AFTINET
Australian Fair Trade & Investment Network
20 YEARS FIGHTING FOR TRADE JUSTICE

AFTINET Submission to the General Review of the Regional Comprehensive Economic Partnership (RCEP)

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Introduction

The Australian Fair Trade and Investment Network (AFTINET) is a national network of community organisations and individuals concerned about the social impacts of trade and investment policy. We advocate for fair trade consistent with human rights, labour rights and environmental sustainability.

AFTINET welcomes the opportunity to contribute to the 2026 Review of the Regional Comprehensive Economic Partnership (RCEP). This submission addresses the terms of reference for this review.

The RCEP members are China, Australia, New Zealand, Japan, South Korea and the 11 ASEAN countries: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, Timor-Leste and Viet Nam.

Current US unilateral tariffs and other coercive policies are undermining cooperative multilateral trade relationships and exiting former commitments to United Nations (UN) agreements on human rights and action to address the climate crisis. Public confidence in such cooperative relationships has been undermined. The Australian government can help to rebuild this confidence by implementing its policies for a more open, transparent trade negotiation process and for agreements that support implementation of UN agreements.

The government has recently tabled the Trade and Investment Agreements (Consultation) Bill 2026,[1] to legislate policy for an improved consultation process for trade and investment agreements, for the inclusion of commitments to agreed international agreements on labour rights and environmental standards, and the exclusion of investor rights to sue governments (ISDS) and other harmful provisions. These principles should be applied to the review of the RCEP.

The DFAT website says the current review is to ensure the RCEP "remains fit for purpose, responsive to emerging challenges, and reflective of evolving business needs."[2] AFTINET wants to ensure that detailed negotiations to change the text of the agreement do not take place behind closed doors with no clear pathways for further community consultation.

This submission makes recommendations on transparency of the negotiations, and on other terms of reference of the review relevant to our members. These include recommendations on labour rights and environmental standards, women's rights and Indigenous Peoples' rights. There are also recommendations on the trade-in-services and electronic commerce chapters and that any arrangements for temporary workers should ensure that they address temporary labour shortages and that workers are protected from exploitation.

Summary and Recommendations

The government. has recently tabled the Trade and Investment Agreements (Consultation) Bill 2026, which legislates for an improved consultation process for trade and investment agreements, the exclusion of harmful provisions like Investor-State Dispute Settlement (ISDS), the inclusion of positive provisions on labour rights and environmental standards and ensuring trade agreements do not

[1] Parliament of Australia (2026) Trade and Investment Agreements (Consultation) Bill 2026, July 1, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s1498
[2] DFAT (2026) RCEP General Review and submissions, https://www.dfat.gov.au/trade/agreements/in-force/rcep/submissions

reduce the right of governments to regulate in the public interest. These principles should inform the RCEP review.

ISDS should continue to be excluded from the RCEP. Even more evidence has emerged to support exclusion of ISDS since the original RCEP negotiations. ISDS gives special legal rights to foreign investors to claim billions from governments for enacting democratically decided public interest regulation, including regulation of carbon emissions to address the climate crisis. This evidence supports the Australian government policy for ISDS to be excluded from new agreements and reviewed and removed from existing agreements. Despite the loss of his first ISDS iron-ore claim, Australian billionaire Clive Palmer is still claiming to be a Singaporean investor and is using ISDS in the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) to claim $120 billion from the Australian government because of the refusal of coal mining and energy permits. These cases join a growing global list of cases by fossil fuel companies against government climate action. Gina Rinehart's Australia-based Hancock Holdings is now using ISDS in the Comprehensive and Progressive Agreement for Trans Pacific Partnership (CPTPP) to claim over US$2 billion from the Canadian government because of the refusal of a coal mining permit in an environmentally sensitive area, despite the CPTPP'S "modern" provisions intended to protect environmental regulation. All of this evidence supports continued exclusion of ISDS from the RCEP.

The RCEP should be updated to include commitments to International Labour Organisation (ILO) basic labor rights and United Nations (UN) Agreements on environment standards, women's rights and the rights of Indigenous peoples. Changes to the electronic commerce chapter should ensure that governments retain the right to regulate rapidly changing developments like Artificial Intelligence (AI) in the public interest to prevent harms to communities and workers. The trade-in-services chapter should be reviewed to ensure it does not restrict government regulation of essential services needed to address policy challenges like aged care. The provisions on temporary workers should be reviewed to protect the integrity of Australia's permanent migration system and ensure that temporary workers meet specific labour shortages and that they are not vulnerable to exploitation.

The following recommendations are made to address these issues.

1. Transparency

- ***There should be widespread public consultation in the review negotiation process.***
- ***Draft texts should be released during negotiations, and the full texts should be released before they are signed*.**

2. ISDS

ISDS provisions should continue to be excluded from the RCEP.

3. Labour Rights

The RCEP should include enforceable commitments not to reduce labour rights and to 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)***
- ***The elimination of discrimination in respect of employment and occupation (ILO Conventions 100 and 111), and***
- ***A safe and healthy working environment (ILO Conventions 185 and 187).***

4. Myanmar

- ***Australia should continue and strengthen sanctions to support the call of the majority in Myanmar and the international community for the return of democracy.***

5. Environment and Climate

That the government seek to ensure that the RCEP is aligned with its policies to protect the environment and achieve net zero carbon emissions targets through enforceable commitments not to reduce environmental standards, and to implementation of UN International Environment Agreements, enforced through the government-to-government dispute processes contained in the agreement, including:

- ***the UN Framework Convention on Climate Change 1992, the Paris Agreement 2015, and Implementation Agreements at subsequent 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.***

6. Women's rights **The RCEP 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.**

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

8. Electronic Commerce/Digital Trade

The RCEP should not include provisions that:

- ***Prevent governments from regulating the cross-border flow of data***
- ***Prevent regulation to address market power imbalances and reduced competition***
- ***Prevent governments from accessing source code and algorithms and from regulating harmful content***
- ***Prevent governments from regulating the abuse of AI to create fake news***
- ***Prevent governments from regulating AI violations of copyright***
- ***Prevent government from regulating autonomous forms of AI to exclude hacking other systems and other harmful actions***
- ***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 RCEP 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.***

9. Trade-in-services

- ***That the government review the reservations in the RCEP trade-in-services chapter to ensure that governments retain the right to regulate and reregulate all public services, government-funded services and other essential services as circumstances change.***
- ***That government seek an amendment to Services Chapter 8 Annex III list B, page 32, to list aged care in reservations excluded from obligations in the Services Chapter.***

10. Temporary workers

- ***That there be clarification of the application of labour market testing in Annex IV, P. 3 to ensure that numbers of temporary workers address genuine labour shortages and that they are protected from exploitation.***

Investor-State Dispute Settlement (ISDS) provisions should continue to be excluded from the RCEP

ISDS has a flawed history and does not increase foreign investment

All trade agreements have government-to-government dispute processes. ISDS is controversial because it is an optional, separate dispute process that gives additional legal rights to a single foreign investor to claim billions in compensation in international tribunals over changes in law or policy that may reduce their future profits, even if the changes are in the public interest.

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"[3] and "legitimate expectations",[4] 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 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

[3] 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. https://brill.com/view/journals/iclr/22/2/article-p235_5.xml?language=en

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

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.[5]

Supporters of ISDS claim that it increases the level of foreign investment, especially in developing countries. However, there is no conclusive evidence to support this, because studies show that investment decisions are influenced by many other more significant factors, including commercial viability and market conditions. A 2017 review by Bonnitcha *et al* of the impacts of ISDS in Bilateral Investment Treaties (BITs) on Foreign Direct Investment (FDI) notes the complexity involved in measuring the impact of this single variable on foreign investment flows, which are impacted by many factors. They conclude that

> The studies' results are mixed. A majority find that bilateral investment treaties have a positive and statistically significant impact on inward FDI in at least some circumstances. Amongst these the scale and impact varies remarkably with some reporting strong effects and others finding positive but only small effects. Among the studies reporting a positive effect of BITS on investment flows, some also come to apparently contradictory findings. Finally a sizeable minority of studies find there was no statistically significant effect of BIT adoption on FDI.[6]

The most recent comprehensive 2022 meta-study on ISDS and investment flows concluded that there was "robust evidence that effect of international investment agreements is so small as to be considered zero."[7]

Brazil's parliament has never endorsed BITs or trade agreements containing ISDS, but it has experienced high levels of FDI.[8]

The number of reported ISDS cases has been increasing rapidly, reaching 1,463 in December 2025.[9] These include claims against tobacco regulation,[10] medicine patents,[11] indigenous land rights,[12]

[5] 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. https://brill.com/view/journals/jwit/21/2-3/article-p167_1.xml?language=en

[6] Bonnitcha, J., Lauge, N., Skovgaard, P., Waibel, M. (2017) *The Political Economy of the Investment Treaty Regime*, Oxford University Press, Oxford, p. 159.

[7] Brada, J., Drabek, Z. (2022) Does investor protection increase foreign direct investment? A Meta-Analysis 30 September https://onlinelibrary.wiley.com/doi/full/10.1111/joes.12392

[8] Filho, J. (2008) "The Brazilian Experience with Bilateral Investment Agreements: A Note", *Transnational Dispute Management*, No.1, https://www.transnational-dispute-management.com/article.asp?key=1198.

[9] UNCTAD (2022) Investment Dispute Settlement Navigator, https://investmentpolicy.unctad.org/investment-dispute-settlement

[10] Ranald, P. (2019) When even winning is losing. The surprising cost of defeating Philip Morris over plain packaging, The Conversation, March 27, https://theconversation.com/when-even-winning-is-losing-the-surprising-cost-of-defeating-philip-morris-over-plain-packaging-114279

[11] Baker, B. (2017) The Incredible Shrinking Victory: *Eli Lilly v. Canada*, Success, Judicial Reversal, and Continuing Threats from Pharmaceutical ISDS cases, *Loyola University Chicago Law Journal,* Vol. 49, 2017, Northeastern University School of Law Research Paper No. 296-2017 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3012538

[12] International Centre for Settlement of Investment Disputes (2017) Decision on Bear Creek Mining Corporation versus the Republic of Peru, November 17, ICSID Case No. ARB/14/21, https://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C3745/DS10808_En.pdf

regulation of the minimum wage,[13] environmental protections,[14] and, more recently, government action to reduce carbon emissions, examples of which are discussed in more detail below.

The Labor government elected in May 2022 has a policy against ISDS in new trade agreements, and to review it in existing agreements, recognising that ISDS provisions reduce government scope to regulate in the public interest.[15] Since 2022, there have been many additional examples of cases against public interest laws, court decisions and policies, which strengthen the rationale for this policy.

Clive Palmer's ISDS forum shopping and ongoing claims against regulation of coal mining and energy

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 Agreement (AANZFTA) to claim a total of A$420 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.[16] 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.[17] The refusals were for environmental reasons, including contributions to increased carbon emissions.[18]

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.[19] The Attorney-General commented that "Australia should never have had to spend two years and over A$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."[20]

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[13] UNCTAD (2019) Investment Dispute Settlement Navigator, Veolia v. Egypt 2012, https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/458/veolia-v-egypt;
Breville, B and Bulard, M. (2014) The injustice industry and TTIP, *Le Monde diplomatique*, English edition, June, https://www.bresserpereira.org.br/terceiros/2014/agosto/14.08.injustice-industry.pdf

[14] Withers, P. (2019) Canada ordered to pay US 7 million in NAFTA case, February 25, Canadian Broadcasting Company, https://www.cbc.ca/news/canada/nova-scotia/nafta-bilcon-digby-neck-quarry-environmental-sovereignty-1.5032727
Nelson, A. (2022). Oil firm Rockhopper wins £210m payout after being banned from drilling, *The Guardian*, August 25, https://www.theguardian.com/business/2022/aug/24/oil-firm-rockhopper-wins-210m-payout-after-being-banned-from-drilling#:~:text=Oil%20firm%20Rockhopper%20wins%20%C2%A3210m%20payout%20after%20being%20banned%20from%20drilling,-This%20article%20is&text=A%20corporate%20tribunal%20has%20ordered,an%20offshore%20oil%20drilling%20ban.

[15] Trade Minister Don Farrell (2022) Trading our Way to Greater Prosperity and Security, https://www.trademinister.gov.au/minister/don-farrell/speech/trading-our-way-greater-prosperity-and-security.

[16] 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

[17] 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

[18] 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

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

[20] 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.[21] However, Palmer then announced[22] that his legal team would seek annulment of the decision on technical grounds in the Federal Supreme Court of Switzerland as one of the seats of the international tribunal process. This challenge failed.[23] In the meantime, his other three coal-related cases can proceed in 2026. Since ISDS tribunals have no precedents, and the three tribunals include different members, there is no guarantee that the other three tribunal decisions will be consistent with the first decision, including on the awarding of costs. 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 cases.

The Palmer cases demonstrate how the ISDS system can be used to contest coal mining regulation and manipulated to maximise time and costs for governments. Another recent claim by an Australian company using ISDS in the CPTPP to contest coal mining regulation has been lodged against Canada.

Gina Rinehart's use of ISDS in the CPTPP to claim against the environmental regulation of coal mining in Canada

Hancock Prospecting v Canada (Grassy Mountain project)

Australian billionaire Gina Rinehart's Hancock Prospecting and its subsidiary Riverdale Resources, owners of local company Northback Holdings, are using ISDS in the CPTPP to make a claim against Canada[24] over the refusal of permits for coal mining in an environmentally sensitive area.
The case involves the proposed Grassy Mountain open pit coal project and adjacent projects in Alberta, which were blocked in 2021 after a joint federal–provincial review found coal mining would likely cause significant environmental harm, including damage to waterways and a threatened fish species.[25] The companies allege that Canada has interfered with their coal investments through the decision of the environmental assessment by a joint review panel established under Canadian law, the subsequent appeals through judicial proceedings in Canadian courts which the companies lost, and policy changes of the Government of Alberta. After losing appeals in Canadian courts, the companies have launched an arbitration claim using ISDS in the CPTPP, seeking more than US $2 billion in compensation, alleging that Canada's decisions undermined their investment through unfair and discriminatory treatment.[26]

This claim has been made despite "modern" clauses in the CPPTPP that claim to protect environmental regulation.

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[21] Attorney-General Michelle Rowland (2025).
[22] Palmer, C. (2025) Clive Palmer to challenge tribunal decision, media release September 28, https://x.com/CliveFPalmer/status/1972085296138498546
[23] Department of the Attorney-General (2026) Swiss Federal Supreme Court upholds international tribunal ruling against Clive Palmer, August 5. https://ministers.ag.gov.au/media-centre/swiss-federal-supreme-court-upholds-international-tribunal-ruling-against-clive-palmer-05-08-2026
[24] International Centre for Settlement of Investment Disputes (2024) Riversdale Resources Pty Ltd and Hancock Prospecting Pty Ltd v. Canada (ICSID Case No. ARB/24/50) December 23 https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/24/50
UNCTAD Database (2024). Riversdale and Hancock v. Canada. https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/1389/riversdale-and-hancock-v-canada
[25] Bankes, N. and Tienhaara, K. (2026) The Next Shoe Drops. The Northback (Grassy Mountains Interests) File an International Investment Law Claim Against Canada. *University of Calgary Faculty of Law ABLawg.ca.* April 14. https://ablawg.ca/2026/04/14/the-next-shoe-drops-the-northback-grassy-mountain-interests-file-an-international-investment-law-claim-against-canada/
[26] Bankes and Tienhaara above, summarise the process of the review panel and judicial appeals, which the company lost.

Additional evidence of ISDS claims against government regulation of carbon emissions

The Palmer and Rinehart ISDS claims join a growing global list of claims that threaten the transition away from fossil fuels. A 2022 study published in the journal *Science* showed that the increasing use of ISDS clauses in trade agreements by fossil fuel companies to claim billions in compensation for government decisions to reduce fossil fuel emissions is a growing threat to government action to address climate change.[27]

US company Ruby River Capital filed an ISDS claim against Canada after its liquefied natural gas project was rejected because of concerns about its greenhouse gas emissions. The company sought US$20 billion in compensation despite having spent approximately US$124 million on the project.[28]

In Europe, German energy companies RWE and Uniper launched ISDS cases against the Netherlands using ISDS in the Energy Charter Treaty (ECT) over the government's moves to phase out coal-powered energy by 2030.[29] Although both cases have now been withdrawn, they spurred public debate and a comprehensive review of the EU's membership of the ECT, which led to cancellation of ISDS arrangements between EU members and the EU's withdrawal from the ECT.[30]

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.[31] The claim has provoked widespread public criticism as it is seen as a challenge to government policy to phase out fossil fuels.[32]

'Modern' ISDS provisions are not effective protections against ISDS cases against environmental and other public interest regulation

There have been attempts in more recent trade agreements, such as the CPTPP, to include more protections for governments. This includes exceptions that are meant to safeguard public interest regulation. However, these "modernised" provisions have not been effective as tribunals have found that general exceptions do not remove the liability to pay compensation for measures that affect investments.[33]

For example, in the *Eco Oro v. Colombia* decision, the tribunal disregarded an exception in the Colombia-Canada FTA included to protect governments' right to enact environmental regulation. The exception reads that nothing in the FTA's investment chapter "shall be construed to prevent a Party

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[27] Tienhaara *et al.* (2022) Investor-State disputes threaten the global green energy transition, *Science,* 5 May 2022Vol 376, Issue 6594 pp. 701-70 https://www.science.org/doi/10.1126/science.abo4637

[28] International Centre for Settlement of Investment Disputes (ICSID) (2023b) Ruby River Capital LLC v. Canada, ICSID Case No. ARB/23/5. Available at https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/23/5. Boston University (2023) Submission to the Special Rapporteur on human rights and the environment call for inputs. Available at https://www.bu.edu/gdp/files/2023/11/KT-RT-KG-OHCHR-ISDS-Submission-FIN.pdf

[29] Kluwer Arbitration (2021) http://arbitrationblog.kluwerarbitration.com/2021/08/24/the-netherlands-coal-phase-out-and-the-resulting-rwe-and-uniper-icsid-arbitrations/

[30] Schaugg, L. (2025) *Why Coordinated Withdrawal From the Energy Charter Treaty Remains Essential for Effective Climate Action*. International Institute for Sustainable Development. June 20. https://www.iisd.org/articles/insight/coordinated-energy-charter-treaty-withdrawal-essential

[31] 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/

[32]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/

[33] Wolfgang, A (2022) *Investment Arbitration and State-Driven Reform: New Treaties, Old Outcomes*, *OUP*. https://global.oup.com/academic/product/investment-arbitration-and-state-driven-reform-9780197644386?cc=ch&lang=en&.

from adopting or enforcing measures necessary" to protect the environment, if the measures do not amount to "arbitrary discrimination or disguised restraint on trade or investment". However, the tribunal decided that even if the exception applies to a measure, "this does not prevent an investor claiming … that such a measure entitles it to the payment of compensation".[34] Similar tribunal decisions were made in *Montauk Metals Inc. v Colombia* and *Bear Creek Mining Corporation v Republic of Peru.*[35]

In the CPTPP, another exception includes the additional proviso that nothing should prevent measures to protect the environment "otherwise consistent with this chapter".[36] Trade law experts have said that the circular language of this exception gives no additional protections for environmental regulation.[37]

Only tobacco regulation has been clearly excluded from ISDS claims in the CPTPP.[38] While other language in the CPTPP allows regulation for other legitimate public welfare objectives, it qualifies this by stating except in "rare circumstances".[39] This language allows for a very broad interpretation by tribunals.

None of these clauses prevent claims from being brought against governments. They only provide some possible arguments governments can use in defending cases. Governments still have to spend time and millions in legal costs defending cases.

Recommendation

- ***ISDS provisions should continue to be excluded from the RCEP.***

Commitments to internationally recognised human rights, labour rights and environmental standards

Labour rights

The trade policy model of global production chains encourages 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 of freedom of assembly, the right to join a union or engage in collective bargaining. This model of global production chains which suits the needs of global corporations has negative impacts on workers.

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[34] *Eco Oro v Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum (9 September 2021), paras 826–37
Benton Heath, J (2021) Eco Oro and the Twilight of Policy Exceptionalism, *Investment Treaty News*, https://www.iisd.org/itn/en/2021/12/20/eco-oro-and-the-twilight-of-policy-exceptionalism/.
[35] *Montauk Metals Inc. v Colombia*, ICSID Case No. ARB/18/13, Award (7 June 2024), paras 971–984
Bear Creek Mining Corporation v Republic of Peru, ICSID Case No. ARB/14/21, Award (30 November 2017), para 477
[36] DFAT (2015) Text of the Trans-Pacific Partnership (incorporated into the CPTPP) Chapter 9, Article 9.16, p. 9-18. https://www.dfat.gov.au/trade/agreements/not-yet-in-force/tpp/Pages/tpp-text-and-associated-documents.
[37] Kawharu, A (2015) TPPA Chapter 9 on Investment, Expert Paper no. 2 on the TPPA, p.9, *The Law Foundation,* https://tpplegal.files.wordpress.com/2015/12/ep2-amokura-kawharu.pdf, and Gleeson, D, and Labonte, R (2020) Trade Agreements and Public Health, pp.28-9. Palgrave studies in public health policy research, Palgrave Macmillan, Singapore.
[38] DFAT (2015) Text of the Trans-Pacific Partnership (incorporated into the CPTPP) Chapter 29, Article 29.5, p.29, https://www.dfat.gov.au/trade/agreements/not-yet-in-force/tpp/Pages/tpp-text-and-associated-documents.
[39] DFAT, Ibid, Chapter 9, Annex 9-B, p. 9-35.

Many workers in RCEP countries face precarious temporary employment, long hours of work and unsafe working conditions. The ITUC annual report of global labour conditions in the region documents that conditions include underpayment, excessive work hours, and unsafe working conditions, including exposure to toxic chemicals.[40]

To counter these trends, trade agreements should include commitments by governments not to reduce labour rights, and to implement basic labour rights which are defined by the International Labour Organisation (ILO) and have been endorsed by most countries. These should be enforced by the state-to-state disputes process of the agreement. These rights intersect with UN human rights obligations and include freedom of association, rights to collective bargaining, health and safety in the workplace, no forced labour, no child labour and no discrimination in the workplace (ILO 1998).

Recommendations

The RCEP should include enforceable commitments not to reduce labour rights and to adopt, develop and implement international standards on labour rights, including the International Labour Organisation (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)***
- ***The elimination of discrimination in respect of employment and occupation (ILO Conventions 100 and 111), and***
- ***A safe and healthy working environment (ILO Conventions 185 and 187).***

These should be enforced through the state-to-state dispute processes in the agreement.

Myanmar: Australia should maintain pressure though sanctions

Since the coup in February 2021, Myanmar continues to suffer humanitarian and human rights abuses under the brutal military junta. According to the Assistance Association for Political Prisoners, the Myanmar junta has killed over 8,000 people and detained over 21,000 who opposed the military takeover. There are reports of widespread torture of detainees, and women and girls have been subjected to sexual violence by the military.[41] This has resulted in the internal displacement of over 1.9 million, and 1.3 million refugees. Despite this repression, there is widespread internal resistance to the regime.

As part of the attempt to restore democracy, countries such as Australia, the UK, the EU and Canada have sanctioned individuals and entities designed to limit the regime's access to the funds and military equipment that enable it to continue to commit atrocities against its own people.[42]

[40] ITUC https://www.ituc-ap.org/news-and-updates/2026-ituc-global-rights-index-asia-pacific-remains-second-worst-globally-as-arrests-and-violence-escalate

[41] Assistance Association for Political Prisoners (2026) Political Prisoners and deaths post-coup, September 15 https://aappb.org

[42] DFAT (2026) Myanmar sanctions framework. https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/myanmar-sanctions-framework

Myanmar *Recommendation*

- ***Australia should continue and strengthen sanctions to support the call of the majority in Myanmar and the international community for the return of democracy.***

Commitments to UN Environment agreements and net zero emissions

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

Australia's and many other RCEP countries' recent experiences of increasingly extreme cyclones, fires and floods demonstrate that 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 and many governments have recognised the serious climate crisis by adopting a target of net zero emissions by 2050. 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 phasing out of fossil fuels, deployment of renewable energy and development of other low-emissions technologies.

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

Recommendations:

That the government seek to ensure that the RCEP is aligned with its policies to protect the environment and achieve net zero carbon emissions targets through commitments not to reduce environmental standards and to implementation of UN International Environment Agreements, enforced through the government-to-government dispute processes contained in the agreement, including:

- ***the UN Framework Convention on Climate Change 1992, the Paris Agreement 2015, and Implementation Agreements at subsequent 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.***

These should be enforced through the state-to-state dispute processes in the agreement.

Women's Rights and Indigenous Rights

The RCEP has no commitments in the text of the agreement to implement government policy on recognition and implementation of women's rights and the rights of Indigenous Peoples. This is a serious omission compared with other recent trade agreements.

Women's Rights

Women form half the population, and the economy relies on their paid and their unpaid work caring for children and elders. However, because of historic discrimination, this 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.

The UN Convention on the Elimination of All Forms of Discrimination Against Women, 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 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 RCEP 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.

Rights of Indigenous Peoples

Australian Indigenous peoples live with the legacy of colonial dispossession and discrimination, with basic 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 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 sharing the benefits of trade.

Recommendation:

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

Electronic Commerce/digital trade rules must ensure that governments retain the right to regulate the digital domain in the public interest

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, which are among the largest and most powerful global companies with trillions in concentrated wealth.

The aim of this agenda is to secure the cross-border free flow of data and to establish an international framework that prevents governments from regulating the digital domain and the operations of digital companies. This is particularly concerning given the issues arising from the lack of regulation of digital platforms and the business practices of digital companies including:

- Facebook and Google's data privacy abuse scandals[43]
- Uber classifying itself as a technological platform, not an employer, to avoid labour regulation and enable the exploitation of workers[44]
- tax avoidance[45]
- abuse of market power and anti-competitive practices by Facebook, Google and Amazon[46]
- use of algorithms which are designed to direct vulnerable users to socially harmful content[47]
- AI use of creative works without permission or compensation to the creators, which breaches copyright[48]
- The abuse of facial recognition technology and the use of AI to create misleading content and fake news[49]

[43] Waterson, J. (2018) UK fines Facebook £500,000 for failing to protect user data, The Guardian, October 25, https://www.theguardian.com/technology/2018/oct/25/facebook-fined-uk-privacy-access-user-data-cambridge-analytica.
[44] Bowcott, O. (2017) Uber to face stricter EU regulation after ECJ rules it is transport firm, The Guardian, December 21, https://www.theguardian.com/technology/2017/dec/20/uber-european-court-of-justice-ruling-barcelona-taxi-drivers-ecj-eu.
[45] Drucker, J. and Bowers, S. (2017) After a Tax Crackdown, Apple Found a New Shelter for Its Profits, The New York Times, November 7, https://www.nytimes.com/2017/11/06/world/apple-taxes-jersey.html.
[46] 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.
[47] Walsh, R. (2026) How the $17 Billion Meta Settlement Could Reshape Mental Health Research and Policy in the Digital Age, September 16, Public Health on Call, Jooohns Hopkins University, https://publichealth.jhu.edu/2026/the-meta-settlement-and-social-media-addiction
[48] Wilson, C. (2026) Top AI execs meet with Albanese ministers as leaked copyright reforms spark political blow-up, September 16, ABC News, https://www.abc.net.au/news/2026-09-16/top-ai-firms-meet-albanese-ministers-copyright-law/107160498
[49] Esafety Commissioner (2026) Fake news and misinformation, January 20, https://www.esafety.gov.au/key-topics/fake-news-and-misinformation

- The recent rapid development of forms of AI which can act autonomously to hack into other systems and potentially threaten essential infrastructure.[50]

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.[51] 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 Australian news media information.[52] 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.[53]and is still in place, but technology companies have been resisting it.[54] Another example is the development of Online Safety Codes and Standards and age-related restrictions on the use of social media.[55]

There is ongoing public pressure for regulation of some aspects of AI, which is developing at such a rapid pace without public knowledge or discussion of the consequences alongside other related technologies. [56] Some leading companies like Anthropic are calling for pauses in development to enable more regulation.[57] Public calls include regulating the use of AI algorithms which expose users to addictive patterns of use and harmful content, including self-harm, gender-based violence and politically motivated violence.[58] They also include the use of AI to violate copyright laws which protect the work and incomes of writers, performers and other creative workers.[59] There have been

[50] AFP and Reuters (2026) Anthropic boss Dario Amodei calls for AI slowdown, September 13, ABC News. https://www.abc.net.au/news/2026-09-13/anthropic-ceo-calls-for-slower-ai-development/107147650
[51] Australian Competition and Consumer Commission (2019) Digital Platforms Inquiry final report, June 2019, https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report.
[52] 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.
[53] Australian Competition and Consumer Commission (2022) Review of the News Media Bargaining Code, https://www.accc.gov.au/by-industry/digital-platforms-and-services/news-media-bargaining-code/news-media-bargaining-code
[54] 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
[55] Australian e- safety Commissioner (2025) Online safety codes and standards, https://www.esafety.gov.au/industry/codes#about-the-phase-2-industry-codes

[56] These include Biotechnology and Genetic Engineering, Advanced Robotics and Autonomous Systems, Neurotechnology and Brain-Computer Interfaces (BCIs), Quantum Computing, Geoengineering and Climate Modification Technologies. Government must also retain the right to regulate them in the public interest to prevent harm.
[57] AFP and Reuters (2026) Anthropic boss Dario Amodei calls for AI slowdown, September 13, ABC News, https://www.abc.net.au/news/2026-09-13/anthropic-ceo-calls-for-slower-ai-development/107147650
[58] Walsh, R. (2026) How the $17 Billion Meta Settlement Could Reshape Mental Health Research and Policy in the Digital Age, September 16, Public Health on Call, Jooohns Hopkins University, https://publichealth.jhu.edu/2026/the-meta-settlement-and-social-media-addiction
[59] Wilson, C. (2026) Top AI execs meet with Albanese ministers as leaked copyright reforms spark political blow-up, September 16, ABC News, https://www.abc.net.au/news/2026-09-16/top-ai-firms-meet-albanese-ministers-copyright-law/107160498

recent examples of autonomous forms of AI hacking into other systems which poses potential dangers to essential public and private infrastructure.[60]

There has also been legislation to improve the rights of digital platform workers.[61]

Some of these forms of regulation have been identified by the US digital trade lobby as barriers to trade by the US government, which is pressuring governments to remove them under the threat of increased tariffs.[62] Australia should cooperate with other governments 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:

The RCEP should not include provisions that:

- ***Prevent governments from regulating the cross-border flow of data***
- ***Prevent regulation to address market power imbalances and reduced competition***
- ***Prevent governments from accessing source code and algorithms and from regulating harmful content***
- ***Prevent governments from regulating the abuse of AI to create fake news***
- ***Prevent governments from regulating AI violations of copyright***
- ***Prevent government from regulating autonomous forms of AI to exclude hacking other systems and other harmful actions***
- ***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 RCEP 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.***

Trade in Services Chapter

The objectives of trade-in-services rules in the RCEP, as in other agreements, are to open services to international investment and to reduce regulation of them. These rules treat the regulation of services as a tariff, to be frozen at current levels and to be reduced, not increased, in future.

[60] Handley, E., (2026) OpenAI hacked Medicare portal, Prime Minister Anthony Albanese says, September 24, ABC News https://www.abc.net.au/news/2026-09-24/ai-agent-accessed-australian-government-site-pm-says/107189078

[61] Fair work Commission (2026) New minimum standards for on-demand delivery workers, August 19, https://www.fairwork.gov.au/about-us/workplace-laws/fair-work-commission-orders/minimum-standards-order-on-demand-delivery-workers

[62] 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

Public services are notionally excluded from the services chapter. However, the exclusion of public services 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".[63] 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 RCEP should not restrict changes to regulation of essential services like aged care

RCEP rules in Chapter 8 on trade-in-services are designed to increase foreign investment in essential services and restrict the ability of future governments to regulate them.

This is confirmed by the DFAT Regulation Impact Statement which says the RCEP imposes "obligations on the Australian Government (and the governments of the other RCEP participating countries), including to 'lock-in' and not adversely modify existing regulation in particular services sectors".[64]

Australia has chosen to include all services unless they are specifically reserved, known as a negative list [65]

These rules suit the needs of international investors but can restrict the flexibility needed to make future policy changes like dealing with the aged care crisis and with climate change.

The rules of Chapter 8 treat regulation of services as if it were a tariff, with regulations "locked in" at current levels, and not to be increased in future, unless they are excluded as reservations in Chapter 8 Annex III List B.

RCEP Services Annex III List B includes "the specific sectors and sub sectors or activities for which Australia may maintain existing, or adopt new or more restrictive, measures".[66]

The reservations list for essential services includes regulation of admissions, accreditation and funding of public and private education services.[67]

There is a further list of reserved services on p.32, which reads:

> "Australia reserves the right to adopt or maintain any measure (23) with respect to the provision of law enforcement and correctional services and the following services (24) to the extent that they are social services established or maintained for a public purpose:
>
> - income security or insurance;
> - social security or insurance;
> - social welfare;
> - public education;
> - public training;

[63] DFAT (2020) Text of the RCEP Chapter 8, Article 8.1.(o), https://www.dfat.gov.au/sites/default/files/rcep-chapter-8.pdf
[64] DFAT (2021) Department of Foreign Affairs and Trade (2021b) Regulation Impact Statement, Canberra, p.6 https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/RCEP/Treaty_being_considered
[65] DFAT (2020) Text of the RCEP Chapter 8, Article 8.7.
[66] DFAT (2020) RCEP Services Annex III, Schedule of Australia List B p. 24, www.dfat.gov.au/sites/default/files/rcep-annex-iii-schedule-of-australia.pdf
[67] DFAT (2020) RCEP Services Annex III, List B p.25.

- health (25);
- childcare;
- public utilities;
- public transport and
- public housing.

23. For greater certainty, measures adopted or maintained with respect to the provision of services covered by this entry include measures for the protection of personal information relating to health and children.

24. For the avoidance of doubt, this includes any measure with respect to the collection of blood and its components, the distribution of blood and blood related products, including plasma derived products, plasma fractionation services, and the procurement of blood and blood related products and services.

25. For greater certainty, the subsidies programs under Australia's pharmaceutical benefit scheme and Medicare Benefits Scheme, or successive programs, are not subject to chapter 8 (Trade in Services) consistent with article 8.2 (Scope) or Chapter 10 (Investment) consistent with article 10.2 (Scope)."[68]

Aged care has not been listed as a reservation in this list or elsewhere in Annex III.

Claims that aged care is reserved under the general heading of "health services" or welfare services" are not convincing.

Firstly, child care, which is similar to aged care in that the government provides funding for a public purpose but the service is provided by a mix of public, non-profit and private providers, is specifically included in the list of reservations.

Secondly, there are three footnotes in the quote above from Annex III which clarify some specific services that are included in the definition of health services, using phrases like 'for the avoidance of doubt' and 'for greater certainty.' Aged care is not included in any of these footnotes.

For these reasons, for the avoidance of doubt and greater certainty, it would be reasonable to have separate listing for aged care as a reservation. This would better ensure that Commonwealth and state governments are not restricted in responding to recommendations for changes or increases in regulation made by the Royal Commission into Aged Care Quality and Safety.

RCEP rules also restrict governments from regulating numbers of staff in all services Qualifications, licensing and technical quality standards cannot be "more burdensome than necessary" for the investor.[69] Aged care has not been reserved from these obligations.

The failure to reserve aged care may be related to the fact that, when the RCEP was negotiated, the aged care industry was dominated by local firms, including both for-profit and not-for-profit providers like church organisations. The for-profit providers were based in Australia, and not subject to international trade and investment rules which apply to international investors and service providers.

This has now changed. Recent data show that many aged care beds are now provided by for-profit providers owned by international investors and that Opal, jointly owned by a Singapore company, is the largest provider.[70] This means that rules in the RCEP and other trade agreements that lock in current levels of regulation now apply to international investors in the aged care sector.

[68] DFAT (2020) RCEP Services Annex III, List B p.32.
[69] DFAT (2020) RCEP Chapter 8 Articles 8.5 and 8.15.
[70] Aged Care Online (2025) Australia's Top 10 Largest Residential Aged Care Providers in 2025, https://agedcareonline.com.au/2025/11/Australia-s-Top-10-Largest-Residential-Aged-Care-Providers-in-2025

The Royal Commission exposed scandals caused by a lack of qualified staff and poor quality of care, and recommended increases in staffing numbers, increases in qualifications of staff and changes to requirements for quality of care and licensing arrangements. These are all areas of regulation restricted in the RCEP clauses described above. 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. But reform of the aged care sector is ongoing. At the time of the review and ratification of the RCEP, the Joint Standing Committee on Treaties noted the ambiguity and recommended that 'such inconsistencies give rise to public concern, and it would be better if they were avoided'.[71] To ensure that there is no potential threat to ongoing reform of the aged care sector aged care should be listed as a specific reservation in Annex III.

Recommendation :

- ***That the government review the reservations in the RCEP trade-in-services chapter to ensure that governments retain the right to regulate and reregulate all public services, government-funded services and other essential services as circumstances change***
- ***That government seek an amendment to Services Chapter 8 Annex III list B, page 32 to list aged care in reservations excluded from obligations in the Services Chapter.***

Temporary Workers: Annex IV

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

The government's 2023 report on Migration Strategy[72] acknowledged that temporary migrant workers 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.

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.[73] 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.[74] A more extensive 2026 survey of 10,000 overseas workers on temporary visas found "an interlocking system of deliberate exploitation". [75]

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[71] 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.

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

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

[74] Howe et al. (2019) Towards a Durable Future: Tackling Labour Challenges in the Australian Horticulture Industry, https://www.researchgate.net/publication/331586106_Towards_a_Durable_Future_Tackling_Labour_Challenges_in_the_Australian_Horticulture_Industry_-_REPORT

[75]Berg. L. and Farbenblum. B. (2026) "Researchers found pervasive worker underpayment in Australia, with two-thirds of temporary visa holders paid less than they were legally owed. University of New South Wales May 7, https://www.uts.edu.au/news/2026/05/a-new-survey-of-10000-migrants-reveals-exploitation-at-work-is-the-norm.-heres-how-to-fix-it

The evidence from these 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.

For these reasons, AFTINET does not support expansion of the numbers of vulnerable temporary workers through commitments in trade agreements. However, Annex IV which deals with Australia's specific commitments refers to temporary contractual service providers and does not clearly require labour market testing to establish whether there are local workers available. Annex IV states that

> "labour market testing **may** be required for some occupations, to the extent that this is not inconsistent with Australia's commitments under the WTO" (p.3).[76]

On December 11, 2023, the government announced changes to Australia's migration strategy following a comprehensive review. The changes are aimed at protecting the integrity of Australia's permanent migration system, ensuring that temporary workers meet specific labour shortages, and are not vulnerable to exploitation.[77]

Recommendation

- **That there be clarification of the application of labour market testing in Annex IV, P. 3 consistent with the government's Migration Strategy policy to ensure that numbers of temporary workers address genuine labour shortages and that they are protected from exploitation.**

[76] DFAT Text of the RCEP Annex IV, p. 3 https://www.dfat.gov.au/sites/default/files/rcep-annex-iv-schedule-of-australia.pdf
[77] Commonwealth of Australia (2023) Migration Strategy, December 11, p.13, https://immi.homeaffairs.gov.au/programs-subsite/migration-strategy/Documents/migration-strategy.pdf