



**Submission to Joint Standing
Committee on Treaties on the
Comprehensive and Progressive
Agreement for Trans-Pacific
Partnership**

17 April 2018

Contents

1	Preliminary Summary	3
2	Introduction	4
3	Occupational Licencing and Mandatory Skills Testing	4
4	Investor-State Dispute Settlement Process	5
5	The Job Creation Fallacy	6
6	Visa Exploitation and Labour Market Testing	7
7	Recommendations	9
8	Conclusion	10

1 PRELIMINARY SUMMARY

1. The ETU maintains its opposition to both the way in which the Government is negotiating Australia's trade deals and the content of those agreements, which continue to fall well below the community's expectation for Government to protect Australian jobs, skills, industries and sovereignty.
2. The ETU supports Australian Fair Trade and Investment Networks submission to this review and supports all recommendations reasoned in that submission.
3. The ETU supports Public Services International's submission to this review and supports all recommendations reasoned in that submission.
4. The ETU supports the Australian Council of Trade Unions submission to this review and supports all recommendations reasoned in that submission.
5. The ETU continues to call for fair trade agreements rather than free trade agreements. That is, trade agreements which adequately address:
 - a. upholding occupational licencing and mandatory skills testing regimes;
 - b. labour mobility provisions which do not undermine local jobs;
 - c. the removal of Investor State Dispute Settlement provisions;
 - d. assessment of environmental impacts;
 - e. confidence that agreements are transparently negotiated with the Australian people; and
 - f. transparency with the Australian people on all operational aspects of trade agreements, particularly Investment Facilitation Arrangements.
6. The full text of trade agreements must be required to be presented to both houses of parliament for open debate and endorsement, including aspects that do not require implementing legislation, before being agreed to by the government.

2 INTRODUCTION

The Electrical Trades Union of Australia (ETU) is the Electrical, Energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU). The ETU represents over 62,000 electrical industry workers around the country and the CEPU as a whole, represents over 101,000 workers nationally, making us one of the largest trade unions in Australia.

The ETU welcomes the opportunity to make a submission to this Joint Standing Committee on Treaties (JSCOT) inquiry into the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP).

The TPP will have profound consequences on the countries who are signatory as well as the nearby trading partners of signatory countries. If it enters into force, the TPP will become the largest trade deal in history, covering 11 countries, 495 million people and 15 per cent of all global trade. The agreement itself contains 30 chapters, and over 6000 pages. It deals with a wide range of matters that are traditionally the preserve of national governments to determine through their own domestic, democratic parliamentary processes.

But, as has become the status quo for trade agreements Australia is involved in, the TPP has been negotiated and will commence with almost no public scrutiny and absent the usual transparent examination that should be expected in a modern western democracy.

Too often in our experience, the overall benefits of trade agreements are over-sold by governments and the considerable downsides are dismissed.

In this case, Australian taxpayers are being required to forgo \$220 million over the forward estimates¹ in lost tariff revenue in exchange for trading away their jobs, skills, industries and sovereignty through this deeply deficient trade agreement.

3 OCCUPATIONAL LICENCING AND MANDATORY SKILLS TESTING

An independent and transparent process for both skilled and semi-skilled temporary migrants is essential to ensure that qualifications gained overseas and held by temporary overseas workers meet the contemporary requirements of Australian

¹ [TPP National Interest Analysis](#)

qualifications and licensing arrangements. This is in the interest the worker, employer's and, in particular, the public and their safety.

For electrical occupations specifically, the TPP represents a likely introduction of significant regulatory challenges at a time when the industry is already grappling with too many challenges, including defunding of the licencing and training institutions which are needed to uphold the quality and value of our well trained Australian electrical workers. This will almost certainly increase the likelihood of occupational and public health and safety risks.

When concerns about maintaining occupational licencing standards have been put to the Government for previous trade agreements, the response has been concerning. In answer to these important questions, the Government states that working visa applicants will still be required to demonstrate to the Immigration Department that they possess the requisite skills and experience to work in this country. This includes evidence of identity, work history, qualifications, memberships of relevant bodies or associations, references and other documents.

This confirms that impacts on skills assessments in Australia for the over 400 so called "contractual service providers" occupations allowed for under the TPP will be vetted by the Immigration Department with little more than a paperwork inspection.

This could lead to a situation where there is no guarantee that temporary workers will have the same level of skills, health and safety knowledge and qualifications as are required for local workers, potentially endangering themselves, other workers and the public.

It also appears that the federal government wants to simply load up the already under resourced agencies responsible for skills testing which would lead to a greater reliance on licencing regimes in state jurisdictions as an occupational licencing 'safety net'.

The risks associated with this are enormous.

The pressure this will place on resources for policing or enforcement of licencing checks by either level of government regulatory agencies is unacceptable and will likely just get worse under these arrangements over due course.

4 INVESTOR-STATE DISPUTE SETTLEMENT PROCESS

Over the last three years since the TPP-12 was negotiated, there have been increasing numbers of cases taken against changes to EU and US government laws and policy decisions, and there has been an enormous growth in public opposition to Investor-State Dispute Settlement (ISDS) processes. Opposition has been expressed

by legal experts, state and provincial governments and the general public. Both the EU and the US are now retreating from ISDS in trade negotiations.

Australia spent millions fighting tobacco giant Phillip Morris which showed clearly both the level of appetite for and financial backing that multi-national corporations have access to and are prepared to exercise in suing Governments.

Australian public sentiment is opposed to the inclusion of ISDS provisions in trade deals.

There is mounting evidence and alarm from many experts, including Australia's former High Court Chief Justice French, that ISDS tribunals lack the basic principles of fairness and consistency found in domestic legal systems. There is no independent judiciary, and no appeal mechanisms or system of precedent. 'Judges' can preside over one case while acting as a paid advocate in another, even if claimants and clients overlap between the two cases – a clear conflict of interest.

The fact ISDS provisions are restricted to foreign investors only means these clauses also discriminate against local businesses which can only access our domestic court system for any claims for compensation. This could then have an impact on relative access to finance and certainly violates basic principles of national treatment and competitive neutrality.

Despite all these warning signs, the Australian Government continues to jeopardise our sovereignty by accepting ISDS provisions in trade negotiations.

It is embarrassing that other countries governments have done more to exempt themselves from ISDS provisions in the TPP than Australia's Government has.

5 THE JOB CREATION FALLACY

Despite repeated claims of massive trade liberalisation leading to exponential jobs growth, the statistics just do not add up. On 9 December 2015, then Minister for Trade and Investment Andrew Robb claimed;

“Mr Robb said this outcome would immediately enhance our competitive position in the world's second biggest economy which will be good for growth and job creation. Our dairy industry for example expects ChAFTA to result in 600-700 extra dairy jobs in the first year alone.”

Current ABS statistics show that from the period November 2015 – May 2017 there has been a total reduction in agricultural industry jobs of 31,400 total employed persons.²

Claims of exponential growth in GDP are also not currently bearing fruit with the last four quarters published by the ABS showing first a declining GDP growth followed by a record low trend of 0.4% quarter on quarter growth not seen since the 2008 Global Financial Crisis.³ It is only recently that GDP growth has started to pick up again. The ETU is of the firm view that GDP growth will again be negatively impacted if the TPP comes into effect.

The fact that availability of statistical data from the Department of Foreign Affairs and Trading has been severely curtailed since the signing of ChAFTA only adds to the concerns that local Australian jobs are unnecessarily being replaced by often exploited foreign labour. With the TPP coming into effect, the curtailing of information from the relevant Department further erodes trust and transparency in Australia's trade deals.

This current trade deal is being proposed at a cost of \$220 million over the forward estimates, with no actual guarantee of alternate revenue increases, shows that ideology is playing the determining role in these negotiations rather than what might actually be in Australia's best interest.

6 VISA EXPLOITATION AND LABOUR MARKET TESTING

The ETU believes that skilled migrants make a valuable and substantial positive contribution to Australia's economic, social and cultural fabric and must be treated with equity and respect -particularly with reference to wages and industrial conditions - as compared to Australian citizens.

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

In contrast, the TPP still includes removal of labour market testing for temporary migrant workers, despite the government's own claimed policy change and the fact that the government did not remove labour market testing in the recent Peru - Australia FTA, which was negotiated at the same time as the TPP. According to its own policy,

²<http://www.abs.gov.au/AUSSTATS/ABS@Archive.nsf/log?openagent&6291005.xls&6291.0.55.003&Time%20Series%20Spreadsheet&8FD383735D83F01FCA258146001A6294&0&May%202017&22.06.2017&Latest>

³http://www.abs.gov.au/ausstats/meisubs.NSF/log?openagent&5206001_key_aggregates.xls&5206.0&Time%20Series%20Spreadsheet&356C58F5129827C7CA25813700176281&0&Mar%202017&07.06.2017&Latest

the government could have reinstated labour market testing in the TPP but has chosen not to do so.

The TPP has provisions for companies to bring in unlimited numbers of temporary migrant workers from Vietnam, Malaysia, Japan, Canada, Mexico and Chile without them having to advertise the jobs locally to see if there are any Australian workers available to do the work. This is contrary to the government's own claims that it has reintroduced such testing. These visas can be provided to workers in 435 occupations. No other country has offered such a large amount of occupations for entry by Australian workers. We already have labour market testing exemptions in China, South Korea, Thailand, New Zealand and Singapore trade agreements, and this will just add more exploitable workers to the pool of 1.4 million people with temporary work visa rights in Australia currently.

All overseas workers should have the right to join and be represented by a trade union and also have the right to be treated fairly and equitably.

In July 2017 in Australia for every job vacancy there was approximately 17 unemployed Australians. Record youth unemployment exists in many parts of the country and regional unemployment is at record highs. The limited provisions in ChAFTA relating to demonstration of sourcing local labour is so deficient that companies brazenly advertise specifically for overseas visa workers without ever advertising locally. We fail to see how the TPP will improve this situation.

The TPP also provides for watered down provisions for international labour rights including extended sunset periods and carve outs for any actual enforcement.

Unfortunately, there are still many employers who seek to exploit overseas workers or not uphold their responsibilities to Australian workers. The nature of the instances includes:

- Workers being engaged where skilled and qualified Australian workers were available to do the work putting unnecessary burden on Australia's welfare system;
- Breaches of employer sponsorship obligations;
- Under-payment of workers;
- Excessive working hours;
- Workplace bullying;
- Debt bondage;
- 457 visa workers nominated to work in skilled occupations and then being required by their employer to perform unskilled work on a regular or permanent basis;
- Employers offering to sponsor workers for permanent residency for a fee up to \$50,000
- Exorbitant charges and interest payments on loans for 457 visa holders to be placed in jobs;

- Salary deductions to pay for migrant agent fees on the promise of getting permanent residency;
- Threats from employers to not join a union, including contracts that 457 visa workers are forced to sign stipulating they can be sacked for talking to a trade union;
- Attempts by employers to recover costs such as accommodation and food; and
- A number of cases where overseas workers have uprooted themselves to come to Australia only to find after a short time (or immediately in some cases) the job is no longer there.

The ETU cannot support an agreement that includes the removal of basic protections for Australia's domestic labour market testing rules and a failure to protect Australian jobs⁴. Australian and overseas companies will be able to employ unlimited numbers of temporary workers from 6 TPP member countries in hundreds of occupations across nursing, engineering and the trades without any obligation to provide evidence of genuine efforts to first recruit Australian workers. In doing so, Australia has agreed to the worst deal of any TPP country in terms of what it has given up in relation to migration safeguards.

7 RECOMMENDATIONS

In our submissions on previous trade agreements before JSCOT, the ETU provided a range of recommendations which are just as pertinent today as they were in our original submissions. We submit the following recommendations to the review:

Recommendation 1

The review finds that the TPP is not in the Australian national interest and should not be continued in its current form.

Recommendation 2

Investor State Dispute Settlement clauses, or any similar arrangements, undermine Australian legal sovereignty. These arrangements and clauses should be immediately removed from the TPP, and any future trade agreement or treaty that Australia enters into.

Recommendation 3

Labour Market Testing is a critical tool for ensuring the interests of the Australian domestic workforce are protected. The TPP provisions which remove, exempt or water

⁴ Menadue, J., Preferential trade deals – gigantic foundation stone or pebbles, 13 October 2015, <http://johnmenadue.com.blog/?p=4749>

down Labour Market Testing requirements in Australia should be immediately stripped from the TPP and its accompanying documents.

Recommendation 4

A review must be conducted into Australia's skills assessment and licencing institutions and regulators capacity to maintain appropriate occupational skills testing of overseas workers is not compromised.

Recommendation 5

The full text of trade agreements must be required to be presented to both houses of parliament for open debate and endorsement, including aspects that do not require implementing legislation, before being agreed to by the government.

Recommendation 6

That a full, public study of the environmental impacts of the TPP be carried out urgently, with the findings to inform the inclusion of a new chapter in the agreement that deals with environmental standards that includes commitments by governments to implement agreed international environmental standards which should be enforced by the government-to-government disputes process of the agreement.

Recommendation 7

The TPP should include commitments by governments to implement agreed international labour rights and enforced labour exclusion which should be enforced by the government-to-government disputes process of the agreement and operable from commencement of the agreements.

Recommendation 8

That a detailed social and economic impacts assessment of the TPP text and its accompanying documents should occur immediately, followed by immediate commencement of detailed stakeholder consultation (including industry, unions and civil society groups).

8 CONCLUSION

The current secret and undemocratic process our Governments are utilising to negotiate international trade deals are unacceptable to the Australian public. More and more public institutions are calling for the text of trade agreements to be released for public and parliamentary scrutiny before they are signed and when they are reviewed. These demands have grown because trade agreements now deal with issues like medicines, copyright, food regulation, labour rights and other public interest

issues which should be decided through the democratic parliamentary process, not secretly signed away in trade deals.

This review process simply reinforces concerns in regard to secrecy and a lack of transparency in the review process. This review simply pretends to give civil society a voice in the review while actually continuing to lock the Australian public voice out of the debate.

Without genuine access to information like:

- The terms of the review;
- The participating Governments demands;
- The Australian Governments demands; and
- Detailed statistical data on migration.

How can the Australian public actually participate genuinely in the debate?

The complexity of bilateral and regional trade agreements and the potential for provisions to impose net costs on the community presents a compelling case for the negotiated text of an agreement to be comprehensively analysed before signing and again at each and every review.

Current processes fail to adequately assess the impacts of agreements. They do not systematically quantify the costs and benefits of agreement provisions, fail to consider the opportunity costs of pursuing preferential arrangements compared to unilateral reform, ignore the extent to which agreements actually liberalise existing markets and are silent on the need for post-agreement evaluations of actual impacts.

The questionable claims of job creation by the TPP and other agreements assumes all jobs are exchangeable – that a laid-off linesman or electrician can just slot into a newly- created banking or viticulture role.

That this agreement was kept secret through a decade of negotiations is testament to how unpopular these provisions would have been if subjected to any serious scrutiny. That the review is being conducted in essentially the same manner that the negotiations for the initial agreement were conducted reinforces the culture of secrecy.

It will take more than vague assurances of job creation and some misapplied economic theory to convince our union that the TPP in its current form can do anything but harm the working people we represent.