



NEW SOUTH WALES NURSES AND MIDWIVES' ASSOCIATION

In association with the Australian Nursing Federation

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Committee Secretary
Joint Standing Committee on Treaties
PO Box 6021
Parliament House
Canberra ACT 2600

Via email: jsct@aph.gov.au

Dear Committee

Re: Inquiry into the Free Trade Agreement between the Government of Australia and the Government of the Republic of Korea

The New South Wales Nurses and Midwives' Association (NSWNMA) is the registered union for all nurses and midwives in New South Wales. The membership of the NSWNMA comprises all those who perform nursing and midwifery work. This includes assistants in nursing (who are unregulated), enrolled nurses and registered nurses and midwives at all levels including management and education.

The NSWNMA has over 59,500 members and is affiliated to Unions NSW and the Australian Council of Trade Unions (ACTU). Eligible members of the NSWNMA are also deemed to be members of the New South Wales Branch of the Australian Nursing and Midwifery Federation.

Our role is to protect and advance the interests of nurses and midwives and the nursing and midwifery professions. We are committed to improving standards of patient care and the quality of health and aged care services. We are committed to the concept of Universal Health Care.

The Association holds concerns with regard to the Free Trade Agreement between the Government of Australia and the Government of the Republic of Korea (KAFTA) on the basis of the inclusion of Investor State Dispute Settlement (ISDS) processes that will result in Australian governments being exposed to legal action when passing legislation in the interests of worker's rights, health and the environment.



The Association understands that ISDS processes initially existed in order to protect the investment and profit of companies across international borders where varying international judicial processes, or threats of expropriation, placed those investments and profits at risk. However ISDS processes are now widely used to challenge perceived barriers to profit where judicial processes are sound.

As a union representing nurses and midwives we are very concerned that the inclusion of ISDS process would restrict any government from legislating in the interest of worker's rights such as minimum wages, work health and safety, the right to collective bargaining and freedom of association given that these rights can come at the cost of decreased profits to the investors. We see the need to protect worker's rights as one that goes beyond our borders and as such we are mindful of the impact ISDS provisions have on workers in countries with weaker labour laws than ours.

The Threat of ISDS on Health Care

The Association opposes the existence of ISDS processes within all free trade agreements and we note that Indonesia, Germany and France are opposing ISDS in trade agreements. The inclusion of ISDS processes will mean that, regardless of whatever else is negotiated within the agreement, foreign investors could initiate legal proceedings for perceived barriers to trade; even when those perceived barriers are in the interests of health.

Reassurances from the Minister for Trade that 'carve outs' can be made for health and environmental legislation have been demonstrated to be hollow on the International stage. They have not been effective in the modern US-Peru free trade agreement or the Central American Free Trade Agreement. These 'carve outs' did not prevent the Renco lead mining company from suing the Peruvian government who required the company to clean up lead pollution, or the Pacific Rim company from suing the El Salvador government because it refused a mining license for environmental reasons.

The Association's members have voiced their concerns regarding the health impact of coal seam gas mining. We note that the NSW State Government has put a freeze on granting mining licenses. Similar action by a Canadian Province has resulted in litigation through a free trade agreement containing ISDS provisions.

Whilst there are already Korean companies with exploration and mining rights in Australia, we have grave concerns that ISDS process within KAFTA will encourage mining companies to restructure themselves to be legally based in the Republic of Korea in order to avail themselves of the ISDS provisions; as Phillip Morris did with regard to the plain packaging of cigarettes and being based in Hong Kong.

Of greatest significance to our case is the example of *Eli Lilly & Co*¹ taking action against the Canadian Government¹. In this case the Canadian Government declined a patent for a medicine on the grounds that that the medicine does not deliver the benefits promised. *Eli Lilly & Co* are not only challenging the facts of the drug's efficacy but the Canadian Government's legal right to make a decision on this basis.

Regardless of assurances from Government that such cases will not be successful, the running of these cases diverts precious resources and time; money and resources that could be better spent on health care.

The inclusion of ISDS within any free trade agreement clearly exposes the Australian health care system. This places at risk future initiatives around food and beverage labelling, regulation of health professionals, health care delivery and environmental standards. To include ISDS processes could be seen as government acting in the interests of investors over the rights of the community, our health and our environment.

The Association seeks that the KAFTA is not approved until such time that ISDS provisions are removed. Australian Governments must have the ability to legislate domestically without fear of being sued for simply acting in the interests of our health, our environment and our future.

Yours sincerely

BRETT HOLMES
General Secretary

¹ <http://www.techdirt.com/articles/20130208/03441521918/canada-denies-patent-drug-so-us-pharma-company-demands-100-million-as-compensation-expropriation.shtml>