Indian academic as a visiting professor for one semester a year over four years, with a new candidate being selected each year. It is expected the inaugural appointee will be selected by the end of 2011. While at UTS the selected academics will contribute to research, scholarship, educational engagement and mentoring at both undergraduate and postgraduate levels. The chair is an opportunity to develop collaboration in research and teaching with possibly several Indian universities over the course of the MOU.
- Macquarie University established an India Research Centre in November 2010 which is aimed at developing further social, academic and community links with India, with a focus on arts and cultural studies.
- The Australasian Legal Information Institute, based at the University of NSW (UNSW), has taken a leading role in the development and launch of the Legal Information Institute of India (IndiaLII). IndiaLII is an important vehicle for co-operation between Australia and India.

- UNSW and UTS Law schools are collaborating with ILS Law College in Pune in holding a conference in February 2012.
- The University of Wollongong (UOW) International Links Grant scheme funds both research and teaching collaborations. For the 2011/12 round 20% of the \$125K pool was directed to support connections with India and this is expected to grow in 2012/13.
- UOW is actively engaged in research and development, staff exchange and student recruitment with India and has a strong focus in building partnerships with industry and particularly the Corporate Sector in India.
- The University of Sydney supports joint capacity building projects specific to its research strengths, e.g. health and agriculture and has sent three delegations to India over the past three years.
- The NSW Government has been working with the Commonwealth Government on initiatives to improve the information provided to international students and their welfare and safety during their stay in Australia. In conjunction with the Commonwealth's efforts to require international education providers to demonstrate their capacity to provide quality education (following an amendment to the Education Services for Overseas Students Act 2000), NSW has introduced tougher regulations that require new mandatory public reporting of how international education providers are complying with State and Federal legislation.

#### *Agricultural research*

- Primary Industries (a Division of DTIRIS) has had a long-standing relationship with academic, government and farming organisations in India through collaborative research. Over the last three years, DTIRIS has been involved in several research projects funded by the Australian Centre for International Agricultural Research. (ACIAR). The processes involved in undertaking research projects from start-up to end require close collaboration, between Indian and Australian economists, scientists and agronomists, and also from contributors in other countries such the US and the UK.

Examples of current Primary Industries projects are at Tab B.

#### *Alumni*

- NSW University Alumni networks include a growing community in India. International chapters of the Alumni community provide a valuable base for graduates and provide the opportunity to increase professional networking and to further the reputation of NSW Universities in India and grow people to people links.

## SUGGESTED AREAS FOR ENHANCED LINKAGES

NSW would support the inclusion in the Agreement of a provision relating to cooperation in innovation, research and development and the promotion of a framework supportive of higher education collaborations. DTIRIS has canvassed the views of NSW Universities and research institutes on areas where collaboration could be enhanced.

### *Research collaboration*

- India is an important source for PhD students studying at Australian Universities. One research institute suggested that a program be put in place that supports PhDs registered at Australian universities but able to conduct collaborative research across the two countries. The current Australian Endeavour PhD program does not permit students to undertake any research in their home country. Brazil has recently announced an expansion of the scholarship program for overseas PhD study, in which sandwich PhDs are the desired model, with two to two and a half years in Brazil and the remaining time overseas. It was suggested that a similar program with India, involving public sector and non government organisations (NGOs), could provide benefits to both countries and enable Australian research contributions to translate into substantial impact.
- Increased scientific and research collaboration co-funded by the Indian and Australian Governments with activities including:
  - Workshops focusing on research priorities such as science and technology; business and humanities; and public and community health.
  - Launching a major project or initiative designed to solve a significant challenge or problem that involves a few universities from both countries and is fully funded by both Governments.
  - Establishing an Australia-India Scientific and Innovation Leadership program involving key researchers that is funded by both countries.
  - Investment by Indian universities in establishing dedicated international offices through which student exchanges can be facilitated and quality assured. Australian universities should establish Indian cultural associations on campus.
- Universities highlighted the scope to build collaboration between Australian universities and Indian companies and research institutes.
- Support for the advancement of innovation communities and knowledge partnerships between Australia and India, by:
  - Fully funded strategic workshops that lead to ongoing collaboration
  - Strong links between the G08 and the emerging research intensive Innovation universities being developed in India
  - Ongoing Funding for each of the nodes (Melbourne, UNSW and La Trobe) of the Australia-India Institute to build more strategic collaboration in core areas of priority.

Specific topics for collaboration which were suggested included:

- Collaboration between Australian and Indian medical researchers on the design and co-ordination of investor-initiated simple randomised clinical trials of low cost intervention such as: bovine lactoferrin in pregnancy to prevent preterm birth; or bovine lactoferrin after preterm birth to prevent sepsis and death; appropriate oxygen saturation targeting to prevent mortality and morbidity; and placental transfusion for preterm infants at birth to prevent cerebral palsy, sepsis and death. It was also suggested that the Indian government be encouraged to improve clinical testing in India through use of specialised diagnostic products suitable for diseases prevalent in India.
- Collaboration on agricultural issues common to both countries, including increasing desertification and land degradation, decreasing soil carbon and the growing threat of climate change and variability, with a view to developing and implementing new technologies and sustainable land management strategies. In this regard, the NSW Government supports the continuation of Indian-Australian collaborative forums on possible areas of agricultural research, such as the September 2011 forum between India and the Australian Centre for International Agricultural Research.
- Research related to capturing the benefits of a low carbon future approached from the angle of communities and social change behaviours issues.
- Other areas of suggested collaboration were water use efficiency, crop variety development, animal grazing and genetics. This could include formalised education and training in agricultural production systems and technology provided at NSW facilities for targeted groups from India who would then undertake ground work in India.

#### *Education exchanges*

- Education exchanges were highlighted as an important way to build people-to-people links. Suggestions include:
  - a framework whereby Indian students spend time in Australia and Australian students spend time in India working on multidiscipline themes projects such as sustainability.
  - an executive leadership program involving senior administrators, registrars and school principals to build increased collaboration and understanding between institutions in both countries.
- The University of Newcastle has established a number of Memorandums of Understanding with Indian-based universities and educational institutes to encourage student exchange and collaboration on teaching and research activities. These include exchanges with:
  - Indian Institute of Technology, Delhi: To underpin the exchange of up to 3 students from each institution per year,

and to undertake collaborative research education in science, engineering, management and social sciences.

- University of Madras: To underpin the exchange of faculty and students for research or training, and to facilitate joint research and teaching activities, and exchange of publications.
- Indian Institute of Foreign Trade: To underpin the exchange of up to 3 students from each institution per year, and to foster the development of academic and cultural interchange in education and research.
- Indian Institute of Management, Indore: To underpin the exchange of up to 2 postgraduate students per year for one semester, and to undertake joint research and publications with the University's Faculty of Business and Law.

#### *Business networks*

- It has been suggested that business seminar and networking events could assist businesses – particularly small to medium sized enterprises – to access information on how to do business in India and also to form business partnerships.

DTIRIS raises the following areas for consideration in DFAT's trade negotiations in addition to trade in goods and services and investment issues.

- **Indian State Participation**

DTIRIS supports the broadening of the negotiations to include undertakings relating to measures on participation by individual Indian States, recognising that the States in India have considerable economic and regulatory responsibilities, including taxation powers.

- **Procurement**

The NSW Government notes that Australia is not a signatory to the Government Procurement chapter of the WTO. However, it is noted that the Australian Government has agreed to include Government Procurement in a number of bilateral free trade agreements, most notably the AUSFTA. In the event that the Australian Government agrees to the inclusion of the Government Procurement chapter in the Agreement, the NSW Government strongly recommends that this be done in a manner that is consistent with Australian Government (and NSW Government) obligations under the FTAs, especially the AUSFTA and that the Agreement does not expand the coverage of our obligations.

- **WTO-plus agreement**

The NSW Government supports the Agreement being a WTO-plus agreement that can serve as a template for other agreements with developing/emerging economies.

- **Agreement Review**

DTIRIS would welcome the opportunity to provide further comment as the Australia-India trade agreement negotiations continue and supports a review of the operation of the Agreement after four years in order that the Agreement can be refined as the bilateral relationship evolves.

**TAFE AND NSW GOVERNMENT SCHOOLS**

- The Department of Education and Communities, through its commercial arm DEC International, currently has joint projects with TAFE NSW and a number of Indian states and agencies including the Gujarat State Government, Maharashtra State Government, Newland Global Group and Saksham Bharat Skills SIS Global.
  - Projects include pilot programs in the IT sector, training programs for trainers, study tours, curriculum development in key industry areas, qualifications framework development, vocational teacher training, twinning models, creation of training facilities, and joint delivery of courses.
  - Training includes English language programs and TAFE diplomas and advanced diplomas in areas including international business, accounting, information technology, engineering, tourism, and hospitality and marketing, offering pathways to several Australian university degree programs.
- TAFE NSW has 31 registered agents in multiple office locations in India.
- In 2010, four study tour groups from India visited NSW Government schools and DEC International hosted two schools and two TAFE related delegations from India.

**UNIVERSITIES**

- The University of New South Wales (UNSW) has an office in Mumbai, for the purpose of recruiting students to UNSW. UNSW also arranges staff visits to India several times per year.
- The International Assessments for Indian Schools (IAIS) educational measurement and assessment service is an initiative of the UNSW Educational Assessment Australia (EAA) and Macmillan India Ltd program. Over 175,000 students across India and neighbouring countries take part in the IAIS in the subject areas of Computer Skills, English, Mathematics and Science.
- S P Jain, an Indian institute with international accredited by DEC in NSW, is investing \$45 million in building a new campus at the Sydney Olympic Park. Students in the Global Bachelor of Business Administration (GBBA) four year program for undergraduates study at S P Jain's Singapore campus for the first two years and in Sydney for the last two years. Students will transfer from Singapore to Sydney in 2012. At the end of the program, students will be conferred with an Australian degree.

**NSW Cooperation with India in Agricultural Research****ACIAR Projects Involving DTIRIS and Indian Policy Makers**

DTIRIS has had a long-standing relationship with academic, government and farming organisations in India through collaborative research. Over the last three years, DTIRIS has been involved in several research projects funded by the Australian Centre for International Agricultural Research. (ACIAR).

Research projects vary in themes and time-scale, but often one project can lead to another through an exchange of ideas between Australian and Indian policy-makers. The processes involved in undertaking research projects from start-up to end require close collaboration, not only between Indian and Australian economists, scientists and agronomists, but also from contributors in other countries such the US and the UK..

Some recent examples include the following:

**Policy Instruments to Address Air Pollution Issues in Agriculture – Implications for Happy Seeder Technology Adoption in India**

This ACIAR-funded project originated with the development by the CSIRO and Punjab Agricultural University of technology for direct drilling of wheat seed into rice residue. The direct drilling technique is designed to avoid the traditional practice of burning rice stubble prior to sowing the wheat crop. The seasonal stubble burn off in the Punjab causes terrible air pollution and health problems.

The project involved:

- Assessment of the costs of agriculturally based pollution in Punjab and description of policies that may contribute to the pollution
- Evaluation of the Happy Seeder relative to other rice residue use and management technologies
- Evaluation of a range of potential policy instruments to improve adoption of the Happy Seeder technology
- Reviewing the influence of policies and policy instruments in changing residue management in Australia

The project included a workshop on alternative rice residue use and management technologies, held in October 2010 at the Punjab Agricultural University in Chandigarh. The workshop helped strengthen DTIRIS I relationships with the Punjab Department of Agriculture, the Punjab State Council for Science and Technology, the Punjab Pollution control Board and the Punjab Agricultural University.

DPI collaborated with leading Indian institutions, the National Council for Applied Economic Research (NCAER) and The Institute for Social and Economic Change (ISEC) to complete this project.

### **Facilitating Efficient Agricultural Markets in India: An Assessment of Competition and Regulatory Reform Requirements**

This project examines current agricultural marketing and competition policy settings in India, Brazil, Russia, China and South Africa to determine whether they achieve objectives of improved productivity, higher rural employment and income, and enhanced food security. The project was a collaboration between DTIRIS, NCAER, La Trobe, Melbourne and Exeter (UK) Universities and the Australia and NZ School of Government.

The project included a workshop in November 2009 held in Delhi on the theme “Achieving Food Security in India: Improving Competition, Markets and the Efficiency of Supply Chains”. The workshop was opened by the Australian High Commissioner Mr Peter Varghese and included Allen Fels, Dean of the Australia and NZ School of Government, as keynote speaker and Professor Ramesh Chand of The National Centre for Agricultural Economics and Policy Research (NCAP) as chief guest.

The workshop focused on regulatory reform case studies in wheat and horticulture. An important outcome was recognition of an explicit linkage between agricultural policy reform and agricultural sector productivity and food security. In India’s case, input subsidies and price supports serve to artificially hold resources in wheat and rice production, impeding adjustment into other enterprises. Negative outcomes include declining productivity, lower regional employment and adverse impacts on food security. This holds important implications for regulatory reform.

### **An Extension of Research on Indian Agricultural Markets and Competition Issues- Identifying Competition Issues in the Indian Onion Market**

This project is an extension of the Efficient Agricultural Markets project listed above. It was requested by the Chief Economic Advisor to the Government of India Professor Kaushik Basu. The project will apply the general findings of the earlier project to the specifics of the onion market in India. The catalyst for this research was the recent spike in onion prices, which may be due not just to a supply shortfall, but also the structure of the onion market. The main output will be a report on the structure and performance of the onion market, highlighting potential market structure and regulatory issues, with a set of policy options for the Indian Government and the Competition Council of India.

This project is a collaboration between DTIRIS, La Trobe and Melbourne Universities, Exeter University, and India’s NCAER, and Infrastructure Development Finance Company (IDFC) Foundation.

## **Capturing the Potential for Indian Greenhouse Gas Offsets in Indian Agriculture**

This project proposal has arisen out of the Efficient Agricultural Markets project above. Current policy settings are inducing falling productivity and encourage unsustainable, emissions intensive farming practices. This project examines the potential of agricultural policy reform including an agricultural offsets scheme to deliver not only cost-effective emissions abatement but also higher agricultural productivity and incomes, lower unemployment, and enhanced food security.

The project will comprise four parts

- Part 1 involves a desktop review of current national policy settings that may be encouraging high emissions in India's agricultural sector.
- Part 2 will be a review of international GHG policy settings that could play a role in assisting India meeting its emissions intensity targets at least cost.
- Part 3 will be a modelling exercise of the scope of cost-effective emission abatement in India's agricultural sector. The results will help identify the location of regional case studies with the greatest scope for cost effective GHG abatement. The results will also help define policy simulations of the economy-wide effects of reform and GHG abatement in the agricultural sector.
- Part 4 will explore the potential market-based offset designs and incentives necessary for the adoption of abatement practices in agriculture.

Valuable partnerships will be formed through the project that will enhance the capacity of collaborators in India to undertake more holistic assessments of policy and to conduct economic modelling.

Collaborators include DTIRIS, La Trobe University, Infrastructure Development and Finance Corporation (IDFC), NCAER, and the International Food Policy research Institute (IFPRI).

The project timeline commenced in July 2011 and finishes in June 2014.

The NSW Department of Primary Industries is a registered training organisation. The Group is well placed to provide services to assist India in formalised education and training in the areas of such as production technologies and management skill development; science and research capacity; and resource sustainability and management development. Models could include bringing targeted groups to NSW, followed by on-ground work in India – using field trials / demo site by technical expertise.