

Department of Foreign Affairs and Trade
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Comments by Civil Liberties Australia (CLA) on the Trans Pacific Partnership agreement

Thank you for giving us the opportunity to make a submission on this topic, so that the threats to Australia's civil liberties, freedoms and rights can be weighed along with any potential benefits claimed for the Trans Pacific Partnership agreement (TPP).

Civil Liberties Australia is extremely concerned about the TPP. Our main concern is that the agreement is being negotiated by the Australian government under extreme secrecy. Even elected Members of Parliament will only be allowed to see the texts after they are signed, and even then, the tabling will be for only 20 days, during which Parliament will be faced with the impossible task of scrutinising 29 chapters of a massive and detailed document. By contrast, corporations and their advisers are "co-writers" of the treaties, with full access to all drafts from an early stage. We understand from media reports that US politicians will be given greater access than Australian parliamentarians: it is not clear to Civil Liberties Australia why Australian MPs, and Australians, should be treated as second class to Americans.

Joseph Stiglitz, the acclaimed American economist, was so concerned by leaked information about:

- proposed restrictions on internet use,
- expansion of US copyright law to include (amongst much else) extensions on length of copyright,
- the criminalisation of copyright "infringement",
- patenting of surgical procedures, and
- much higher prices for pharmaceuticals

that he wrote to all TPP negotiators to warn them of the consequences of signing.

Civil Liberties Australia is a not-for-profit association which reviews proposed legislation to help make it better, as well as monitoring the activities of parliaments, departments, agencies, forces and the corporate sector to ensure they match the high standards Australia has traditionally enjoyed, and continues to aspire to.

We work to help keep Australia the free and open society it has traditionally been, where you can be yourself without undue interference from 'authority'. Australians' civil liberties are all about balancing rights and responsibilities, and ensuring a 'fair go' for all.

Australians have already faced significant price increases to pharmaceuticals due to changes made in the Australia-United States Free Trade Agreement (AUSFTA). We can now expect further increases, and these will have the greatest impact on seniors and pensioners. Companies will be free to set their own price.

"Investor-state dispute settlement provisions" known as ISDS, were first proposed to protect corporations against poor governance practices in lesser developed nations which might prejudice corporate interests. It is not clear why they are now being applied to advanced democracies like Australia. Accepting ISDS would allow foreign corporations to sue all levels of Australian governments, including local government, whenever government actions could be seen by an offshore tribunal to impinge on their profits! Prime Minister John Howard rejected attempts by the US government to impose ISDS on Australia under the Australia-US Free Trade Agreement, arguing that the Australian judicial system was more than adequate to adjudicate in matters of corporate law. However, Trade Minister Andrew Robb has announced he would agree to ISDS provisions in the hope of accessing greater markets, especially in the US and Canada. He has stated that new safeguards in ISDS clauses prevent unreasonable litigation. The litigious nature of US and other international corporate entities give Civil Liberties Australia no comfort that Mr Robb's "Great Expectations" will be proven accurate. It appears that negotiations by senior Australian representatives are being carried out in a most naïve manner.

ISDS litigation is lose-lose for national sovereignty

Australia is already being sued by Philip Morris over Australia's plain-packaging legislation, under ISDS provisions of a treaty with Hong Kong. Even where classes of government regulation have been specifically excluded from the ISDS, corporations have sued regardless. For example, although Uruguay stipulates that its treaty cannot be used to overturn public health regulations, Philip Morris is trying to overturn Uruguay's health regulations regarding tobacco use. Canada is currently being sued for placing a moratorium on fracking to protect its environment and Germany is being sued for abandoning use of nuclear power. Even if a corporation loses a case, governments are nevertheless obliged to pay the huge cost of ISDS litigation.

Such ISDS disagreements are not settled by the legal system of the signatory state, but by private international tribunals comprising usually lawyers with experience in working for corporations. The tribunal deliberations will be held in secret, they are not bound by convention, and there is no appeal against their decision. Local companies, on the other hand, will still be subject to Australian law.

Agreeing to ISDS in order to enable Australian companies to sue overseas governments is a perilous proposition. It means that not only will Australian citizens be at risk of having to pay any penalties incurred by federal, state and local governments, but will be asked to do so for the sake of indemnifying Australian companies against the risks of investing overseas. This effectively means privatising business profits while socialising business risks, funded by the Australian taxpayer. No future Australian government will be able to confidently

develop a legislative program or to adhere to budget commitments, liable as they will be to the possibility of being sued for many hundreds of millions of dollars. The impact of litigation at the local government level could be catastrophic.

Another invidious result of accepting ISDS is that Australian companies will be at a disadvantage compared to foreign corporations, because they will not be able to sue Australian governments for laws, regulations or policies which may affect their present or future profits. Based on US experience after it ratified the North American FTA, many Australian companies will set up operations overseas to enjoy the same benefits as foreign companies. Their move will take away jobs and taxation revenue from Australia, with consequences for employment, government revenue, economic growth and the balance of trade.

Australia's democracy will be further subverted by the requirement, under the TPP, for Australian governments to consult with foreign corporations before passing new laws which may affect the corporations: under the TPP, foreign corporations will have more rights than Australian companies and citizens.

The TPP comes at a time when local tariff barriers have already been lowered or removed, and there is little prospect of any economic gains to Australia apart from a couple of rural industries. It appears to be a case of urban Australia subsidising rural Australia by means of a foreign trade agreement. This has a doubly-negative effect on Australians: for example, if more cattle and beef products are exported, the domestic price rises to Australian consumers. Meanwhile, Australian consumers will be paying increased prices because of the non-tariff (copyright, intellectual property protection, etc) barriers imposed by the TPP on such day-to-day goods and services as listening to music, watching TV, reading and taking medicines.

TPP may mean Trans Pacific (overseas corporations) Protection

Leaks around the TPP negotiations reveal that the vast bulk of the document does not deal with trade at all, but focusses on imposing changes to our domestic legislation, which will require Australia to make legislative changes in areas such as protecting the environment, food safety and food labelling. Civil Liberties Australia is concerned that we will lose our freedom of choice to avoid Genetically-Modified Organisms (GMO) food. Country of origin labelling and "buy Australian" campaigns are important to Australia, even if only for health reasons as the recent frozen fruit disease outbreaks indicate: TPP agreements limiting such local initiatives would be entirely counter-productive, and would violate of our rights as citizens. Apart from the liberties, freedoms and rights arguments, Australian producers may lose their "clean and green" advantage under changes to labelling regimes floated in versions of the TPP.

Australia should be sovereign in deciding its intellectual property laws and rules in relations to restricting internet access and to criminalising behaviour currently regarded as customary

usage. It is not for other nations to tell us how to regulate our own people. To uphold clauses in the TPP, it is likely internet providers will be obliged to spy on Australians' use of what is the lifeblood of communication worldwide. As noted earlier, Australia faces having to pay even more excessively for music, video and streamed products.

The prices of our pharmaceuticals could rise substantially under longer patent protection periods and "green fielding" to further extend patent for minor changes to ingredients, presentation or taking regime. Australia already pays about \$3800 a month per person for one cancer drug (Glivec/Gleevec), which can be bought for about \$60 a month in India, where patents do not apply as they do in Australia.

Changes challenge our liberties and democracy

Civil Liberties Australia believes that the extensive potential changes – under TPP – to Australian laws covering working conditions, industrial health and safety, and a relaxation of standards for entry of foreign workers, are a danger to the freedom of citizens to decide their own democracy. That this negative outcome would occur at a time of growing unemployment in Australia is a threat to the social fabric.

The TPP is likely, over time, to mean more public services are opened to foreign corporations aiming at the substantial profit margins they are used to globally. Profiteering and rorting of Australian laws and regulations has occurred already in Australia when jobs and service delivery have been taken over by overseas corporations, or when corporations have been allowed to compete in Australia. There is accumulating long-term evidence of how aspects of Australia's once-exemplary banking system have become corrupted since privatisation (such as in the financial services area).

The problem is not competition which might be introduced by the TPP: the problem is how the competitors operate to different standards of corporate governance. When foreign corporations expand their reach into Australia under TPP provisions, the Australian Government will have less ability to manoeuvre in regulating against any such abuses, because of the ISDS clauses and other provisions. The threat of law suits will always temper any Australian Government action against a foreign corporation, emasculating the power of the Executive and the Parliament to adequately safeguard the rights and liberties of Australians.

Public services are defined and designed as serving the Australian public, not to make profits which can be off-shored by foreign corporations. Experience from other trade agreements indicates a particular risk to Australia's postal system, Medicare, hospitals and prisons. If such entities are not run by governments, they cease being 'public services', to the detriment of users in terms of the cost of services.

Apart from the cost increases citizens will have to pay, important standards drop. For example, in the area of liberties and rights, abuses of prisoners have been recorded in many

for-profit prisons overseas. The purpose of our prison system is to rehabilitate prisoners, not to provide cheap labour for local companies and windfall profits to the corporations who run the prisons. It is alarming that UK experience proves that the two major corporations involved in prisons and security services have systematically over-charged the UK Government over the best part of a decade.

Studies show no economic benefit

It is ironic that, according to major studies, the Australian public will be asked to make commercial sacrifices in exchange for no economic benefit at all, at the same time as putting at serious risk established liberties, rights and freedoms. Australia's Productivity Commission found that the claimed economic benefits of many bilateral and regional trade agreements have been exaggerated, and are in fact insignificant. Even the US Department of Agriculture in its study *Agriculture in the Trans Pacific Partnership countries* (2014), on page 21, predicted by the year 2025, the net economic value to Australia of the TPP would be 00.00%. While that is the economic estimate, the estimate in relation to potential negative impact on civil liberties and human rights is negative.

If Australia ratifies the TPP in the fond hope of gaining greater market access for some farmers, the costs to the wider community may far outweigh any rural benefits. If Australia is forced, by clauses in the TPP, to forfeit an ability to preserve our environment and water supplies, protect bio-diversity, control pollution, provide low cost pharmaceuticals and regulate working conditions, in the long term farming communities also will pay a high price.

When laws are made by agreements negotiated in secret by representatives of foreign corporations – without input from the Australian Parliament and people – Australia is losing its sovereignty. We cannot call ourselves a democracy if we abandon the right of people and parliament to decide our future after open and transparent public consultation and debate.

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