# Australian Fair Trade and Investment Network (AFTINET) Submission to the review of the Indonesia-Australia Comprehensive Economic Partnership Agreement (I-ACEPA) March 2026

# Contents

# Introduction

AFTINET is a national network of 60 community organisations and many more individuals supporting fair regulation of trade consistent with democracy, human rights, labour rights and environmental sustainability.

AFTINET supports the development of fair trading relationships with all countries based on these principles. We recognise the need for regulation of trade through the negotiation of international rules.

AFTINET supports the principle of multilateral trade negotiations, provided these are conducted within a transparent and democratically accountable framework that recognises the special needs of developing countries.

These principles are especially important in the current context when urgent multilateral action is required to address the climate crisis. However, both cooperative multilateral action on trade and climate action are under challenge from US unilateral coercive tariffs and pressure on some countries to import more fossil fuels. This creates more urgency to diversify cooperative trading and climate cooperation relationships in our region and elsewhere.

We welcome the opportunity to make a submission to the review of the Indonesia-Australia Comprehensive Economic Partnership Agreement (I-ACEPA).

When Trade Minister Farrell announced the government's trade policy on November 13, 2022, he recognised the environmental necessity and the economic development opportunities in "the transition to low-carbon, low-cost and reliable energy generation, storage and transmission." He also stated that "the benefits of trade must be shared among the community." This includes "rules in trade agreements that commit to maintaining high labour standards" and ensuring that "traditionally marginalised voices are amplified including those of First Nations Australians and women." The policy also recognised that Investor-State Dispute Settlement (ISDS) in trade agreements, which enables international corporations to sue governments over policy changes, reduces the right of governments to regulate in the public interest. The policy pledges to exclude ISDS from new trade agreements and review ISDS in existing agreements. [1]

In the current context of trade coercion, Prime Minister Albanese has re-emphasised the importance of reducing Australia's dependence on global supply chains through trade diversification and increasing domestic manufacturing capacity through the *Future Made in Australia strategy* for renewable energy and other low carbon industries[2]. He has also pledged to uphold UN agreements and principles and to work with other middle power countries to preserve cooperative trade relations[3].

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[1] Farrell, D., (2022) Trading our way to greater prosperity and security. November 13, https://www.trademinister.gov.au/minister/don-farrell/speech/trading-our-way-greater-prosperity-and-security.
[2] Albanese, Anthony. 2025a. "Statement on USA tariffs". April 3, 2025. Australian Labor Party. Canberra. https://alp.org.au/news/statement-on-usa-tariffs/.

[3] Albanese, A. (2026) Albanese, Anthony. (2025) Transcript of Television interview *Insiders* Sunday 25 January 2026 Australian Broadcasting Corporation https://www.pm.gov.au/media/television-interview-insiders-0

and Albanese A. (2026) Opening Remarks on welcoming President Carney to Parliament. March 5, 2026 https://www.pm.gov.au/media/opening-remarks-parliament-house-canberra-2

## Summary

This submission reviews the experience of Indonesia and Australia in the context of recent developments, advocating that Australia should implement its policy to support commitments on environmental protection and climate action, labour rights and the rights of women and Indigenous peoples in the IAECEPA. It then presents the latest evidence for the exclusion of certain provisions from I-ACEPA because they reduce the right of governments to regulate in the public interest in a rapidly changing international environment. These include removing ISDS and removing provisions which would prevent the public interest regulation of the digital domain, removing provisions which expand the number of temporary overseas workers without labour market testing or labour rights and removing provisions which restrict the regulation of essential services. Specific recommendations about the text of I-ACEPA are made at the end of each section.

***Recommendations on climate action and the environment***

***That the government seek to ensure that I-ACEPA is aligned with its policies to protect the environment and achieve net zero carbon emissions targets through commitments to adopt, develop and implement United Nations multilateral environmental agreements, including:***

- ***the UN Framework Convention on Climate Change 1992, the Paris Agreement 2015, and Implementation Agreements at subsequent UNFCCC COP meetings***
- ***the Montréal Protocol on Hydrofluorocarbons***
- ***the International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978***
- ***the UN Convention on International Trade in Endangered Species***
- ***the UN Convention on Biological Diversity***
- ***the UN Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (in force as from 11 December 2001).***

***Recommendations on labour rights***

***The I-ACEPA should include enforceable commitments to progressively adopt, develop and implement international standards on labour rights, including the International Labour Organisation's (ILO) Declaration on Fundamental Principles and Rights at Work and the Fundamental Conventions. These include:***

- ***The right of workers to freedom of association and the effective right to collective bargaining (ILO Conventions 87 and 98)***
- ***The elimination of all forms of forced or compulsory labour (ILO Conventions 29 and 105)***
- ***The effective abolition of child labour (ILO Conventions 138 and 182), and***
- ***The elimination of discrimination in respect of employment and occupation (ILO Conventions 100 and 111)***
- ***A safe and healthy working environment (ILO Conventions 185 and 187).***

***Recommendations on women's rights and rights of Indigenous Peoples***

***I-ACEPA should include enforceable commitments to progressively adopt, develop and implement international standards based on the UN Convention on the Elimination of All Forms of Discrimination Against Women***

- ***the UN Declaration on the Rights of Indigenous Peoples.***

***Recommendation on ISDS***

- ***recognising the emergence of even more evidence of the harmful impacts of ISDS since I-ACEPA was negotiated, the Australian government should implement its policy and support the removal of ISDS provisions through the removal of Section B of Investment Chapter 14 of the I-ACEPA***

***Recommendations on digital trade:***
***The I-ACEPA should not include provisions that:***

- ***Prevent governments from regulating the cross-border flow of data***
- ***Prevent regulation to address market power imbalances***
- ***Prevent governments from accessing source code and algorithms and from regulating to prevent the misuse of algorithms to reduce competition and to prevent class, gender, race and other forms of discrimination***
- ***Prevent governments from regulating the abuse of Artificial Intelligence***
- ***Prevent governments from setting standards for the security of electronic transactions and preventing cybercrime***
- ***Prevent governments from regulating to ensure that digital platform workers have access to the same minimum standards for wages and working conditions as other workers***
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- ***Prevent governments from regulating to protect workers' privacy, prevent intrusive surveillance and ensure that workers have access to data collected about them.***

***The I-ACEPA should include:***

- ***Full exemptions for tax policy to ensure that digital companies do not evade tax.***
- ***Mandatory minimum standards for privacy and consumer protections, including where data is held offshore. These should be no weaker than Australian standards.***

***Recommendations on trade in services***

- ***That the government ensure that public services are clearly defined and clearly excluded from services commitments***
- ***That the government review the reservations in the I-ACEPA trade-in-services chapter to ensure that governments retain the right to regulate and reregulate all government-funded and other essential services as circumstances change***
- ***That aged care services be listed as a specific reservation in Annex II to Investment Chapter 9 of the I-ACEPA***

## Inclusion of environmental standards, workers' rights, women's rights and indigenous rights

Australian bilateral and regional agreements and other trade arrangements, like the Indo-Pacific Economic Partnership (IPEF). have included chapters and/or commitments on environmental standards and labour rights. However, the strength of the commitments and their enforceability has varied widely. There are commitments not to reduce labour and environmental standards in bilateral agreements with the US and the Republic of Korea.[4] The Australia-UK Free Trade Agreement has chapters with more detailed commitments on United Nations (UN) environmental agreements and net zero emissions, labour rights and on women's rights.[5] The Australia-UAE agreement also includes chapters on the environment and climate change, labour rights, women's rights and indigenous rights. However, none of these commitments are enforceable through the same state-to-state dispute processes that apply to other chapters in the agreement.

The current review of I-ACEPA is an opportunity for the Australian government to implement its policy of more consistent and enforceable commitments on environmental standards and net zero emissions, based on United Nations (UN) agreements, cooperation on reducing carbon emissions and the development of renewable energy industries, and commitments to labour rights, women's rights and rights of Indigenous peoples.

## Commitments to UN Environment agreements and net zero emissions

Australia and Indonesia are both vulnerable to events like cyclones and typhoons, which are becoming more intense and frequent as a result of climate change. Indonesia is also vulnerable to rising sea levels which are already occurring. Changing weather patterns are also leading to adverse health outcomes through the spread of water-borne and mosquito-borne diseases.

Trade agreements should include commitments by governments to implement international environmental agreements which should be enforced by the government-to-government disputes process of the agreement.

Climate change and environmental degradation present systemic risks to economic stability, public health and sustainable development. Trade agreements play an increasingly important role in shaping how countries respond to these challenges, particularly through their influence on investment, production patterns and energy systems.

The Australian Government has recognised the serious climate crisis by adopting a target of net zero emissions by 2050 and interim targets by 2030 and 2035. The government is also committed to the development of national and regional renewable energy initiatives in cooperation with trading partners.

Trade policy should be aligned with these commitments. This includes ensuring that trade and investment rules facilitate, rather than constrain, climate action, including the deployment of

[4] Department of Foreign Affairs and Trade (2004) *Text of the Australia-United States Free Trade Agreement,* Chapter 18 https://www.dfat.gov.au/trade/agreements/in-force/ausfta/official-documents/Pages/official-documents.
Department of Foreign Affairs and Trade (2014) *Text of the Korea-Australia Free Trade Agreement,* Chapter 17, https://www.dfat.gov.au/trade/agreements/in-force/kafta/official-documents/Pages/full-text-of-kafta
[5] Department of Foreign Affairs and Trade (2021) Australia-UK Free Trade Agreement text Chapters 21, 22 and 24 https://www.dfat.gov.au/trade/agreements/not-yet-in-force/aukfta/official-text

renewable energy, development of low-emissions technologies, and implementation of domestic climate policies.

Meeting the challenge of climate change is also inked with other forms of environmental protection - protection of the marine environment, biodiversity conservation, combating wildlife trafficking and illegal logging.

***Recommendations***

***That the government seek to ensure that I-ACEPA is aligned with its policies to protect the environment and achieve net zero carbon emissions targets through commitments to adopt, develop and implement United Nations multilateral environmental agreements, including:***

- ***the UN Framework Convention on Climate Change 1992, the Paris Agreement 2015, and Implementation Agreements at subsequent UNFCCC COP meetings***
- ***the Montréal Protocol on Hydrofluorocarbons***
- ***the International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978***
- ***the UN Convention on International Trade in Endangered Species***
- ***the UN Convention on Biological Diversity***
- ***the UN Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (in force as from 11 December 2001).***

## Labour Rights

Increased trade and investment can improve most people's lives if the benefits of trade and investment are shared equitably. This will not happen automatically but requires active policies to adopt and progressively implement internationally recognised standards for labour rights.

Global production chains encourage competition to provide the lowest labour and environmental costs for exports, which can erode workers' rights, especially in low-income countries. This often occurs in export processing zones or export industries where the workers have little or no effective labour rights to join a union or engage in collective bargaining. This model of global production chains suits the needs of global corporations but can have negative impacts on workers.

Indonesia is a member of the Indo-Pacific Economic Framework (IPEF), which is not a traditional trade agreement but a series of diplomatic agreements. The IPEF clean economy agreement outlines pathways to advance the transition to clean economies and achieve net-zero emissions, and promotes international labour standards and labour rights, but by DFAT's own admission, it contains minimal legally binding obligations.[6] The IPEF Supply Chains agreement mentions the importance of consultation with workers, women and Indigenous peoples in the preamble[7] and has commitments to monitoring the implementation of ILO standards on labour rights, but these commitments are not

[6] DFAT (2024), National Interest Analysis (NIA) on Indo-Pacific Economic Framework for Prosperity Agreement Relating to a Clean Economy, 6 June, p. 6, para. 14, https://www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/244_Joint_Committees/JSCT/2024/IPEF_Clean_Economy/NIA.pdf

[7] DFAT (2023) Text of the Indo-Pacific Economic Framework for Prosperity Agreement relating to supply chain resilience, November 14, pp1-2, https://www.dfat.gov.au/sites/default/files/indo-pacific-economic-framework-prosperity-agreement-relating-supply-chain-resilience.pdf

legally binding.[8] However, these IPEF provisions demonstrate a willingness on the part of Indonesia to discuss these issues in the context of trade arrangements.

The government should implement its commitments to maintain high standards of labour rights in trade agreements through supporting the following recommendations:

***The I-ACEPA should include enforceable commitments to progressively adopt, develop and implement international standards on labour rights, including the International Labour Organisation's (ILO) Declaration on Fundamental Principles and Rights at Work and the Fundamental Conventions. These include:***

- ***The right of workers to freedom of association and the effective right to collective bargaining (ILO Conventions 87 and 98)***
- ***The elimination of all forms of forced or compulsory labour (ILO Conventions 29 and 105)***
- ***The effective abolition of child labour (ILO Conventions 138 and 182), and***
- ***The elimination of discrimination in respect of employment and occupation (ILO Conventions 100 and 111)***
- ***A safe and healthy working environment (ILO Conventions 185 and 187).***

## Women's rights

Women form half the population, and the economy relies on their paid work in many industries and their unpaid work caring for children and elders. However, because of historic discrimination women's work is often unrecognised and under-rewarded resulting in higher rates of poverty. Changes in trade policy can have disproportionate impacts on women's economic participation. Gender analysis is required to assess and mitigate those impacts. For example, tariff changes can disproportionately impact female dominated industries like the garment industry. In developing countries, many small farmers are women and changes to agricultural trade policies can disproportionately impact them. We note that article 7 of the International Covenant on Economic, Social and Cultural Rights of which Australia is a signatory speaks of ensuring equal pay for work of equal value free of assumptions of gender.

The UN Convention on the elimination of all forms of discrimination which many countries have ratified shows how discrimination can be removed to increase women's social and economic participation. This is essential for women's full participation in both policy and in economic and trade activities, and in sharing the benefits of those activities.

In recent years, some trade agreements have included gender equality provisions that recognise the importance of women's economic empowerment and typically include commitments to cooperation, capacity building and gender-responsive policy. However, these provisions are often not legally enforceable and lack effective monitoring mechanisms.

***Recommendation:***

***The I-ACEPA should include enforceable commitments to progressively adopt, develop and implement international standards based on the UN Convention on the Elimination of All Forms of Discrimination Against Women***

[8] DFAT (2023), Section A Article 1 Definitions.

## Rights of Indigenous peoples

Australian Indigenous peoples live with the legacy of colonial dispossession and discrimination, with civil rights and land rights only recognised by Australian governments and courts over the last 60 years.

Indigenous peoples are rights-holders with jurisdictional authority over Country, not merely stakeholders to be consulted. In particular, free prior and informed consent is required for activities on Indigenous Country. Trade agreements that constrain environmental regulation, land governance, or climate action on Indigenous Country also undermine indigenous rights, even if it those rights are referenced formally.

In addition, trade agreements can affect the protection of Indigenous knowledge and cultural heritage, particularly through intellectual property provisions. Strong safeguards are needed to prevent misappropriation and to ensure that Indigenous communities retain control over the use of their knowledge and cultural expressions.

The government should implement its commitments to the inclusion of Indigenous peoples and share the benefits of trade through supporting the following recommendation:

***The I-ACEPA should include enforceable commitments to progressively adopt, develop and implement international standards based on the UN Declaration on the Rights of Indigenous Peoples.***

## Removal of Investor-State Dispute Settlement (ISDS)

ISDS is a mechanism in some trade and investment agreements that allows foreign (but not local) investors to claim billions from governments in compensation for law or policy changes if they can convince an international tribunal that the change will reduce their expected future profits, even if the change is for health, environmental reasons or other public interest reasons.

Australian government policy recognises that ISDS reduces the right of governments to regulate in the public interest. The policy excludes ISDS from new trade agreements and pledges to review ISDS in existing agreements.[9] Since the I-ACEPA was ratified, even more evidence has emerged to reinforce this policy.

ISDS provisions originally developed in the post-colonial period after World War II to compensate international investors for the direct expropriation or taking of property by governments. However, over the past 60 years, they have expanded to include "indirect expropriation"[10] and "legitimate expectations",[11] which do not exist in national legal systems. Investors can claim that they deserve compensation if they can argue that a change in law or policy reduces the value of their investment and/or expected future profits and/or that they were not consulted fairly about the change and did

[9] Farrell, D., (2022) Trading our way to greater prosperity and security, November 13, https://www.trademinister.gov.au/minister/don-farrell/speech/trading-our-way-greater-prosperity-and-security.

[10] Malakotipour, M (2020) The chilling effect of indirect expropriation clauses on host states public policies: A call for a legislative response. *International Community Law Review*. 29 May. Available at https://brill.com/view/journals/iclr/22/2/article-p235_5.xml?language=en

[11] Levashova, Y (2022) The role of investors' due diligence in international investment law: legitimate expectations of investors. 22 April. *Kluwer Investment Blog*. Available at https://arbitrationblog.kluwerarbitration.com/2020/04/22/the-role-of-investors-due-diligence-in-international-investment-law-legitimate-expectations-of-investors/

not expect the change to occur when they made the investment. Most ISDS cases are against developing countries.

ISDS *ad hoc* tribunals are staffed by investment lawyers who continue to practice as advocates and the tribunals lack the protections of national legal systems. Flaws include the lack of independent judges, arbitrator conflict of interest, lack of transparency, lengthy proceedings, high legal and arbitration costs, forum-shopping by investors, inconsistent decisions caused by the lack of precedents and appeals, third-party funding for claims as speculative investments, and excessively high awards based on dubious and inconsistent calculations of expected future profits.[12] The Clive Palmer cases show how these flaws can be manipulated to maximise time and costs to governments.

**Clive Palmer and other fossil fuel companies use ISDS to challenge democratic decisions on climate action**

Since the ratification of I-ACEPA, there have been many ISDS cases which challenge the urgent need for government climate action. Australian billionaire Clive Palmer has registered his company Zeph Investments in Singapore, claimed to be a Singaporean investor and used ISDS in the ASEAN-Australia-New Zealand free trade to claim a total of $A420 billion from the Australian government. The first claim in 2023 was for $300 billion after he lost a High Court appeal against a Western Australian government decision to refuse an iron ore mining license.[13] The other three claims, which total $120 billion, are for the refusal of permits for a coal mine and coal-fired power station in Queensland.[14] The refusals were for environmental reasons, including contributions to increased carbon emissions.[15]

In September 2025, an ISDS tribunal dismissed Palmer's claim to be a Singaporean investor in the first WA iron ore case and ordered him to pay the Australian government legal costs of $13.6 million[16]. The Attorney-General commented that "Australia should never have had to spend two years and over AU $13 million defending an investor-State claim brought by an Australian national. The Albanese Government remains committed to actively engaging in processes to remove or reform existing investor-State dispute settlement mechanisms."[17]

[12] Langford, M, Potesta, M and Kaufman, G (2020) UNCITRAL and Investment Arbitration Reform: Matching Concerns and Solutions. *Journal of World Investment and Trade.* 22 June. Available at https://brill.com/view/journals/jwit/21/2-3/article-p167_1.xml?language=en

[13] Ranald, P. (2023) How Clive Palmer is suing Australia for 300 billion with the help of an obscure legal clause and Christian Porter 4 April, https://theconversation.com/how-clive-palmer-is-suing-australia-for-300-billion-with-the-help-of-an-obscure-legal-clause-and-christian-porter-203111

[14] Attorney General's Department. Investor-State Dispute Settlement. Zeph Investments Pte Ltd. https://www.ag.gov.au/international-relations/international-law/international-trade-and-investment-law#:~:text=The%20Jericho%20Power%20Station%20Claim%20(PCA%20Case%20No%202024-48,Waratah%20Coal's%20Galilee%20Coal%20Project

[15] Queensland Department of Environment and Science (2023) Waratah Galilee Coal Mine EA refused, www.des.qld.gov.au/our-department/news-media/mediareleases/waratah-galilee-coal-mine-ea-refused

[16] Permanent Court of Arbitration (2025) Zeph Investment vs Australia PCA Case No. 2023-40 Award, September 26 https://pcacases.com/web/sendAttach/90853

[17] Attorney-General Michelle Rowland (2025) International tribunal rejects Clive Palmer's claim against Australia, Media Release September 27, https://ministers.ag.gov.au/media-centre/international-tribunal-rejects-clive-palmers-claim-against-australia-27-09-2025

The government hoped that Palmer would withdraw his remaining cases following the tribunal decision.[18] However, Palmer then announced[19] that his legal team will challenge the tribunal's decision in the Federal Supreme Court of Switzerland as one of the seats of the international tribunal process. The Swiss court is not an appeal mechanism for the tribunal and cannot consider the broad merits of the case, only technical legal issues, so the action may not succeed. This is a delaying tactic. In the meantime, his other three coal-related cases can proceed in 2026. ISDS tribunals have no precedents, so there is no guarantee that the other three tribunal decisions will be consistent with the first decision, including on the awarding of costs, which are at the discretion of the tribunal. This means the Australian government could face the time and costs associated with each individual case, amounting to multiples of tens of millions of dollars, even if Palmer loses.

The Palmer cases demonstrate how the ISDS system can be manipulated to maximise time and costs for governments. Palmer's cases join a growing global list of fossil fuel company cases against government action to address climate change, documented in the prestigious Journal *Science* in 2023.[20]

In Europe, German energy companies RWE and Uniper used ISDS in the Energy Charter Treaty (ECT) against the Netherlands over its moves to phase out coal-powered energy by 2030.[21] These and other cases spurred public debate and after a comprehensive review, the EU Commission in July 2023 proposed a coordinated withdrawal of all EU states from the Energy Charter Treaty (ECT) because its ISDS provisions were being used against government policies to reduce carbon emissions.[22]

The UK has also announced its withdrawal from the ECT.[23] However it still faces ISDS claims under other treaties. In 2025 the UK faced its first ISDS claim under the bilateral Singapore UK investment agreement from Singapore-based Woodhouse Investment Pte Ltd against a High Court decision to deny a permit for a coal mine in Cumbria[24]. The claim has provoked widespread public opposition as it is seen as a challenge to government policy to phase out fossil fuels[25].

**ISDS recognised at COP 30 by governments and the UNFCCC as a major obstacle to climate action**

A 2023 report by the UN Special Rapporteur on human rights and the environment found "overwhelming evidence that ISDS is a major barrier to addressing climate change."[26] This recognition continued in the 2025 UNFCCC COP 30 report, *Baku to Belém Roadmap to 1.3T* on

[18] Attorney-General Michelle Rowland (2025).
[19] Palmer, C. (2025) Clive Palmer to challenge tribunal decision, media release September 28, https://x.com/CliveFPalmer/status/1972085296138498546
[20] Tienhaara *et al.* (2022) Investor-State disputes threaten the global green energy transition, *Science,* 5 May 2022 Vol 376, Issue 6594 pp. 701-70 https://www.science.org/doi/10.1126/science.abo4637

[21] Kluwer Arbitration (2021) http://arbitrationblog.kluwerarbitration.com/2021/08/24/the-netherlands-coal-phase-out-and-the-resulting-rwe-and-uniper-icsid-arbitrations/
[22] European Commission (2023), 7 July, https://energy.ec.europa.eu/news/european-commission-proposes-coordinated-eu-withdrawal-energy-charter-treaty-2023-07-07_en
[23] UK government (2024) UK departs Energy Charter Treaty, 22 February, https://www.gov.uk/government/news/uk-departs-energy-charter-treaty
[24] Investment Treaty News (2026)The United Kingdom faces its First ISDS Arbitration. January 19. https://www.iisd.org/itn/2026/01/19/the-united-kingdom-faces-its-first-isds-arbitration/
[25]ABColombia (2026) ISDS a threat to global security. February 4. Report of a conference sponsored by Christian Aid, CAFOD, SCIAF, Oxfam and Trocaire. https://www.abcolombia.org.uk/isds-a-threat-to-global-security/
[26] Boyd, D. (2023) Paying polluters: the catastrophic consequences of Investor-State Dispute Settlement for climate and environment action and human rights. UN Commission on Human Rights, July 13 https://www.ohchr.org/en/documents/thematic-reports/a78168-paying-polluters-catastrophic-consequences-investor-state-dispute?s=03

climate financing, which explicitly called out Investor-State Dispute Settlement (ISDS) in trade agreements as a systemic barrier to financing climate action in developing countries (p.52):

> *A further systemic barrier reflects outdated clauses used in over 2,000 investment treaties that can impact the sovereign policy-making space of developing countries. Investment treaties with investor-state dispute settlements provisions allow foreign investors to claim compensation against government measures that may challenge their business interests. Potential damages liability can affect policy decisions to set enabling environments for climate action. Up to USD 83 billion has been awarded through 349 investor-state disputes for policy actions such as denial of permits for GHG emissions-intensive exploration, extraction, or infrastructure. Developing countries are vulnerable to over 60 per cent of potential Investor-state dispute settlement (ISDS) claims due to climate action.*[27]

Irene Vélez Torres, the environment minister of Colombia, spoke during COP 30 following a much-lauded announcement in which Colombia said it would protect its part of the Amazon from fossil fuel exploitation. She said ISDS made such decisions far more difficult because Colombia is one of the most affected countries in the world by ISDS, with 23 known cases already, and as many as 280 potential cases if the country continues to take ambitious climate action. “No government should have to choose between protecting nature and its people, and protecting itself from arbitrators,” she said.[28]

After facing billions in ISDS claims, many developing country Governments have withdrawn from ISDS arrangements. South Africa, India and Indonesia have terminated Bilateral Investment Treaties. Australia is reviewing its Bilateral Investment Treaties and both governments have concluded trade and investment agreements without ISDS.

The ISDS experience of the Indonesian government and its withdrawal from bilateral investment treaties demonstrates that it is already reluctant about ISDS provisions. Australian investors have sued the Indonesian government. In 2012, UK company Churchill Mining PLC and its Australian subsidiary Planet Mining Pty Ltd claimed USD1.3 billion because Indonesia cancelled coal mining licences after evidence of forgery. Although Indonesia won the case, it had to pay 25% of its legal costs, amounting to USD3.68 million[29].

Indonesia has also faced specific threats related to the climate crisis and development issues because it is rich in critical minerals needed for the transition to renewable energy, which has increased global demand. Indonesia and Australia have both intensified their efforts to process these minerals onshore to add value, rather than export raw materials. Indonesia’s restrictions on raw materials exports have been part of a broader development strategy for value-added exports which was challenged in the past through an ISDS case brought by Newmont mining [30]under the Netherlands-Indonesia Bilateral Investment Treaty before Indonesia terminated that treaty. The rush

[27] UNFCCC COP 30 (2025) F*rom Baku to Belem roadmap to 13 T,* November 5. https://unfccc.int/documents/650953
[28] Montague, B. COP30 'must declare an end to ISDS' *The Ecologist*, November18. https://theecologist.org/2025/nov/18/cop30-must-declare-end-isds
[29] International Centre for Settlement of Investment Disputes (2016) *Award in the case of Churchill Mining PLC and Planet Mining Pty Ltd vs the Republic of Indonesia.* December 6, p.199. https://www.italaw.com/sites/default/files/case-documents/italaw7893.pdf
[30] Van der Pas, H. and Damanik, R. (2014) “The case of Newmont Mining vs Indonesia. November 14. Transnational institute. Amsterdam.https://www.tni.org/en/publication/the-case-of-newmont-mining-vs-indonesia

to mine critical minerals [31] could see more ISDS threats against national development policies from international mining companies.

Both Australia and Indonesia have a common interest in removing ISDS from the I-ACEPA. This is reinforced by further recent international recognition of ISDS as a barrier to climate action.

***Recommendation***

- ***recognising the emergence of even more evidence of the harmful impacts of ISDS since I-ACEPA was negotiated, the Australian government should implement its policy and support the removal of ISDS provisions through the removal of Section B of Investment Chapter 14 of the I-ACEPA***

## I-ACEPA must ensure that governments retain the right to regulate the digital domain

Digital trade is a complex area of trade law that is directly tied to provisions relating to financial services and broader trade in services. The digital trade agenda is highly influenced by the US digital industry lobby, which seeks to codify rules that suit the dominant digital industry companies.

The aim of this digital trade agenda is to secure the cross-border free flow of data and to establish an international regulatory framework that prevents governments from regulating the digital domain and the operations of digital companies. These companies are now corroborating with the US government's use of coercive tariffs to change public interest digital regulation[32]. This is deeply concerning because the need for public interest regulation is demonstrated by the following examples:

- Facebook and Google's data privacy abuse scandals[33]
- Uber classifying itself as a technological platform, not an employer, to avoid labour regulation and enable the exploitation of workers[34]
- tax avoidance[35]
- abuse of market power and anti-competitive practices by Facebook, Google and Amazon[36]
- use of algorithms which enable anti-competitive conduct, result in discrimination based on class, gender or race or enable cyber-bullying

[31] Hertanti, R. (2023) Between a mineral and a hard place: Indonesia's export ban on raw minerals. June 15, Transnational institute. Amsterdam. https://www.tni.org/en/article/between-a-mineral-and-a-hard-place

[32] Tommaso Giardini (2025) Is US Pressure Against Foreign Digital Policy Working? An Investigation of US Tariff Deal Priorities and Government Responses, including an Annex with Annotated Tariff Deal Texts, December 2, https://digitalpolicyalert.org/report/reactions-to-tensions

[33] Waterson, J. (2018) UK fines Facebook £500,000 for failing to protect user data, The Guardian, October 25, via: https://www.theguardian.com/technology/2018/oct/25/facebook-fined-uk-privacy-access-user-data-cambridge-analytica.

[34] Bowcott, O. (2017) Uber to face stricter EU regulation after ECJ rules it is transport firm, The Guardian, December 21, via: https://www.theguardian.com/technology/2017/dec/20/uber-european-court-of-justice-ruling-barcelona-taxi-drivers-ecj-eu.

[35] Drucker, J. and Bowers, S. (2017) After a Tax Crackdown, Apple Found a New Shelter for Its Profits, The New York Times, November 7, via: https://www.nytimes.com/2017/11/06/world/apple-taxes-jersey.html.

[36] Ho, V. (2019) Tech monopoly? Facebook, Google and Amazon face increased scrutiny, *The Guardian*, June 4, via: https://www.theguardian.com/technology/2019/jun/03/tech-monopoly-congress-increases-antitrust-scrutiny-on-facebook-google-amazon.

- The abuse of facial recognition technology and Artificial Intelligence.

The 2019 Australian Competition and Consumer Commission's (ACCC) digital platforms report identified the need for regulatory reform in Australia to address concerns about the market power of big tech companies, the inadequacy of consumer protections and laws governing data collection, and the lack of regulation of digital platforms.[37] Successive governments, including the current government, have developed regulation to address these concerns.

One example is the News Media Bargaining Code, a mandatory code of conduct that governs commercial relationships between Australian news businesses and digital platforms that benefit from a significant bargaining power imbalance. The code enables news media companies to reach agreements for payment from digital platforms for their use of news media information.[38] Addressing this imbalance was seen as necessary to support the sustainability of the Australian news media sector, which is essential to a well-functioning democracy. The code was reviewed in 2022[39] and is still in place, but technology companies have been resisting it[40]. Another example is the development of Online Safety Codes and Standards and age-related restrictions on the use of social media.[41] There has also been legislation to improve the rights of digital platform workers. There is ongoing consideration of the public interest in the regulation of the expansion of cybercrime and some aspects of Artificial Intelligence.

Some of these forms of regulation have been identified by the US digital trade lobby as barriers to trade in the America First trade policy agenda. The US government is pressuring governments to remove them under the threat of increased tariffs.[42] Australia should cooperate with other governments like Indonesia to resist such pressure.

Digital trade provisions should not prevent governments from regulating all aspects of the digital domain that require regulation in the public interest.

***Recommendations on digital trade:***

***The I-ACEPA should not include provisions that:***

- ***Prevent governments from regulating the cross-border flow of data***
- ***Prevent regulation to address market power imbalances***
- ***Prevent governments from accessing source code and algorithms and from regulating to prevent the misuse of algorithms to reduce competition and to prevent class, gender, race and other forms of discrimination***

[37] Australian Competition and Consumer Commission (2019) Digital Platforms Inquiry final report, June 2019, via: https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report.

[38] Australian Competition and Consumer Commission (2021) News Media Bargaining Code, https://www.accc.gov.au/focus-areas/digital-platforms/news-media-bargaining-code/news-media-bargaining-code.

[39] Australian Competition and Consumer Commission (2022) Review of the Code https://www.accc.gov.au/by-industry/digital-platforms-and-services/news-media-bargaining-code/news-media-bargaining-code

[40] McIlroy, T. (2025) Meta could face millions in fines for not signing content deals in Australia. *The Guardian.* November 13. https://www.theguardian.com/technology/2025/nov/12/meta-could-face-millions-in-fines-for-not-signing-content-deals-in-australia

[41] Australian e- safety Commissioner (2025) online safety codes and standards https://www.esafety.gov.au/industry/codes#about-the-phase-2-industry-codes

[42] Tommaso Giardini (2025) Is US Pressure Against Foreign Digital Policy Working? An Investigation of US Tariff Deal Priorities and Government Responses, including an Annex with Annotated Tariff Deal Texts, December 2, https://digitalpolicyalert.org/report/reactions-to-tensions

- ***Prevent governments from regulating the abuse of Artificial Intelligence***
- ***Prevent governments from setting standards for the security of electronic transactions and preventing cybercrime***
- ***Prevent governments from regulating to ensure that digital platform workers have access to the same minimum standards for wages and working conditions as other workers***
- ***Prevent governments from regulating to protect workers' privacy, prevent intrusive surveillance and ensure that workers have access to data collected about them.***

***The I-ACEPA should include:***

- ***Full exemptions for tax policy to ensure that digital companies do not evade tax.***
- ***Mandatory minimum standards for privacy and consumer protections, including where data is held offshore. These should be no weaker than Australian standards.***

## Consistency with Australia's migration policy and protection of rights of temporary workers

AFTINET supports Australia's permanent migration system which has contributed to our vibrant multicultural society and economy. Permanent migrants have the same rights as other workers in Australia because they cannot be deported if they lose their employment.

The government's recent report on Migration Strategy[43] acknowledged that temporary migrant workers who are tied to one employer are more vulnerable to exploitation than permanent migrant workers. The fact that they are tied to one employer and face deportation if they lose their job means that these workers have no effective rights in the workplace. The expansion of the number of temporary migrant workers through trade agreements treats workers as commodities without the protection of their human and labour rights in fixed agreements that are difficult to change.

Arrangements with specific countries to address genuine labour market shortages or seasonal needs should be made through diplomatic agreements which can include specific protections for workers' rights and specific obligations on employers to implement those protections. Such arrangements are more flexible than trade agreements and can be more easily evaluated and varied to ensure they meet their goals. The PALM scheme with Pacific Island and Timor Leste governments is intended to be such an agreement but has also faced complaints about worker exploitation. The scheme was evaluated and revised to improve worker protections in 2024[44].

There is widespread evidence of the exploitation of temporary overseas workers in the absence of such protections. A survey of temporary overseas workers in Australia published in 2017 by University of New South Wales academics found temporary overseas workers experienced widespread wage theft.[45] Similar evidence was provided in 2017 to the Joint Parliamentary Committee Inquiry into the Modern Slavery Act and by a 2019 study of the horticultural industry.[46] Those on temporary working holiday maker visas were also vulnerable. The evidence from these

[43] Commonwealth of Australia (2023) Migration Strategy December 11, https://immi.homeaffairs.gov.au/programs-subsite/migration-strategy/Documents/migration-strategy.pdf

[44] DFAT (2024) Expanding and improving the PALM scheme – recent reforms. https://www.dfat.gov.au/geo/pacific/engagement/pacific-labour-mobility

[45] Berg et al. (2017) Wage Theft in Australia, https://apo.org.au/sites/default/files/resource-files/2017-11/apo-nid120406.pdf

[46] Howe at al. (2019) Towards a Durable Future: Tackling Labour Challenges in the Australian Horticulture Industry, www.sydney.edu.au/Content/Dam/Corporate/Documents/Business-School/Research/Work-And-Organisational-Studies/Towards-a-Durable-Future-Report.pdf

studies shows gross violations of Australian minimum work standards including failure to pay even minimum wages, long hours of work, and lack of health and safety training leading to workplace injuries, as well as lack of effective freedom of association and collective bargaining rights. During the COVID pandemic temporary workers who lost their employment were also denied payments available to other workers and were expected to return to their home countries when many had no means to do so[47].

Based on this evidence AFTINET does not support expansion of the numbers of vulnerable temporary workers and removal of labour market testing requirements in trade agreements.

Article 12.9 of the I-ACEPA committed to negotiate arrangements over the next three years for an increased number of contractual service providers[48]. These workers would enter under the then Temporary Skill Shortage visa which covered over 400 skilled occupations. There is no reference to labour market testing to determine if such arrangements would address genuine skills shortages.

A separate side letter committed Australia upon ratification of the agreement to an additional 4,000-5000 temporary Working Holiday Maker visas per year for 5 years.[49] A separate Memorandum of understanding provides up to 200 training visas per year[50].

The Labor government renegotiated the training Visa arrangements in August 2023 after they came into office, presumably with the aim of retaining the training arrangements but protecting the rights of trainees and making the scheme consistent with broader migration policy[51].

The Labor government also announced on December 11, 2023, changes to Australia's migration strategy following a comprehensive review. The changes are aimed at protecting the integrity of Australia's permanent migration system, applying labour market testing to ensure that temporary workers meet specific labour shortages, and are not vulnerable to exploitation, and ensuring that temporary workers have a pathway to becoming permanent residents and citizens[52].

These principles should be applied to the review of I-ACEPA.

***Recommendations:***

- ***that the government review the movement of people chapter to ensure that it is consistent with current policy to protect the rights of temporary workers***
- ***that the government implement its policy of labour market testing to ensure that temporary workers meet specific labour shortages, and are not vulnerable to exploitation***

[47] Maritn, S. and Doherby B (2020) Morrison government urged to help temporary visa holders 'trapped' in Australia. *The Guardian*. 21 March. https://www.theguardian.com/world/2020/mar/21/morrison-government-urged-to-help-temporary-visa-holders-trapped-in-australia

[48] DFAT ( 2019) Text of the I-ACEPA Chapter12, p 112 https://www.dfat.gov.au/trade/agreements/in-force/I-ACEPA/I-ACEPA-text/Pages/I-ACEPA-chapter-12-movement-of-natural-persons

[49]DFAT (2019) Text of the I-ACEPA Side Letter on Working Holiday Maker visas https://www.dfat.gov.au/sites/default/files/I-ACEPA-side-letter-work-holiday-visas.pdf

[50] DFAT (2019) Text of the I-ACEPA Memorandum of Understanding on a Pilot Workplace-Based Training Visa Arrangement https://www.dfat.gov.au/trade/agreements/in-force/I-ACEPA/I-ACEPA-text/Pages/I-ACEPA-mou-pilot-workplace-based-training-visa-arrangement

[51]DFAT (2023) Text of the I-ACEPA Memorandum of Understanding on the Indonesia-Australia Skills Development Exchange Pilot https://www.dfat.gov.au/trade/agreements/in-force/I-ACEPA/I-ACEPA-text/trade-and-investment/memorandum-understanding-indonesia-australia-skills-development-exchange-pilot

[52]Commonwealth of Australia (2023) op. cit., p.13, https://immi.homeaffairs.gov.au/programs-subsite/migration-strategy/Documents/migration-strategy.pdf

- ***that the government review and remove article 12.9 of the I-ACEPA***
- ***that the government remove the side letter on temporary Working Holiday Maker visas***

## Trade in Services provisions should not restrict the right of governments to regulate essential services in the public interest

Trade in services chapters are intended to open services to international investment and remove regulatory restrictions on trade in services. However, the structure of these chapters is too rigid and restricts the right of governments to regulate in the public interest and to respond to changing circumstances.

**Exclusion of Public services is ambiguous**

Public services are notionally excluded from the I-ACEPA services chapter. However, the exclusion of public services in Chapter 9, Article 9.1 is ambiguous because a public service is defined as "a service supplied in the exercise of governmental authority [which] means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers"[53]. In Australia, as in many other countries, many public and private services are provided side-by-side, meaning few public services are covered by this definition.

**The negative list and ratchet structure restricts public interest regulation if circumstances change**

The chapter uses a negative list structure, which means that all services are covered by the agreement unless they are specifically excluded in Annexes I and II. It also follows a "ratchet" structure, which means that regulation of services is treated as if it were a tariff and is frozen at existing levels or reduced over time. Regulation cannot be increased in future unless it is exempted under Annex II of the agreement.

Under the negative list governments must specifically exclude service sectors, laws and regulation that they do not want to be covered by the agreement. Annex I lists current non-conforming laws and policies that can be maintained, but they cannot be changed in ways which would make them more "trade restrictive" in future, and new restrictions cannot be introduced. Annex II lists non-conforming laws and policies that can be both maintained and changed in future. However, the aim is to reduce over time the measures listed in both Annexes.

The negative list and ratchet structure are specifically intended to prevent governments from introducing new forms of regulation, which are seen as potential barriers to trade. But this structure limits policy space available to respond to changed circumstances or to implement alternative policy proposals. The negative list also means that new services that may be developed in the future are automatically covered by the agreement and their regulation is restricted.

These rules do not compel privatisation of public services but they can prevent re-regulation to address the failures of privatisation. For example, the failure of deregulation and privatisation of Australian vocational education services resulted in government reregulation of those services late in 2016 [54]. The increased regulation of vocational education could have been contrary to trade-in-services rules in the Trans-Pacific Partnership which was then still under negotiation. The

[53] DFAT 2019 Text of the I-ACEPA Chapter 9, Article 9.1 https://www.dfat.gov.au/trade/agreements/in-force/I-ACEPA/I-ACEPA-text/Pages/I-ACEPA-chapter-9-trade-in-services Article 9.2.2(c)

[54] Conifer, D., (2016) "Parliament Passes Bill to Overhaul Vocational Education Sector", *ABC News*, December 1, 2016, https://www.abc.net.au/news/2016-12-02/parliament-passes-bill-to-scrap-troubled-vet-loans/8085860.

government responded to this unintended consequence and the need for re-regulation in the CPTPP and subsequent agreements like the IA-CEPA, by including a new reservation in Annex II of those agreements which retained the right to regulate the funding and standards of education services.[55]

Without very specific reservations, trade-in-services rules can also restrict new forms of regulation needed when circumstances change, as has occurred with the need for increased financial regulation following the Global Financial Crisis and the Royal Commission into the Banking and Financial Services Industry,[56] the Royal Commission into Aged Care Quality and Safety discussed below, and governments' responses to climate change through regulation of energy services' carbon emissions discussed above.

**Other restrictions on regulatory space: market access and domestic Regulation provisions**

Market access provisions in Article 9.5 prevent governments from regulating the number of service suppliers, the number of service operations and number of people employed in a particular service sector or by a service supplier [57].

Domestic Regulation and Recognition provisions in Article 9.7-8 create obligations for governments on the domestic regulation of services to ensure that regulations for licensing, qualifications and technical standards are "reasonable" (Article 9.8.1) and do not constitute "a restriction on the supply of the service" (Article 9.8.4b) [58]

The possible impacts of these provisions emerged in 2021when a debate took place about whether aged care services were specifically excluded from trade-in-services rules in the Regional Comprehensive Economic Partnership (RCEP) and other trade agreements. Aged care is funded by the federal government but managed largely by private providers. The 2021 Report of the Royal Commission into Aged Care Quality and Safety[59] exposed multiple scandals caused by a lack of qualified staff and poor-quality care, and recommended increases in staffing levels, increases in qualifications of staff and changes to licensing arrangements. Many of these recommendations have now been implemented, including measures to increase staffing levels through legislation requiring a registered nurse to be on site in residential aged care at all times and mandated minimum care minutes. Reform of the aged care sector is ongoing.

These increases in regulation could have been prevented by the market access and national treatment rules listed above, unless aged care was specifically reserved from the agreement in Annex II. Aged care is not listed in the specific reservation with other specific services like childcare in the RCEP, the CPTPP and the I-ACEPA.[60] The government argued that aged care was excluded under the more general category of social services, but the Joint Standing Committee on Treaties noted the ambiguity and recommended that 'such inconsistencies give rise to public concern, and it would be

[55] See DFAT (2015) Text of the Trans-Pacific Partnership (incorporated into the CPTPP) Annex !!, p. 1. https://www.dfat.gov.au/sites/default/files/annex-ii-australia.pdf.
And DFAT ( 2019) Text of the I-ACEPA. Annex !!, p. 1. https://www.dfat.gov.au/trade/agreements/in-force/I-ACEPA/I-ACEPA-text/Pages/I-ACEPA-annex-ii-schedule-of-australia

[56] United Nations (2009) Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System, https://www.un.org/en/ga/econcrisissummit/docs/FinalReport_CoE.pdf.

[57] DFAT 2019 Text of the I-ACEPA Chapter 9, p. 68

[58] DFAT 2019 Text of the I-ACEPA Chapter 9, pp 68-70

[59] Royal Commission into Aged Care Quality and Safety (2021) Summary of the Final Report, https://agedcare.royalcommission.gov.au/sites/default/files/2021-03/final-report-executive-summary.pdf.

[60] DFAT (2015) Text of the Trans-Pacific Partnership (incorporated into the CPTPP) chapter 10, Annex II, p. 8, https://www.dfat.gov.au/sites/default/files/annex-ii-australia.pdf.

better if they were avoided'.[61] To ensure that there is no potential threat to ongoing reform of the aged care sector in line with the Royal Commission recommendations, aged care should be listed as a specific reservation in Annex II of the I-ACEPA.

**Services exclusions do not exclude ISDS cases**

The exclusions for public interest legislation in the Annexes of non-conforming measures do not prevent foreign corporations from suing governments over changes in these forms of regulation under the separate ISDS provisions in the Investment Chapter for measures introduced at national, state or local government level. Annexes I and II only exclude government-to-government claims relating to certain clauses in Section A of the investment chapter, and do not exclude ISDS claims in Section B. As explained in the ISDS section above, there are increasing numbers of ISDS claims against government actions to address the climate crisis by reducing carbon emissions. This threat can only be addressed by removing ISDS from the agreement.

**Recommendations**

- ***That the government ensure that public services are clearly defined and clearly excluded from services commitments***
- ***That the government review the reservations in the I-ACEPA services chapter to ensure that governments retain the right to regulate and reregulate all government-funded and other essential services as circumstances change***
- ***That aged care services be listed as a specific reservation in Annex II to Investment Chapter 9 of the I-ACEPA***

[61] Joint Standing Committee on Treaties (2022) Report 196 on the Regional Comprehensive Economic Partnership, p.27, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/RCEP/Report_196/section?id=committees%2Freportjnt%2F024720%2F76916.