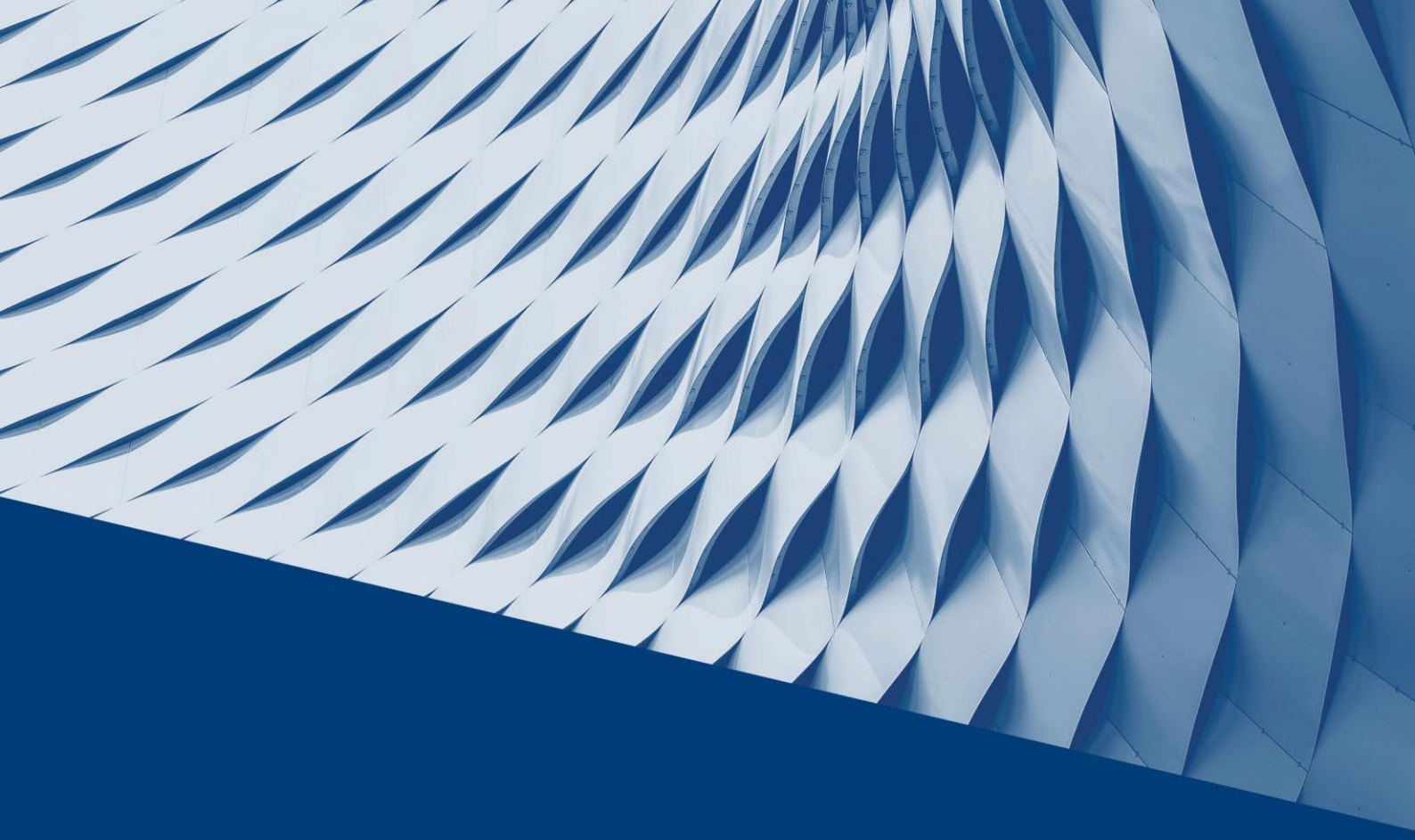


ACTU Submission to the Review of the Regional Comprehensive Economic Partnership (RCEP): Aligning RCEP with Australia's Emerging Worker-Centred Trade Framework.

Australian Council of Trade Unions (ACTU) submission to the Department of Foreign Affairs and Trade

ACTU Submission, 26 October 2026
ACTU D. No 68

ACTU
australian council of trade unions

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Introduction

About the ACTU

The Australian Council of Trade Unions (ACTU) is Australia's peak national body of unions, founded in 1927. Our 37 affiliated unions and trades and labour councils represent nearly 2 million members across all industries and occupations. With this movement, the ACTU has a long and proud history of winning for working people and continues to build on that legacy through its advocacy on a broad range of issues affecting workers and their communities.

Worker-centred trade policy

The ACTU supports fair trade as a vehicle for economic growth, job creation, tackling inequality and raising living standards. The most important objective of trade policy should be to deliver benefits to workers, the community and the economy by increasing opportunities for local businesses, creating quality local jobs and protecting public services. The benefits of trade must be shared across the community and must promote equitable development abroad.

The ACTU welcomes the opportunity to contribute to the DFAT review of the Regional Comprehensive Economic Partnership (RCEP).

The negotiation, conclusion and implementation of RCEP were highly controversial. Unions and civil society organisations expressed serious concerns about the inability to have meaningful input into the negotiations.[1] The final agreement also raised serious concerns about the absence of enforceable labour protections based on International Labour Organisation (ILO) standards, the breadth of restrictions on governments' regulatory capacity and the failure to provide sufficient protection for public-interest regulation.

[1] ACTU, Regional Comprehensive Economic Partnership Agreement: ACTU Submission to the Inquiry on the Regional Comprehensive Economic Partnership Agreement (RCEP) (21 April 2021) 1-3; AFTINET, Submission to the Joint Standing Committee on Treaties Inquiry into the Regional Comprehensive Economic Partnership (RCEP) (April 2021) 5-6; Joint Standing Committee on Treaties, Report 196: Regional Comprehensive Economic Partnership Agreement (August 2021), Ch 6.

In response to such flaws in the negotiation and content of trade agreements, the Government has introduced the Trade and Investment Agreements (Consultation) Bill 2026 (the Trade Bill), into the Parliament on 1 July 2026.[2]

The Bill would establish a more transparent and accountable framework for negotiating and reviewing free trade agreements.[3] It establishes a Trade Advisory Group with representatives from civil society, including trade unions, requires independent analysis and review of agreements, and requires consultation on negotiating objectives. It also limits the Australian Government's ability to enter into agreements containing provisions that threaten regulatory autonomy or public welfare, as well as to advocate for binding labour standards chapters, among other requirements.[4]

RCEP will be independently reviewed under this new legislation if the Bill is passed and operative by the end of 2026. Any agreement in force for less than five years upon the commencement of the legislation must be reviewed within five years of the agreement's commencement date.[5] RCEP commenced in Australia on 1 January 2022.

The ACTU therefore recommends that this current DFAT review feed into that new independent review, but not be a substitute for it.

Should the Bill or its commencement be delayed, the principles it will advance provide an important framework for the current DFAT-initiated review to respect. The Bill's purpose will be substantially limited if existing, broadly applicable and economically significant trade agreements continue to contain provisions that are inconsistent with the principles it establishes.[6] RCEP is precisely the kind of major agreement that must be considered as part of the transition to this new framework.

This review and potentially the independent review that follows it should proceed with the express intention of identifying provisions inconsistent with the new framework and securing negotiations to amend those provisions so that RCEP reflects the Government's stated program for reform and a genuinely worker-centred trade policy.

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[2] Trade and Investment Agreements (Consultation) Bill 2026; Parliamentary Library, Trade and Investment Agreements (Consultation) Bill 2026 Bills Digest No. 2, 2026-27.
[3] Ibid.
[4] Trade and Investment Agreements (Consultation) Bill 2026, pts 2-5.
[5] See sections 12(3) and 19(4) of the Trade Bill.
[6] Parliamentary Library, Bills Digest (2026); Australian Labor Party, National Platform (2023), Ch 12.

Recommendations

Recommendation 1: *The DFAT-led review of RCEP should either feed into a new independent review to be completed under the new Trade and Investment Agreements (Consultation) Bill, or be completed to respect and adhere to the principles in that Bill.*

Recommendation 2: *The review should result in a practical pathway to reform, including formal negotiations on necessary amendments, safeguards against further non-compliance and ongoing monitoring and reporting arrangements.*

Recommendation 3: *The review should be supported by independent economic, social, labour, environmental and community impact assessments. The results of those assessments, together with supporting evidence and a departmental compliance matrix identifying where RCEP is consistent with, partially consistent with or inconsistent with the standards reflected in the Trade Bill, should be published.*

Recommendation 4: *RCEP should be amended to include an enforceable labour chapter based on the ILO Declaration on Fundamental Principles and Rights at Work, subject to meaningful consultation, monitoring and dispute-settlement mechanisms.*

Recommendation 5: *The Australian Government should pursue the exclusion of Myanmar from RCEP for so long as the military junta remains responsible for serious and systematic violations of internationally recognised labour rights, human rights and democratic freedoms, consistent with the findings of the ILO Commission of Inquiry and the subsequent measures adopted under article 33 of the ILO Constitution.*

Recommendation 6: *RCEP should preserve domestic labour-market testing, Australian skills-assessment processes, licensing requirements and practical protections for temporary migrant workers.*

Recommendation 7: *The review should identify provisions of RCEP that may constrain the ability of Australian governments to regulate in the public interest and should pursue amendments, reservations or interpretive mechanisms necessary to preserve regulatory autonomy in areas including public services, climate policy, public health and worker protections.*

Recommendation 8: *Australia should seek amendments expressly reserving aged care and other essential public services from obligations that may limit future regulatory flexibility.*

Recommendation 9: *RCEP should include explicit recognition of parties' climate and emissions reduction commitments, including those made pursuant to the Paris Agreement, and should protect climate action, industrial decarbonisation, worker-centred transition measures and other policies necessary to achieve net-zero objectives. The review should also consider opportunities to strengthen regional cooperation supporting clean-export industries and renewable industry supply chains.*

Recommendation 10: *Australia should seek to remove the possibility of future ISDS provisions being incorporated into RCEP and ensure that no future amendment weakens Australia's ability to regulate in the public interest.*

Recommendation 11: *The review should examine whether provisions outside Chapter 16 could constrain government procurement policies directed at local industry development, Indigenous economic advancement, supply-chain resilience, public health and environmental sustainability.*

1. Review against a new statutory standard

The new Trade Bill is a framework for the negotiation, assessment and review of trade agreements that combines procedural transparency with clear substantive objectives.[7] Taken together, it affirms that trade liberalisation must support and not undermine democratic accountability, consultative oversight, decent work and the broader public interest.

The framework established by the Bill has four key dimensions.

1.1 Consultation and representation

The Bill introduces a new level of transparency into Australia's trade negotiations. It requires the announcement of negotiations, the publication of negotiating objectives and the establishment of a Trade Advisory Group (TAG).[8]

The creation of the TAG is especially significant because it reflects a deliberate shift towards embedding public oversight in the trade-negotiation process. The Bill requires the publication of

[7] Joint Standing Committee on Trade and Investment Growth, Strengthening Australia's Approach to Trade Negotiations (May 2024) Recommendations 7-8 and pp 108-110; Trade and Investment Agreements (Consultation) Bill 2026, pt 2.

[8] Joint Standing Committee on Trade and Investment Growth, Strengthening Australia's Approach to Trade Negotiations (2024) Recommendations 7-8; Trade and Investment Agreements (Consultation) Bill 2026, pt 2.

negotiating objectives together with an explanation of those objectives.[9] The TAG must be provided with draft negotiating objectives and consulted before those objectives are finalised and published.[10] The Group also plays an ongoing role in the assessment and review framework established by the Bill.[11] Independent analysts and reviewers must consult with the Group during their work, and their reports must be provided to the Group and ultimately published, subject only to limited exceptions.[12]

Importantly, the composition of the TAG reflects not only traditional tripartite principles, but also the broader interests of civil society.[13] The framework recognises that trade agreements have consequences that reach well beyond export industries and commercial actors. Workers, consumers, communities and representative organisations all have a legitimate interest in the outcomes of trade negotiations and should have a meaningful role in shaping them.

This represents a substantial departure from the model under which RCEP was negotiated. During those negotiations, unions and civil society organisations had limited opportunities to participate in any meaningful way and were largely excluded from the development of the agreement that ultimately emerged.[14]

1.2 Evidence

The Bill also embeds evidence-based policy making into the trade framework.

It requires independent analysis of proposed agreements and proposed amendments, with a specific focus on their expected economic and community impacts.[15] Trade agreements are therefore no longer treated as inherently beneficial simply because they expand trade. They are instead assessed against their actual consequences for the Australian economy and Australian society.

The requirement for evidence-based assessment does not end once an agreement enters into force. The Bill establishes a continuing system of independent review designed to evaluate whether agreements are functioning as intended and whether they continue to serve Australia's interests over time.[16]

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[9] Trade and Investment Agreements (Consultation) Bill 2026, s 13.
[10] Ibid, s 14.
[11] Ibid, ss 17-19
[12] Ibid.
[13] Trade and Investment Agreements (Consultation) Bill 2026, s 28; Parliamentary Library, Bills Digest (2026).
[14] AFTINET, RCEP Submission (2021) 5-6; ACTU, RCEP Submission (2021) 1-3; Joint Standing Committee on Treaties (JSCOT), Report 196 (2021), Ch 6 ("Consultation and transparency").
[15] Trade and Investment Agreements (Consultation) Bill 2026, ss 17-18.
[16] Ibid, s 19.

This is a significant shift. It contradicts the assumption that trade agreements are matters for the Executive alone and instead recognises that agreements with long-term economic and social consequences should be subject to continuing public scrutiny and independent evaluation.

1.3 Substantive safeguards and outcomes

The substantive safeguards contained in the Bill represent the point at which the legislative framework diverges most sharply from the model embodied in RCEP.

The Bill places positive obligations on the Executive to advocate for outcomes that advance important public interests. These include the economic interests of First Nations peoples, environmental protection and commitments relating to internationally recognised labour rights.[17]

The Bill also establishes clear limits on what future governments may agree to in trade negotiations. It prohibits investor-state dispute settlement provisions, protects labour market testing arrangements, preserves the integrity of the Pharmaceutical Benefits Scheme and requires the preservation of Australia's sovereign ability to regulate in the public interest.[18]

These provisions reflect a view that trade agreements should serve the broader interests of society rather than simply facilitate market access and commercial activity. They recognise that governments retain responsibilities that extend beyond trade liberalisation, including the protection of workers, public services, public health and democratic decision-making.

In many respects, these safeguards stand in contrast to the assumptions that informed RCEP. While the new framework seeks to place public-interest considerations at the centre of trade policy, many of the concerns raised about RCEP relate precisely to the absence of those protections.

1.4 A commitment to review existing trade agreements.

Taken together, the elements of the Trade Bill establish a system that is fundamentally different from the one under which RCEP was negotiated and concluded.

The principles of transparency, accountability and democratic participation that underpin the Bill are not consistently reflected in the process that produced RCEP. Nor are many of the substantive safeguards that would now be regarded as essential features of modern trade policy.

RCEP will be independently reviewed under this new legislation if the Bill is passed and operative by the end of 2026. Any agreement in force for less than five years upon the commencement of the legislation must be reviewed within five years of the agreement's commencement date.[19]

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[17] Ibid, s 15.
[18] Ibid, s 16.
[19] See sections 12(3) and 19(4) of the Trade Bill.

RCEP commenced in Australia on 1 January 2022. The ACTU therefore recommends that this current DFAT review feed into that new independent review, but not be a substitute for it.

Should the Bill or its commencement be delayed, the principles it will advance provide an important framework for the current DFAT-initiated review to respect. The Bill's purpose will be substantially limited if existing, broadly applicable and economically significant trade agreements continue to contain provisions that are inconsistent with the principles it establishes.[20] The review should also result in a new set of negotiating objectives for amendments to RCEP. RCEP is precisely the kind of major agreement that must be considered as part of the transition to this new framework.

Recommendation 1: *The DFAT-led review of RCEP should either feed into a new independent review to be completed under the new Trade and Investment Agreements (Consultation) Bill, or be completed to respect and adhere to the principles in that Bill.*

Recommendation 2**:** *The review should result in a practical pathway to reform, including formal negotiations on necessary amendments, safeguards against further non-compliance and ongoing monitoring and reporting arrangements.*

2. Independent analysis

The new Trade Bill will require independent analysis in relation to a proposed free trade agreement or proposed amendments to it.[21] Regardless of whether the review of RCEP is conducted independently as required by the Trade Bill, or by DFAT under the current process, such an analysis should take place. Such an analysis should be critical to the development of negotiating objectives, or to inform amendments to an agreement Australia may want to seek. Remarkably - to the best of our knowledge - no post-implementation analysis of the impact of RCEP on Australia has ever taken place.

Recommendation 3: *The review should be supported by independent economic, social, labour, environmental and community impact assessments. The results of those assessments, together with supporting evidence and a departmental compliance matrix identifying where RCEP is*

[20] Parliamentary Library, Bills Digest (2026); Australian Labor Party, National Platform (2023), Ch 12.
[21] Section 17(1).

consistent with, partially consistent with or inconsistent with the standards reflected in the Trade Bill, should be published.

3. Compliance chapters and RCEP amendments

There are many areas in the RCEP that do not reflect the policy intentions put forward by the Bill. This review should turn to these areas and implement a clear plan for re-negotiating RCEP to bring about this alignment.

3.1 Labour rights

RCEP has a range of compliance focused chapters,[22] including a Dispute Settlement chapter (chapter 19).[23] Notably absent from the compliance architecture of the agreement, however, is any mechanism for protecting labour rights that is backed up with meaningful enforcement and recourse to remedies.

At a minimum, RCEP should include a new enforceable labour chapter that applies to all parties and is subject to the agreement's main dispute settlement mechanism, bringing RCEP into alignment with the legislative policy framework introduced by the Bill. The chapter should centre ILO Conventions as the basis for defining fundamental principles and rights at work, and require parties to adopt, maintain and effectively enforce corresponding laws. Consistent with other trade agreements that actively promote labour rights, the chapter should prohibit parties from weakening labour protections to attract trade or investment, or to promote economic growth.[24] Explicit reference to the protection of occupational health and safety, collective bargaining, and freedom of association should also be included in this chapter and meaningful remedies should be included to address and deter breaches of these commitments.[25]

A truly enforceable labour chapter will also have effective mechanisms for monitoring compliance.[26] Accordingly, worker and employer organisations should be given active roles in fulfilling this monitoring and compliance role. This degree of enforceability is more aligned with the policy intention of the Trade Bill than agreements which rely on labour cooperation

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[22] Regional Comprehensive Economic Partnership Agreement, chs 13 (Competition), 16 (Government Procurement), 18 (Institutional Provisions) and 19 (Dispute Settlement).
[23] Regional Comprehensive Economic Partnership Agreement, ch 19.
[24] Australia-European Union Free Trade Agreement, ch 18 (Trade and Sustainable Development), art 18.2(3) (providing that a Party must not weaken or fail to enforce labour protections in a manner affecting trade or investment); Comprehensive and Progressive Agreement for Trans-Pacific Partnership, art 19.4.
[25] International Labour Organization, ILO Declaration on Fundamental Principles and Rights at Work (1998, as amended); Australia-European Union Free Trade Agreement, ch 18 (Trade and Sustainable Development)
[26] ACTU, RCEP Submission (2021) 7-8.

mechanisms or weaker labour chapters that lack comprehensive enforcement arrangements.[27] Chapter 16 (the Economic and Technical Cooperation chapter) of RCEP lacks even this minimal recognition of labour-rights.[28] However, for the purposes of this review, we do not agree that inserting a similar, non-binding affirmation of labour into any of the RCEP chapters will be sufficient to orient this agreement with the new legislative trade policy.

Such a chapter is acutely needed in the context of RCEP. Most participating countries have a poor record on labour rights. The International Trade Union Confederation publishes an annual assessment of the labour rights records of countries.[29] The majority of RCEP countries rate either poor or very poor on its most recent assessment. Cambodia, Indonesia, Laos, Malaysia, China and South Korea are rated "very poor" scoring 5, the worst on the index. Thailand, Vietnam and the Philippines are all rated as "poor" scoring 4 on the index. Myanmar, discussed below, scores a "5+" leading the ITUC to describe its labour rights record as "catastrophic".

Recommendation 4: *RCEP should be amended to include an enforceable labour chapter based on the ILO Declaration on Fundamental Principles and Rights at Work, subject to meaningful consultation, monitoring and dispute-settlement mechanisms.*

3.2 Myanmar should be removed from RCEP

Myanmar has engaged in serious and systematic violations of internationally recognised labour rights.

Since the military coup of 1 February 2021, independent trade unions in Myanmar have faced sustained repression.[30] Trade union leaders and activists have been arrested, detained, forced into hiding or driven into exile.[31] Freedom of association, collective bargaining and other fundamental labour rights recognised by the International Labour Organisation have been systematically undermined. [32]

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[27] Korea-Australia Free Trade Agreement, ch 17 (Labour), especially art 17.1; ACTU, RCEP Submission (2021) 12.
[28] Regional Comprehensive Economic Partnership Agreement, ch 16; see also ACTU, RCEP Submission (2021) 9-12.
[29] 2026 ITUC Global Rights Index: The World's Worst Countries for Workers
[30] International Labour Organisation, Towards Freedom and Dignity in Myanmar: Report of the Commission of Inquiry established in accordance with article 26 of the ILO Constitution concerning the non-observance by Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Forced Labour Convention, 1930 (No. 29) (2023).
[31] Ibid.
[32] International Labour Organization, ILO Declaration on Fundamental Principles and Rights at Work (1998, as amended); International Labour Organization, Towards Freedom and Dignity in Myanmar (2023).

Since RCEP entered into force, concern regarding the situation in Myanmar has only intensified. An ILO Commission of Inquiry in 2023 found far-reaching violations of trade union rights, the suppression of independent worker organisations and widespread labour-rights abuses.[33] In 2025, the International Labour Conference adopted a resolution under Article 33 of the ILO Constitution in response to Myanmar's persistent failure to comply with its obligations relating to freedom of association and forced labour.[34] Relevantly, it called on all ILO constituent members, including governments, employers and workers to (at paragraph 2(c):

> "…review, in the light of the conclusions of the Commission of Inquiry, the relations they may have with Myanmar military authorities and take appropriate measures to ensure that such relations in no way enable, facilitate or prolong the violations of workers' rights in respect of freedom of association and forced labour. In particular, any relations that may contribute or enable the perpetuation of ongoing harm or violence or acts of repression and intimidation of workers and employers peacefully exercising their fundamental rights through the support or supply of military equipment or means, including jet fuel, or the free flow of funds to the military authorities, should be comprehensively reviewed with the aim to disable all means that have abetted or empowered the perpetuation of the above-mentioned egregious violations;"

Any credible review as called for by the ILO would conclude that Myanmar's continued membership of RCEP presents a serious risk of fuelling such abuses. This review should support that conclusion and recommend that the Australian Government work with other RCEP member governments to remove Myanmar from it.

The ACTU continues to support the inclusion of an enforceable labour chapter in RCEP. However, the situation in Myanmar cannot be resolved solely by future labour-rights provisions. If a binding labour chapter had been in force throughout this period, Myanmar would already have been in serious and profound breach of its obligations under it.

Recommendation 5: *The Australian Government should pursue the exclusion of Myanmar from RCEP for so long as the military junta remains responsible for serious and systematic violations of internationally recognised labour rights, human rights and democratic freedoms, consistent*

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[33] International Labour Organisation, *Towards Freedom and Dignity in Myanmar* (2023).
[34] International Labour Conference, *Resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Myanmar* (June 2025), para 2(c).

with the findings of the ILO Commission of Inquiry and the subsequent measures adopted under article 33 of the ILO Constitution.

3.3 Temporary movement of workers

The Trade Bill prohibits future commitments that waive labour market testing beyond Australia's obligations under the General Agreement on Trade in Services (GATS).[35] The Australian Labor Party's trade policy commitments go further, expressing support for skills assessments being undertaken in Australia and for the protection of domestic licensing arrangements.[36]

Trade agreements should also contain sufficient safeguards to ensure that temporary migration arrangements support genuine labour shortages, protect local employment opportunities and prevent the exploitation of temporary migrant workers.

The review should therefore assess whether any RCEP commitments go beyond Australia's GATS obligations, whether any provisions could be interpreted as permitting the waiver of labour market testing, and whether Australia's skills assessment and licensing frameworks remain fully protected and under domestic control.

Particular attention should also be given to the practical operation of temporary migration arrangements under the agreement. The review should examine whether workers entering Australia through RCEP-related migration pathways are adequately protected against exploitation, wage theft, unsafe working conditions and other forms of workplace abuse.

Altogether, all relevant provisions of RCEP should be reviewed against the question of whether temporary migrant workers are guaranteed meaningful access to Australian workplace rights and protections in both law and practice. This question is particularly important given the absence of a binding labour standards chapter in the agreement and that overseas workers may be formally covered by Australia's industrial and workplace health and safety laws, but often do not enjoy practical protection under them.[37]

Temporary migrant workers have long been vulnerable to exploitation because of their dependence on visa arrangements and employment relationships. The ACTU has consistently

[35] Trade and Investment Agreements (Consultation) Bill 2026, s 16(2)(b).
[36] Australian Labor Party, 2023 ALP National Platform (2023) 104 [17] and 105 [23(a)].
[37] ACTU, RCEP Submission (2021) 5.

documented and advocated on these issues, including in relation to seasonal migration arrangements such as the PALM scheme and other vulnerable cohorts of workers.[38]

The RCEP agreement provides no additional protections for temporary workers beyond those available under domestic law. The ACTU therefore submits that the review should examine how the agreement interacts with Australia's migration and workplace relations framework and identify opportunities to strengthen protections, close enforcement gaps and ensure that temporary migration arrangements operate in a manner consistent with decent work principles.

Recommendation 6: *RCEP should preserve domestic labour-market testing, Australian skills-assessment processes, licensing requirements and practical protections for temporary migrant workers.*

3.4 Aged care and essential services

Both the ACTU[39] and AFTINET[40] have previously raised concerns over the absence of aged care services in any list of sectors that are excluded from Australia's services and investment obligations. While Australia retains the ability to maintain licensing and qualification rules, these must apply within the regulatory framework established by chapter 8 of the agreement.[41] Though chapter 8 does not expressly require the aged care sector to be completely unregulated, real restrictions still apply, leaving a degree of uncertainty with respect to future policy flexibility.

Policy flexibility in aged care is an important issue because it concerns the Government's sovereign ability to regulate in the interests of its citizens, particularly some of the most vulnerable members of society. Staffing ratios and quality-of-care requirements are often treated as domestic regulation, which is generally permitted under the framework in Chapter 8.[42] However, uncertainty remains about whether measures designed to protect the quality and availability of aged care services could be interpreted as inconsistent with market access obligations for services that have not been expressly reserved.[43] Regulatory measures such as limiting the number of service providers in a region, or reserving particular services for public providers, may therefore raise serious legal questions about the extent of the Government's freedom to regulate by the means it considers appropriate.

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[38] Ibid.
[39] Ibid, 6-7.
[40] AFTINET, RCEP Submission (2021) 10-13.
[41] Regional Comprehensive Economic Partnership Agreement, ch 8, especially art 8.15 (Domestic Regulation).
[42] Ibid.
[43] Regional Comprehensive Economic Partnership Agreement, ch 8, especially arts 8.5 (Market Access) and 8.15 (Domestic Regulation); AFTINET, RCEP Submission (2021) 10–13.

The lack of specific reservation also means that cross-border supply and foreign ownership could complicate the ability of the Government to regulate the aged care sector.[44]

Aged care in Australia is currently delivered by a mix of government, not-for-profit, private and investor-backed providers operating through a variety of corporate structures.[45] Where foreign investors or foreign service suppliers are involved, RCEP's national treatment rules, market access commitments and investment protections may apply.[46] While Australia may still regulate quality, safety, staffing and accreditation, the methods available to achieve those regulatory objectives may be constrained where foreign investment is involved. For example, if a government seeks to prefer public ownership or community providers, or take measures to reverse trends in privatisation, it may not be able to freely do so without having to at least consider its trade obligations under RCEP.[47]

Accordingly, the ACTU supports the concerns originally raised by AFTINET and highlights that because aged care is not expressly carved out, future governments may face uncertainty when introducing new restrictions on private or foreign providers. We continue to say that the existing reservations are not sufficient and submit that this review should commit to seeking an amendment to the RCEP that expressly reserves the aged care sector from the service rules.

Recommendation 7: *The review should identify provisions of RCEP that may constrain the ability of Australian governments to regulate in the public interest and should pursue amendments, reservations or interpretive mechanisms necessary to preserve regulatory autonomy in areas including public services, climate policy, public health and worker protections.*

Recommendation 8: *Australia should seek amendments expressly reserving aged care and other essential public services from obligations that may limit future regulatory flexibility.*

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[44] AFTINET, RCEP Submission (2021) 10–13; Regional Comprehensive Economic Partnership Agreement, ch 8 and Annex III.

[45] Australian Institute of Health and Welfare, Providers of aged care (29 May 2026), available at <https://www.gen-agedcaredata.gov.au/topics/providers-of-aged-care>; Cam Ansell, 'Sector likely to consolidate further', Australian Ageing Agenda (21 January 2026), discussing investment and acquisition activity in the Australian aged care sector, available at https://www.australianageingagenda.com.au/executive/sector-likely-to-consolidate-further/

[46] Regional Comprehensive Economic Partnership Agreement, arts 8.4 (National Treatment), 8.5 (Market Access) and ch 10 (Investment).

[47] AFTINET, RCEP Submission (2021) 10–13; Regional Comprehensive Economic Partnership Agreement, ch 8 and Annex III.

3.5 Climate, energy and transition

The Trade Bill sets out a policy requirement that Australia's ability to regulate be strictly preserved.[48] The Labor Party policy commitments that underpin the statutory purpose of the Bill also express a clear undertaking not to enter into any agreement that undermines Australia's net-zero commitments.[49] Thus, freedom to regulate in favour of climate and environmental protections is an important aspect of the government's desire to preserve the ability to regulate in the interests of the nation and its citizens.

Currently, the RCEP agreement has no express climate or environmental safeguards. Accordingly, we submit that this review should commit to establishing a clear climate safeguard in provisions of RCEP. The provision should protect and affirm the right of parties to regulate emissions standards and affirm the rights of parties to pursue clean-energy alternatives. Public procurement, environmental licensing, and industrial decarbonisation should also be promoted as methods for addressing climate and environmental concerns.

In addition to preserving regulatory autonomy, the review should consider how RCEP can better support the transition to a low-emissions economy. Modern trade agreements should not merely avoid constraining climate action; they should facilitate it. This includes supporting regional cooperation on decarbonisation, strengthening supply chains for renewable energy and low-emissions industries, and promoting trade and investment that contributes to the achievement of net-zero emissions objectives.

Australia and many other RCEP members have adopted emissions reduction commitments consistent with the Paris Agreement.[50] The review should therefore consider whether RCEP could be updated to include explicit recognition of those commitments and provide greater certainty that climate and industrial transition measures adopted in pursuit of them will not be undermined by other provisions of the agreement.

The review should also consider opportunities to strengthen regional economic cooperation in areas relevant to the clean-energy transition, including long-term arrangements that support emerging clean-export industries, renewable energy supply chains and industrial decarbonisation initiatives across the region.

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[48] Trade and Investment Agreements (Consultation) Bill 2026, ss 15-16.
[49] Australian Labor Party, 2023 ALP National Platform (2023) 106 [24(g)].
[50] United Nations Treaty Collection, *Paris Agreement: Status of Ratification*, available at https://treaties.un.org.

Recommendation 9: *RCEP should include explicit recognition of parties' climate and emissions reduction commitments, including those made pursuant to the Paris Agreement, and should protect climate action, industrial decarbonisation, worker-centred transition measures and other policies necessary to achieve net-zero objectives. The review should also consider opportunities to strengthen regional cooperation supporting clean-export industries and renewable industry supply chains.*

3.6 Investor State Dispute Settlement (ISDS)

The finalised RCEP text did not contain an ISDS mechanism. The dispute resolution process established in Chapter 19 of the agreement only provides for state-to-state dispute resolution.[51]

Nevertheless, the agreement expressly leaves open the possibility for the introduction of ISDS provisions in the future. Article 10.18 committed the parties to enter discussions about ISDS provisions no later than 2 years after the agreement entered into force.[52] This two-year deadline passed on 1 January 2024, and no record of these discussions has been identified. However, the presence of Article 10.18 in the agreement reflects an openness to incorporating ISDS provisions in the future, which is embedded into the architecture of the finalised text.[53]

RCEP also has amendment and review mechanisms that present no legal barrier to the possibility that ISDS clauses may be added to the agreement in the future.[54] These review mechanisms, coupled with the Chapter 10's openness to discussing ISDS provisions, present a real risk that ISDS may become part of the RCEP agreement as part of its future treaty evolution.

The possibility of ISDS becoming a part of RCEP in the future is a problem that this review must identify and address. The Bill clearly prohibits Australia from entering future agreements that have ISDS provisions. While RCEP is an already established Free Trade Agreement, taking steps to renegotiate RCEP and ensure that it is no longer open to becoming an agreement that carries ISDS provisions is consistent with the policy intention of this Bill.

Recommendation 10: *Australia should seek to remove the possibility of future ISDS provisions being incorporated into RCEP and ensure that no future amendment weakens Australia's ability to regulate in the public interest.*

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[51] Regional Comprehensive Economic Partnership Agreement, ch 19 (Dispute Settlement).
[52] Ibid, art 10.18.
[53] Ibid, art 10.18; ACTU, RCEP Submission (2021) 8-9.
[54] Ibid, art 10.18 and ch 20 (Final Provisions).

3.7 Government procurement and local industry

Government procurement is not just government acquisition of goods and services. It is also a critical instrument of industry policy, economic resilience, regional development, public health, Indigenous economic advancement and the creation of secure local employment. Procurement can be used to support emerging industries, strengthen sovereign capability, promote local manufacturing, increase participation by small and medium enterprises and ensure that public expenditure delivers broader social and economic benefits.[55]

The importance of preserving this policy flexibility is reflected in the Trade Bill. The Bill recognises that governments must retain the capacity to pursue legitimate public-interest objectives through procurement policies, including support for small and medium enterprises, Indigenous businesses and other community-focused outcomes. More broadly, the Bill reflects the principle that trade agreements should not unnecessarily constrain the ability of elected governments to respond to changing economic circumstances or pursue democratic policy objectives.

Chapter 16 of RCEP does not appear to present the same concerns as government procurement chapters commonly found in other trade agreements.[56] Unlike agreements that establish binding market-access commitments for procurement markets, Chapter 16 is principally concerned with transparency and cooperation. It does not require Australia to open procurement markets to foreign suppliers on a non-discriminatory basis, nor does it establish comprehensive and enforceable procurement obligations comparable to those found in agreements such as the WTO Government Procurement Agreement.[57]

For that reason, Chapter 16 itself does not appear to directly conflict with the objectives embodied in the Trade Bill.

However, the review should not limit its analysis to Chapter 16 alone. The ability of governments to utilise procurement as a public-policy tool may also be affected by other chapters of the Agreement, including commitments relating to services, investment and market access. Procurement policies frequently intersect with broader economic regulation. Measures designed to support local manufacturing, encourage domestic supply chains, strengthen sovereign

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[55] Australian Labor Party, *2023 ALP National Platform* (2023) 106 [24].
[56] Regional Comprehensive Economic Partnership Agreement, ch 16 (Government Procurement).
[57] Regional Comprehensive Economic Partnership Agreement, ch 16; World Trade Organization, Agreement on Government Procurement.

industrial capability or advance Indigenous economic participation may have implications beyond procurement itself and can interact with obligations located elsewhere in an agreement.

This issue is particularly significant in light of recent developments in Australian industry policy. Governments at both Commonwealth and state levels have increasingly relied upon procurement frameworks to support strategic domestic industries, strengthen supply-chain resilience and facilitate the transition to a net-zero economy. Procurement policies have also been used to create opportunities for Indigenous businesses, support small and medium enterprises and encourage investment in priority sectors. The review should carefully examine whether the interaction of RCEP's various obligations could restrict the future expansion of these initiatives.[58]

Recommendation 11: *The review should examine whether provisions outside Chapter 16 could constrain government procurement policies directed at local industry development, Indigenous economic advancement, supply-chain resilience, public health and environmental sustainability.*

4. Conclusion

The review of the Regional Comprehensive Economic Partnership presents a unique opportunity to improve one of Australia's most significant trade agreements and bring it into closer alignment with contemporary Australian trade policy.

The Trade and Investment Agreements (Consultation) Bill 2026 represents a decisive shift towards a new trade policy framework for Australia. It reflects a view that trade agreements should be transparent, subject to independent scrutiny, supportive of labour rights and environmental protection, and consistent with the continued ability of governments to regulate in the public interest.

RCEP was negotiated under a markedly different model, with unions and civil society organisations given limited opportunities for meaningful participation. The resulting agreement lacks many safeguards now considered essential to modern trade policy and leaves unresolved concerns about labour rights, regulatory autonomy, public services, climate policy, temporary migration, and democratic accountability. The ongoing repression of independent trade unions and democratic institutions in Myanmar further shows that these are not abstract concerns, but issues with real consequences for workers and communities across the RCEP region.

[58] Regional Comprehensive Economic Partnership Agreement, arts 8.4 (National Treatment), 8.5 (Market Access), ch 10 (Investment) and ch 16 (Government Procurement).

The ACTU again recommends that the current DFAT-initiated review should either feed into an independent review conducted under the Trade Bill, depending on timing, or at the very least conducted against the principles put forward in that Bill. Trade policy should deliver for working people. This review provides an important opportunity to ensure that RCEP does so.

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