

## Submission on Australia's Participation in Trans-Pacific Partnership Negotiations

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I make this submission in relation to Australia's participation in the Trans-Pacific Partnership (TPP) negotiations.

I acknowledge that my submission will be made publicly available on the DFAT website unless I specify otherwise. I do not specify otherwise. In line with my belief that most government processes must be open and frank, I cannot see that, unless my proposed submission was of an extremely sensitive nature, I should even have a choice in the matter. Most people would agree, I think, that apart from matters involving national security or a person's right to their privacy, nearly all other matters a government involves itself in should be open to the scrutiny of the people who have bestowed in their government the responsibility for acting on their behalf in accordance with the laws of the land and the natural principles of justice and equity. Nevertheless, there is an indication on the DFAT website that some organisations or entities may have made submissions to DFAT on the basis that their identities and the texts of their submissions are not to be placed on the public record. In most situations, I believe that such secrecy is inappropriate.

I therefore submit that DFAT should not be permitted to receive any submission that will not be made part of the public record unless the party intending to make the submission can first convince an independent panel that the potential submission involves such sensitive issues – such as national security or a person's privacy – that it would not be appropriate for the submission to be made public. I would expect that very few submissions would be of such a sensitive nature.

Moving on to the matter of Australia's participation in the TPP negotiations, I would very much appreciate the opportunity of being able to view a copy of the current draft agreement in order that I might be permitted to consider the actual text of what is proposed, but this does not appear to be possible. I could find no copy of the current draft agreement on DFAT's website. I understand that a draft agreement exists because there is reference in the public domain to a 'Leaked Draft' and a



'Leaked Text'. Even without such assertions of a leaked document being in existence, normal process would suggest that when the various parties meet to discuss the development of the TPP, there should be something in writing to provide some platform to inform the objects and processes that need to be discussed and agreed to achieve the required outcomes. Such meetings have already occurred. Some written document must therefore exist. Why is it then, that DFAT will not make the document available to inform the discussion?

I therefore submit that DFAT should make an official version of the draft TPP document available to the public for the purpose of encouraging an informed public to provide informed submissions to DFAT so that the process can be transparent and have credibility. Without such transparency, any TPP will lack the moral authority of the Australian people.

Notwithstanding the apparent desire of DFAT to keep the text of the current draft of the TPP from the Australian public, I will proceed – as best I can – to make this submission even though what is to follow is more a list of questions than a comment on a particular part of the draft agreement, given that DFAT refuses to provide access to the current draft of the proposed agreement. DFAT's attitude to the release of the current draft agreement is indicative of a much deeper problem prevalent within Australia at present, and I will not go into that issue any further in this submission except to say that the administration and activities of DFAT will hopefully one day be the subject of a Royal Commission.

Does Australia have the legal power to make an agreement in the terms of that which it is intending to make? I don't know. I don't know the detail in the agreement the Australian government is intending to make. In most instances, it is *the detail* of an agreement that is important to anyone who might seek to determine if an agreement is valid or not.

I have no doubt that the Australian government has the general power to make such laws as it is permitted to make for the peace, order and good government of the Commonwealth with respect to trade and commerce with other countries (*see section 51(i) of the Commonwealth of Australia Constitution Act*). It might be assumed that this power will be relied upon by DFAT to provide some legal support to the proposed TPP agreement. I suppose however that the correctness of this assumption depends on whether the proposed agreement has anything to do with trade or not. If the proposed agreement has something to do with matters other than trade, then other Commonwealth powers will need to exist to support the legality of such matters. At this stage however, I don't know what is proposed in the proposed agreement.

I have heard in the press that the proposed agreement might give certain corporations some right to sue the Australian Government if – after the TPP Agreement is in place – a future policy change by the Australian Government causes, or in part causes, one of these corporations to suffer some loss of one sort or another. Again, it would be helpful if the current version of the proposed agreement was publicly available, as such talk in the press can sometimes be much removed from reality. It would be much preferred if there was something in writing to consider, rather than having to consider and respond to the gossip in the street.





However, if there is some foundation to the verbal dialogue regarding private corporations potentially wanting to use the proposed agreement to bring such legal actions against Australia's, then the Australian Parliament will need to be careful that the terms of the proposed agreement preclude the possibility of such claims. It is not appropriate, in my view, for one Australian Parliament to deliberately, or otherwise, obstruct a future Australian Parliament from changing its laws to better reflect the rights and needs of the Australian people. If better representing Australian citizens requires a change in Commonwealth laws to achieve the level of peace, order and good government required by Australian citizens – or even if improving Australia requires a change to our Constitution itself – then the Australian Parliament and the Australian people must be free to pursue such lawful reforms without the threat of compensation claims flowing from an agreement with one or more foreign countries.

For a long time Australia has enjoyed the reputation for being a politically stable country. A good deal of foreign investment in Australia has flowed into this country because of our political stability. If an Australian Parliament embarks on policies, and enters into agreements, that are not supported by the majority of Australia's citizens, then those policies and those agreements will cause us to lose our reputation for being a place of stability. Australian citizens will demand changes; certain interest groups will resist the changes. Australians will start to speak much more strongly about our right to our independence, and to our liberty – in short – to our right to pursue a course that will ensure our right to remain a sovereign nation. DFAT's policy of refusing to make a draft of the proposed TPP agreement available to the public to underpin the submission process is a dangerous step down the path towards political instability.

I submit that the Solicitor-General should be requested to provide a formal legal opinion on the legality of the proposed draft agreement and on the exposure to compensation claims that the draft agreement may cause to Australian citizens. Further, in the interests of Australian citizens being totally informed on the matter, the formal legal opinion should not be provided to the Attorney General as a draft for comment, but rather, it should, in the first instance, be provided directly to the Australian Parliament by the Solicitor General. The opinion should then be placed on the DFAT website – along with a copy of the proposed TPP Agreement.

The more specific questions I have at present regarding the proposed draft TPP Agreement are as follows:

1. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to reduce its contribution to global carbon dioxide emissions to levels that it believes will help the world achieve a reversal in climate warming?
2. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to reduce its population growth to levels that it believes will help the world achieve a level of environmental and economic sustainability?
3. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to ensure that conventions protecting human rights are observed?



4. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to ensure that Australia can become a place of refuge for genuine refugees?
5. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to provide affordable and or free health care (including dental care) to all of its citizens?
6. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to provide affordable and or free education and training to all of its citizens?
7. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to provide affordable and or free housing to all of its citizens?
8. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to provide affordable and or free power, water and sewerage services to all of its citizens?
9. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to provide affordable and or free transport services to all its citizens?
10. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to provide all Australian citizens with affordable and or free high speed rail services throughout Australia?
11. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to provide affordable and or free telecommunications services, such as optic fibre cables to the home or the workplace, to all its citizens?
12. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to reform its taxation laws in a way that it determines to be just and equitable, such as by ensuring that major corporations are prevented from avoiding paying taxes in Australia by using schemes involving international related-party dealings, or perhaps by reforms targeted at expanding the GST revenue base so that GST might attach to both exports and imports, without there being any exemptions for amounts below or above certain threshold figures?
13. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to ensure that farming and residential Australian land (including farming and residential land in any Australian territory) shall not be permitted to be owned by any person other than an Australian citizen who is not holding citizenship in one or more other countries, or by an Australian company where all of the directors and shareholders of the company are all Australian citizens who do not hold citizenship in one or more other countries?
14. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to ensure that any mortgage or other encumbrance over Australian farming and residential land (including farming and residential land in any Australian territory) shall not be permitted to be owned by any person other than an Australian citizen who is not holding citizenship in one or more





other countries, or by an Australian company where all of the directors and shareholders of the company are all Australian citizens who do not hold citizenship in one or more other countries?

15. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to ensure that leases over land or infrastructure in Australia that involve a foreign entity shall not (with all options to renew included) extend beyond the period of nine (9) years?

16. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to ensure that Australia can make such decisions as it deems fit regarding foreign investment in Australia, and regarding Australian citizens and Australian companies investing or intending to invest in foreign countries?

17. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to adopt such policies that may involve Australia fixing the exchange rate of the Australian dollar against the currencies of one or more other countries, or of imposing, increasing, reducing or removing tariffs, duties, taxes, bounties, import or export embargoes, subsidies, or any other like measures that may or would have the effect of protecting or enhancing the domestic Australian economic environment?

18. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to ensure that its banking and finance systems are regulated in a manner that, under any circumstances, will deliver to Australian citizens the services and benefits that are generally expected of them?

19. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to impose on the banking and finance industry standardised mortgage agreements that, amongst their attributes, include such things as short-form agreements to be used in all lending matters of a particular nature, the abolition of any security requirements beyond a mortgage over the particular chattel or chattels or property or properties which are the direct subject of the lending, a no-cost arbitration panel to hear all disputes whether they be of a domestic or a business nature (and without any limits on the amount in dispute), and a similar no-cost arbitration panel to determine on a once-and-for-all basis any appeals arising from the initial arbitration?

20. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to ensure that its insurance industry is regulated in a manner that, under any circumstances, will deliver to Australian citizens the services and benefits that are generally expected of it, and including such reforms as standardised short-form insurance policy agreements to be used in all insurance matters of a particular nature, a no-cost arbitration panel to hear all disputes whether they be of a domestic or a business nature (and without any limits on the amount in dispute), and a similar no-cost arbitration panel to determine on a once-and-for-all basis any appeals arising from the initial arbitration?

21. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to ensure that all of the superannuation contributions that are paid by Australian citizens



under the Commonwealth's superannuation guarantee legislation (together with the earnings on such payments) are in fact 'guaranteed' by legislation of the Australian Parliament?

22. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to expand the role of the Australian Taxation Office (the ATO) so that the ATO would receive from all employers, all wages, salaries, and any other payments payable to or in respect to their employees and contractors so that the obligations associated with the payment of taxes, superannuation, workers compensation payments and any other statutory payments are transferred to the ATO, thus removing the obligations on employers for the administration of such matters?

23. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to provide aid of any nature to any country that it may chose to provide aid to?

24. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to establish a free trade agreement with any one or more countries of its choosing in such terms as it may deem fit, subject always to it having the Constitutional and moral authority to do so?

25. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to establish, develop or maintain manufacturing facilities in Australia or elsewhere in respect to the domestic or international development and or production and or sale of any vehicles, boats, ships, submarines, planes, jet aircrafts, satellites or spacecrafts of any nature, or any associated machinery or apparatus of any kind?

26. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to ensure that scientific, industrial and medical research in Australia, and the profits flowing from such research, are enjoyed by Australians and by others on a basis that Australia determines as being fair and equitable on a case by case basis?

27. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to ensure all employees in Australia have safe and rewarding working conditions, with a guarantee of a minimum wage, a thirty-seven and a half hour working week, four weeks annual leave, and reasonable loadings and penalty rates applying for night-shift work, dangerous work, and for working on Saturdays, Sundays and Public Holidays?

28. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to ensure that it can deliver to Australian citizens such other labour market reforms as it deems applicable from time to time?

29. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to ensure non-Australians are not absorbed into the Australian working environment if to do so would deny Australian citizens a fair opportunity of performing the relevant work?

30. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to ensure that any non-Australian person employed to work in Australia is not employed on





any conditions that are less favourable to the conditions that would apply if the work was performed by an Australian citizen?

31. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to provide affordable and or free child-care assistance for a family's first two children?

32. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to provide Australian citizens with pensions and other social security payments as it deems fit?

33. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to ensure all products sold in Australia are adequately labelled and certified so as to enable the purchaser to understand such things as to exactly where the product was made or grown, where it was packed or has come from, who has been involved in getting the product to the point of sale, including the specific details of the specific entity who has provided the product to the retailer, where and by who the product was certified as being in compliance with Australian standards, and whether or not the product contains genetically modified materials and or any nano-materials, and if it does, the details of such materials?

34. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to deal with genetically modified foods in whatever way and at whatever stage it may deem fit so as to ensure the maintenance of the highest standards of health for Australians and the highest standards of health for Australia's crops and natural environment?

35. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to ensure its quarantine restrictions are maintained at the highest levels possible?

36. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to protect Australia's farmers from unfair practices that would otherwise place their businesses and their livelihoods at risk of destruction?

37. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to protect manufacturers in Australia from the importation of products into Australia that do not meet minimum acceptable Australian industry standards?

38. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to ensuring that the privacy of Australian citizens is protected?

39. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to ensure that any transcription services or other dealings with an Australian citizen's personal, medical or financial information shall not occur outside Australia unless the person specifically and freely consents, or unless there is a specific national security requirement for dealing with the particular person's information without the individual's consent?



40. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to protect and enhance Australia's performing arts sector, its film industry, its authors, its screen and song writers, and its music sector?
41. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to regulate the content of Australian television programs to ensure satisfactory levels of local content programs are delivered by Australian broadcasters?
42. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to regulate its television broadcasters to ensure an adequate level of censorship is achieved to accord with the reasonable expectations of most of Australia's citizens?
43. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to regulate its internet providers to ensure an adequate level of censorship is achieved to accord with the reasonable expectations of most of Australia's citizens?
44. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to regulate the press so that there is a much more diverse regime of ownership and control than what is currently the case in Australia?
45. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to regulate gambling in any way it may deem fit, such as by imposing a substantial prohibition on gambling advertising?
46. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to regulate the advertising, sale and consumption of alcohol in any way it may deem fit?
47. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to regulate television and other advertising in any way it may deem fit?
48. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to exclude the performance of professional sport on Sundays and on other days of significance to the Australian community?
49. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to enable the regulation of all aspects of uranium mining, production, storage, use and sales?
50. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to enable the regulation of all aspects of the processes regarding the production, storage, use and sales of all nuclear materials?
51. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to deny the supply of Australian uranium and nuclear material to any country that has nuclear weapons or is involved in a nuclear weapons development program?





52. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to reforming its electoral system in an effort to reduce the incidence of corruption, by measures such as the capping of the amount an Australian citizen can donate to a political party and making it illegal for any entity, corporation, union or any non-Australian citizen to donate funds to a political party or candidate?
53. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to wind-back the development of industrial shipping terminals along the Queensland coast in an effort to remove the dangers that threaten the integrity of Australia's Great Barrier Reef?
54. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to wind-back the development of industrial shipping terminals along any parts of its coasts in an effort to restore or protect natural environmental values?
55. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to close down all of Australia's ocean outfalls of sewerage, chemicals and other human waste?
56. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to ensure all rivers and streams in Australia are guaranteed a robust and scientifically determined minimum seasonal environmental flow?
57. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to prohibit the netting of any crustaceans or fish (including whales, dolphins, tunas and sharks) in all areas where such species use the areas in question for nursery purposes?
58. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to ensure that no whaling will take place in or about Australian and Antarctic waters?
59. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to prohibiting any exploration techniques, such as percussion sounding, that have a reasonable likelihood of interfering with the migratory activities or health of whales, dolphins, tunas, sharks and any other fish and other inhabitants of the oceans?
60. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to permit Australian landholders to deny access to their properties by persons or entities of any nature who may be seeking to explore or mine for minerals, oil or gas, or who may wish to travel across their properties or place roads or railway lines or any other structures on their properties?
61. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to prohibit mining or exploration activities that involve 'fracking'?
62. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to reform its competition laws with a view to providing for fair competition within its markets so that Australian citizens can experience the benefits that competition can generate?



63. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to address health issues associated with fast-food outlets, such as by delisting the companies, by withdrawing their permits to operate, and or by removing their rights to advertise their products?

64. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to more fully embrace sustainable living technologies, such as by subsidising the roll-out of solar power cells?

65. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing a path to embrace any national security or defence measures that it may deem appropriate?

66. Without being in breach of the TPP, will the TPP prevent Australia from unilaterally pursuing any powers that it has under or pursuant to the *Commonwealth of Australia Constitution Act*?

I submit that if the proposed TPP Agreement should prevent Australia from dealing, in any way it may deem fit, with any of the matters listed in the sixty-six (66) paragraphs numbered above, then the TPP will impact adversely on Australia's sovereignty. Should this be the case, the TPP must not proceed. More to the point, if the TPP impacts adversely on Australia's sovereignty, then – on legal and moral grounds – the TPP cannot proceed. Further, if the TPP has no legal or moral basis under the Australian Constitution, then any country and any other person or entity that might seek to rely on the TPP would be doing so at their own peril. This issue may be relevant to other trade arrangements Australia may have signed and it may also be relevant to any perceived obligations Australia may have to the World Trade Organisation.

I reserve the right to make further submissions regarding this matter if, at some time in the future, DFAT can see its way clear to permit mainstream Australia to see and consider a copy of the proposed TPP Agreement.



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