

ActionAid Australia Submission to the inquiry into the Australian Government's approach to negotiating trade and investment agreements.

October 2023



Introduction

ActionAid is a global women's rights organisation that empowers women on the frontlines of injustice to mobilise and transform their communities. We work in more than 45 countries to support women to understand their rights, reflect on the people and systems that affect them, and harness their collective power to change their lives and positions in society. Over the past year ActionAid Australia has reached over 3.5 million people through direct support to partners in 19 countries, including working with women's organisations in the Asia-Pacific region with the support of the Australian Aid Program.

ActionAid Australia welcomes the opportunity to make a submission to the Joint Standing Committee on Trade and Investment Growth's Inquiry into the Australian Government's approach to negotiating trade and investment agreements. Trade agreements have wide-ranging impacts on gender equality and sustainable development, particularly in low-income countries. These impacts can be positive, when trade agreements are designed with gender equality and sustainable development in mind. However, currently, trade rules are often developed without adequate consultation with women and other marginalised groups or consideration of their human rights and development impacts. This can lead to unequal social and economic outcomes, worsening the situation for women and undermining progress towards the Sustainable Development Goals (SDGs).

ActionAid welcomes the initial steps taken by the Government to improve civil society consultation and foster greater gender-responsiveness of Australia's trade agreements. Additional action is necessary to ensure Australia's trade agreements are designed to support gender equality and sustainable development objectives in line with DFAT's new International Development Policy¹ and Australia's domestic and international gender equality strategies.²

Reform of Australia's procedure for negotiating trade agreements is critical in supporting this process. This includes increasing the transparency of trade negotiations, expanding civil society consultations, including with women's rights organisations and experts, and ensuring Parliament has adequate oversight of the negotiation and ratification of trade agreements. Mandated gender, human rights and environmental impact assessments are also vital in identifying and mitigating any negative gender, human rights and environmental outcomes from trade rules. Further, by embedding a gender analysis from the onset of trade negotiations, the government can support economic alternatives that foster gender equality and sustainable development for women and marginalised groups in Australia and partner countries.

ActionAid Australia is a member of the Australian Fair Trade and Investment Network and supports their submission to this inquiry. We also note that Australia's trade negotiation and ratification process has been addressed by several Parliamentary inquiries in recent years³,

¹ DFAT (2023) Australia's International Development Policy: For a peaceful, stable and prosperous Indo-Pacific, <https://www.dfat.gov.au/development/new-international-development-policy>

² Australia is currently developing new domestic and international gender equality strategies. For more information see <https://www.pmc.gov.au/office-women/national-strategy-achieve-gender-equality> and <https://www.dfat.gov.au/international-relations/themes/gender-equality/new-international-gender-equality-strategy>

³ Senate Foreign Affairs, Defence and Trade References Committee (2003) *Voting on Trade: The General Agreement on Trade in Services and an Australia-US Free Trade Agreement*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed_inquiries/2002-04/gats/report/index; Joint Standing Committee on Treaties (2012)

with all inquiries recommending improvements to transparency and accountability.

Recommendations	
Reforming Australia's trade negotiation process	<p>Recommendation 1: <i>The government should update its procedure for the negotiation and ratification of trade agreements to ensure that:</i></p> <ul style="list-style-type: none"> <i>i. Australia's negotiation positions are published;</i> <i>ii. Negotiating texts are published throughout trade negotiations; and</i> <i>iii. The final text of agreements is published before each agreement is signed.</i> <p>Recommendation 2: <i>The Government should facilitate mandatory public consultations prior to the commencement of trade negotiations and regular consultations throughout trade negotiations. The Government should use these consultations to show leadership in women's rights by resourcing the participation of women's rights organisations in Australia and partner countries.</i></p> <p>Recommendation 3: <i>The Government should publish consultation reports prior to initiating trade negotiations; and as consultations are conducted throughout trade negotiations. Reports should detail how evidence is taken into consideration in trade negotiations.</i></p> <p>Recommendation 4: <i>Prior to commencing trade negotiations, the Government should table in Parliament a document setting out its priorities and objectives, along with ex ante human rights and environmental impact assessments, including specific gender impact assessments.</i></p> <p>Recommendation 5: <i>JSCOT should be mandated to review all trade agreement texts, along with gender, human rights, economic and environmental impact assessments, before the agreements are signed and to make recommendations to Parliament. A separate sub-committee of JSCOT could be established to enable this review.</i></p> <p>Recommendation 6: <i>Trade agreements should be subject to Parliamentary debate, and Parliament should have the rights to vote on the whole agreement, not just the implementing legislation.</i></p>
Mandating independent gender, human rights and	<p>Recommendation 7: <i>The Government should commit to undertaking independent ex ante and ex post gender, human rights, and environmental impact assessments for all trade agreements in</i></p>

Report 128: *Inquiry into the Treaties Ratification Bill 2012*, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Completed_Inquiries/jsct/ratification_bill/report/index; and Senate Foreign Affairs, Defence and Trade References Committee (2015) *Blind Agreement: Report on the Commonwealth's treaty-making process*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Treaty-making_process/Report; Joint Standing Committee on Treaties (2021) inquiry will inquire into and report on *Certain Aspects of the Treaty-making Process in Australia*. https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/Treaty-makingProcess/Report_193

<p>environmental impact assessments</p>	<p><i>order to identify and respond to any potential negative impacts on gender equality and sustainable development.</i></p> <ul style="list-style-type: none"> <i>i. impact assessments should be conducted prior to the commencement of trade negotiations to inform the scope of negotiations. A second impact assessment should be completed before trade agreements are signed to identify any likely impacts and to provide opportunities for renegotiation. Ex post assessments should be conducted once a deal is implemented so that actual impacts can be identified and redressed.</i> <i>ii. Impact assessment findings should be taken into account and trade provisions that are found to negatively impact women should be mitigated or removed from the agreement.</i>
<p>Ensuring trade provisions do not undermine progress on gender equality and sustainable development</p>	<p>Recommendation 8: <i>The Government should maintain the government policy of excluding ISDS from future trade and investment agreements and expedite the review of ISDS in existing trade and investment agreements, with a view to remove ISDS provisions from all bilateral and regional agreements.</i></p> <p>Recommendation 9: <i>Australia should include binding human rights obligations for international investors in Australian trade agreements. This should include a requirement for investors to undertake gender-responsive human rights due diligence as well as provisions such as civil liability in the home and host states, which commit international investors to uphold human rights and environmental law.</i></p> <p>Recommendation 10: <i>Australia should ensure trade agreements establish an accessible mechanism that enables workers, and communities, to access redress in the case of human rights and environmental violations.</i></p> <p>Recommendation 11: <i>Australia should exclude public services from all trade agreements. A broad definition of public services must be adopted to ensure all public services are excluded, irrespective of whether these services are managed by public or private providers.</i></p> <p>Recommendation 12: <i>Australia should exclude TRIPS Plus provisions that extend medicine monopolies and ensure that trade agreements do not undermine the flexibilities provided to least developed countries under the TRIPS agreement.</i></p> <p>Recommendation 13: <i>Australia should exclude intellectual property rules on seeds, and ensure that low-income governments can implement targeted policies that enable women farmers to overcome barriers to market access and participation.</i></p>

Trade policy, women's rights and sustainable development

Well-designed trade rules can play an important role in supporting gender equality, human rights and progress towards the SDGs. However, current trade agreements are reinforcing and deepening discriminatory economic structures, often locking low-income countries into an economic model that restricts the development of local industries, undermines the creation of decent employment opportunities, and reduces the revenue necessary for the provision of vital social services.

Women are particularly impacted where trade rules stifle workers' rights, disadvantage women small-scale farmers, facilitate the privatisation of public services and reduce access to affordable medicines. These rules are exacerbating gender inequities within the economy, limiting women's access to dignified work, increasing the burden of unpaid care work and deepening poverty among women.

Australia has taken important steps to improve the gender-responsiveness of its trade policy, including transitioning towards the inclusion of gender chapters in trade agreements, as well as the decision to join the Global Trade and Gender Arrangement. ActionAid welcomes these steps and urges the Government to ensure that gender chapters are fully enforceable under dispute resolution processes. However, it is also critical that steps are taken to remove provisions from trade agreements that are found to have a negative impact on women's rights and gender equality. If gender chapters are included in trade agreements without the removal of provisions that are harmful to women, there is a risk that these provisions will simply mask the limitations of the existing neoliberal trade model for progressing gender equality.

ActionAid urges the Government to build on recent reforms by embedding a gender and human rights analysis throughout the negotiation of its trade agreements in order to facilitate a genuine reorientation of agreements towards feminist economic alternatives that support the recognition, reduction and redistribution of women's unpaid work, uphold the rights of women workers and advance gender equality. This should be paralleled by action to improve trade transparency and foster greater civil society consultation throughout Australia's trade negotiations.

ActionAid urges the Government to take action across the following areas:

1. Reforming Australia's trade negotiation process,
2. Mandating independent gender, human rights and environmental impact assessments, and
3. Ensuring trade provisions do not undermine progress on gender equality and sustainable development.

1. Reforming Australia's trade negotiation process

1.1 Transparency in trade negotiations

Under current trade negotiation procedures, the Government is not required to release any information publicly during bilateral, regional and plurilateral trade negotiations. This lack of transparency has faced broad public criticism in Australia and internationally. ActionAid has raised these concerns in relation to the Trans-Pacific Partnership (TPP-11), the Pacific Agreement on Closer Economic Arrangements plus (PACER Plus), and the Regional

Comprehensive Economic Partnership (RCEP) Agreement.⁴ Reforms have also been recommended by the Productivity Commission, a 2015 Senate Inquiry into the treaty-making process, and the 2021 JSCOT inquiry into Certain Aspects of the Treaty-Making Process in Australia.⁵ The direction of travel at the international level is also towards greater transparency. For multilateral negotiations, the WTO now publishes submissions made by member states during negotiations and reports by committee chairs on its website.⁶ The EU also releases its negotiating proposals during the negotiations and has committed to releasing the final text before the agreement is signed.⁷

Transparency in policy development processes is a crucial facet of democracy and enables the public to be aware of, feed into, and hold the government to account for the policies it implements. Given the broad implications that trade agreements have across a range of domestic policy areas in Australia, and for partner countries, it is imperative that trade negotiations have the same level of transparency as domestic policy-making processes. Transparency is particularly important to ensure women and their organisations have access to trade negotiation documents and trade agreement texts and can provide independent analysis of the gendered impacts. Without this analysis there is an increased risk that women's rights are overlooked, and trade agreements include rules that have negative outcomes for women.

Recommendation 1: *The government should update its procedure for the negotiation and ratification of trade agreements to ensure that:*

- i. *Australia's negotiation positions are published;*
- ii. *Negotiating texts are published throughout trade negotiations; and*
- iii. *The final text of agreements is published before each agreement is signed.*

1.2 Stakeholder consultation

A robust procedure for public consultation during trade negotiations is crucial to build public trust in trade agreements and to ensure the social and environmental impacts of trade provisions are considered in trade negotiations. However, it is particularly important to ensure trade policy is open and accountable to women, because women's lower rate of representation in formal government structures, decision-making processes and trade negotiation teams means that they have fewer opportunities to shape trade policy and ensure the gendered impacts of trade rules are identified and taken into consideration. The need for gender analysis to be incorporated into trade policy was reiterated in the SDGs,

⁴ ActionAid submission to the Inquiry into the Trans Pacific Partnership Agreement, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/TPP-11/Submissions; ActionAid submission to the Inquiry into the Pacific Agreement on Closer Economic Arrangements plus, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/PACERPlus-Agreement/Submissions; Civil Society open letter demanding the release of the RCEP text, <https://www.bilaterals.org/?open-letter-demanding-the-release>

⁵ Productivity Commission (2010) *Bilateral and Regional Trade Agreements Final Report*, <https://www.pc.gov.au/inquiries/completed/trade-agreements/report>; Senate Standing Committee on Foreign Affairs Defence and Trade (2015) *Blind agreement: reforming Australia's treaty-making process*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Treaty-making_process/Report; Joint Standing Committee on Treaties (2021) inquiry will inquire into and report on *Certain Aspects of the Treaty-making Process in Australia*. https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/Treaty-makingProcess/Report_193

⁶ See WTO documents portal at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S001.aspx

⁷ European Union (2015) *Trade for all: Towards a more responsible trade and investment policy*. http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf

which urged Governments “to refrain from promulgating and applying any unilateral economic, financial or trade measure not in accordance with international law and the Charter of the UN that impede the full achievement of economic and social development, particularly in developing countries.”⁸

The Government's current approach to stakeholder consultation could be more consistent and transparent. Stakeholders do have some ability to provide input to the Department of Foreign Affairs and Trade (DFAT) through written submissions at the commencement of negotiations and, in some cases, through subsequent meetings and public consultations throughout trade negotiations. However, stakeholder input is limited by the lack of access to agreement texts and DFAT not stating the ways in which this input is taken into consideration during trade negotiations. Further, civil society organisations from partner countries are almost entirely excluded from consultation processes. In trading partner countries this is a missed opportunity to strengthen gender equality in trade agreements, recognising that many countries continue to exercise gender discrimination in employment as identified through the CEDAW reporting processes.

The current government has signalled its intention for a wider community consultation process by establishing consultation groups for business, unions, civil society and First Nations Peoples. ActionAid welcomes this move, however we understand that they have only met once in November 2022. It is also unclear if women's rights organisations are represented in these groups. It is critical that any trade consultations include engagement with women's rights organisations or specialists and international development organisations and experts.

The Government should address broader concerns with stakeholder consultations by establishing a clear procedure that mandates consultations to be conducted regularly throughout negotiations; provide opportunities for all stakeholders to input equally into trade agreements, including women's rights organisations from partner countries; and ensures that stakeholder consultation reports are published and detail how evidence is taken into consideration in trade negotiations. Australia should resource the participation of women's rights organisations in trade consultations, alongside strengthening of gender and trade expertise among government and civil society in partner countries.

Recommendation 2: *The Government should facilitate mandatory public consultations prior to the commencement of trade negotiations and regular consultations throughout trade negotiations. The Government should use these consultations to show leadership in women's rights by resourcing the participation of women's rights organisations in Australia and partner countries.*

Recommendation 3: *The Government should publish consultation reports prior to initiating trade negotiations; and as consultations are conducted throughout trade negotiations. Reports should detail how evidence is taken into consideration in trade negotiations.*

1.3 Parliamentary oversight

Trade agreements are increasingly encroaching on domestic policy space, with trade rules impacting on a wide range of policy issues that should be decided by Parliament, such as health and environmental standards, and the management of public services. In order to uphold democratic standards, it is critical that Parliament is given a more active role in the

⁸ United Nations (2015) *The 2030 Agenda for Sustainable Development*, A/RES/70/1, [paragraph 30], <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>

development and ratification of trade agreements. This should include greater oversight by Parliament and an expanded role for the Joint Standing Committee on Treaties (JSCOT) in the review of trade agreements.

Recommendation 4: *Prior to commencing trade negotiations, the Government should table in Parliament a document setting out its priorities and objectives, along with ex ante human rights and environmental impact assessments, including specific gender impact assessments.*

Recommendation 5: *JSCOT should be mandated to review all trade agreement texts, along with gender, human rights, economic and environmental impact assessments, before the agreements are signed and to make recommendations to Parliament. A separate sub-committee of JSCOT could be established to enable this review.*

Recommendation 6: *Trade agreements should be subject to Parliamentary debate, and Parliament should have the rights to vote on the whole agreement, not just the implementing legislation.*

2. Mandating independent gender, human rights and environmental impact assessments

Currently independent impact assessments are not conducted for Australian trade agreements, meaning that the gender, human rights, environmental and economic impacts of agreements are not independently assessed. DFAT conducts a National Interest Analysis (NIA) for each agreement, however this is not independent and almost always reflects favourably on agreements without providing a genuine analysis of their potential costs and benefits.

ActionAid understands that DFAT is considering conducting gender impact assessments for all trade agreements.⁹ We urge the Government to take this forward, and to mandate independent gender, human rights and environmental impact assessments for all trade agreements. Gender and human rights Impact assessments are critical in determining the gendered impacts of trade rules, ensuring these rules align with Australia's domestic and international gender equality strategies, and identifying how these rules may impact on Australia's international women's rights and sustainable development obligations. Human rights impact assessments should assess the impact of trade agreements on First Nations peoples, and Australia's obligations under the United Nations Declaration on the Rights of Indigenous Peoples.

JSCOT recognised the importance of impact assessments in its report on the PACER Plus trade agreement, recommending that "part of the development assistance allocated to implementing PACER Plus be specifically used to monitor the revenue of Pacific Island Governments, the public health, and gender equality impact of the Agreement."¹⁰

The United Nations Conference on Trade and Development has developed a set of tools to support governments to design gender-aware impact assessments.¹¹ Impact assessments

⁹ The decision to conduct gender impact assessments of Australian trade agreements was reported by the Gender Equality Branch in the recent Gender Equality Strategy consultation with the Feminist Foreign Policy Coalition. However, we are not aware of any public confirmation of this decision.

¹⁰ Joint Standing Committee on Treaties (2018) *Report 179*, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/PACERPlus-Agreement/Report_179

¹¹ UNCTAD (2017) *UNCTAD Trade and Gender Toolbox*, <https://unctad.org/publication/unctad-trade-and-gender-tool-box>

should be conducted prior to the commencement of trade negotiations to inform the scope of the negotiations, before a trade agreement is signed and after the agreement has been implemented. It is critical that Impact assessments are released publicly and acted upon so that any unintended impacts on gender equality, human rights and the environment are mitigated, or where this is not possible, relevant trade provisions are removed from the Agreement.

Recommendation 7: *The Government should commit to undertaking independent ex ante and ex post gender, human rights, and environmental impact assessments for all trade agreements in order to identify and respond to any potential negative impacts on gender equality and sustainable development.*

- i. *impact assessments should be conducted prior to the commencement of trade negotiations to inform the scope of negotiations. A second impact assessment should be completed before trade agreements are signed to identify any likely impacts and to provide opportunities for renegotiation. Ex post assessments should be conducted once a deal is implemented so that actual impacts can be identified and redressed.*
- ii. *Impact assessment findings should be taken into account and trade provisions that are found to negatively impact women should be mitigated or removed from the agreement.*

3. Ensuring trade provisions do not undermine progress on gender equality and sustainable development

ActionAid urges the Government to embed a gender and human rights analysis across its trade policy to ensure that any unintended impacts on gender equality and sustainable development are identified and mitigated. There are a range of provisions in many of Australia's existing trade agreements require reform to ensure alignment with Australia's gender equality and sustainable development goals and obligations.

3.1 ISDS provisions should be excluded from all trade agreements

Investor-state dispute settlement provisions (ISDS) gives multinational companies the right to sue governments in secret tribunals for policy decisions that impact on their investments. The average legal costs of defending ISDS claims is US\$ 8 million per case,¹² while the awards often surpass US\$100 million.¹³ These costs are disproportionately borne by developing countries who face the majority of ISDS claims.¹⁴ ISDS has also been shown to have a 'regulatory chilling-effect' as governments either delay the implementation of a policy measure while an ISDS case is being decided; or resolve against implementing a policy measure due to concern that it will lead to an ISDS claim.¹⁵

¹² United Nations Commission on International Trade Law (2018) *Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-fourth session (Vienna, 27 November-1 December 2017)*, A/CN.9/930, http://www.uncitral.org/pdf/english/workinggroups/wg_3/WGIII-34th-session/930_for_the_website.pdf

¹³ Bonnitcha, J and Brewin, S (2019) *Compensation under Investment Treaties*, International Institute for Sustainable Development, <https://www.iisd.org/system/files/publications/compensation-treaties-best-practices-en.pdf>

¹⁴ UNCTAD (2019) Fact sheet on investor-state dispute settlement cases in 2018, https://unctad.org/en/PublicationsLibrary/diaepcbinf2019d4_en.pdf

¹⁵ OHCHR (2015) UN experts voice concern over adverse impact of free trade and investment agreements on human rights, media release, <https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=16031&LangID=E>

ActionAid welcome's the Labor Government's policy to exclude ISDS provisions from new trade agreements and to review the inclusion of ISDS in in existing agreements.¹⁶ We also note that ISDS has already been excluded from the proposed Australia-EU Free Trade Agreement (A-EUFTA) and the India-Australia Comprehensive Economic Cooperation Agreement currently under negotiation. We urge the Government to maintain its policy of excluding ISDS from new trade and investment agreements, and to expedite the review and removal of ISDS from existing bilateral and regional trade agreements. Bilateral side letters can be used to exclude Australia from ISDS provisions in regional trade agreements where negotiations to exclude these provisions are unsuccessful.

Recommendation 8: *The Government should maintain the government policy of excluding ISDS from future trade and investment agreements and expedite the review of ISDS in existing trade and investment agreements, with a view to remove ISDS provisions from all bilateral and regional agreements.*

3.2 Trade agreements should not undermine decent employment for women workers

Women's ability to access decent work is a critical vehicle for the realisation of gender equality. Trade liberalisation has been instrumental in facilitating the rise of export-oriented manufacturing sectors in developing countries, with women representing the majority of workers. However, power imbalances between multinational corporations and workers mean that labour rights continue to be suppressed in these industries. Women workers are locked into insecure employment and working conditions are also notoriously exploitative - collective bargaining and union rights are suppressed and workers rarely have access to sick leave, maternity leave or pension provisions.

Covid-19 has raised new concerns about labour rights abuses for workers at the bottom of global supply chains. Women workers in the garment and manufacturing industries were disproportionately impacted by mass layoffs in the immediate aftermath of the pandemic, and ActionAid's new report *Stitched Under Strain* has found the garment workers in Cambodia are being locked into poverty as brands and factories push the costs of the Covid-19 recovery onto garment workers across the country.¹⁷

Australia should take this opportunity to lift women workers out of poverty by ensuring that Australia's trade agreements include enforceable labour rights provisions that support the transformation of women's work by progressing the realisation of decent employment and living wages, alongside a wider action to mandate Australian companies to undertake human rights due diligence across their supply chains.

Recommendation 9: *Australia should include binding human rights obligations for international investors in Australian trade agreements. This should include a requirement for investors to undertake gender-responsive human rights due diligence as well as provisions such as civil liability in the home and host states, which commit international investors to uphold human rights and environmental law.*

¹⁶ Trade Minister Don Farrell (2022) *Trading our Way to Greater Prosperity and Security*. Retrieved from <https://www.trademinister.gov.au/minister/don-farrell/speech/trading-our-way-greater-prosperity-and-security>

¹⁷ ActionAid Australia and CENTRAL (2023) *Stitched under strain: Long-term Wage Loss Across the Cambodian Garment Industry*, <https://cambodia.actionaid.org/publications/2023/stitched-under-strain-long-term-wage-loss-across-cambodian-garment-industry>

Recommendation 10: *Australia should ensure trade agreements establish an accessible mechanism that enables workers, and communities, to access redress in the case of human rights and environmental violations.*

3.3 Trade in services provisions should not undermine public services and entrench women's unpaid care burden

Investment in public services and the public sector workforce is critical for the realisation of gender equality and the reduction and redistribution of women's unpaid care burden.

Trade agreements can reduce women's access to public services by reducing resources available to fund essential services and by facilitating the privatisation of services.

Historically trade tariffs have been a critical source of revenue for low-income countries that have weaker tax infrastructure and experience high rates of corporate tax avoidance.¹⁸ Tariff liberalisation reduces this vital source of funding, leaving low-income countries with resourcing gaps and chronically underfunded public services. Trade in services rules can also facilitate the privatisation of public services, by opening up services to foreign investment and limiting government's ability to regulate these services.¹⁹ The privatisation of public services can reduce their accessibility and affordability as service costs increase and the availability of services decreases, particularly in poorer communities.

Trade agreements often include carve-outs for public services, which governments argue protect these services from privatisation. However, the definition of public services is often limited to services that are not supplied on a commercial basis or in competition with any other service, which is inadequate in the context where many public services are delivered alongside private services.²⁰ Australia should ensure all trade agreements include a broad exclusion of public services so that agreements do not undermine women's access to essential services.

Recommendation 11: *Australia should exclude public services from all trade agreements. A broad definition of public services must be adopted to ensure all public services are excluded, irrespective of whether these services are managed by public or private providers.*

3.4 Intellectual property rules should not undermine access to medicines and disadvantage women farmers

Intellectual property rules, including TRIPS and TRIPS plus rules²⁰ can extend medicine monopolies for pharmaceutical companies, reducing access to affordable medicines in low-income countries. Women are most impacted when trade rules increase the price of medicines due to their disproportionate risk of poverty, specific reproductive health needs and increased vulnerability to illness is due to their experience of gender-based discrimination and violence. Reform of intellectual property rules is critical to ensure that trade agreements facilitate affordable access to medicines in low-income countries.

Women farmers also bear the brunt of Intellectual property rules that establish monopolies on seeds, preventing women from undertaking the traditional practise of collecting, saving,

¹⁸ World Bank (2021) *Taxes on International Trade*: Least Developed Countries, https://data.worldbank.org/indicator/GC.TAX.INTT.RV.ZS?locations=XL&year_low_desc=false

¹⁹ Standstill and ratchet clauses lock in existing levels of privatisation and facilitate deregulation. For more detail see European Commission (2016). *Services and investment in EU trade deals: Using 'positive' and 'negative' lists*, https://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154427.pdf

²⁰ World Trade Organisation (1995) *Agreement on Trade- Related Aspects of Intellectual Property Rights* https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm; see also Médecins Sans Frontières (No date) *Spotlight on: TRIPS, TRIPS Plus, and Doha*, <https://msfaccess.org/spotlight-trips-trips-plus-and-doha>

selling and reusing seeds.²¹ Farmers in low-income countries not only lose potential income from selling seeds, but their costs also increase due to the need to purchase seeds from multinational corporations. Women farmers are particularly disadvantaged because they have less access to the credit needed to purchase commercial seeds, which puts their livelihoods at risk.

Australia should take steps to ensure that intellectual property provisions do not undermine access to affordable medicines in low-income countries and put the livelihoods of women farmers at risk.

Recommendation 12: *Australia should exclude TRIPS Plus provisions that extend medicine monopolies and ensure that trade agreements do not undermine the flexibilities provided to least developed countries under the TRIPS agreement.*

Recommendation 13: *Australia should exclude intellectual property rules on seeds, and ensure that low-income governments can implement targeted policies that enable women farmers to overcome barriers to market access and participation.*

Conclusion

ActionAid welcomes the opportunity to feed into this inquiry into Australia's trade negotiation approach. There is a considerable opportunity for the Government to strengthen its gender and human rights analysis of trade agreements in order to bring greater alignment between Australia's trade policy and gender and development objectives. ActionAid looks forward to supporting the Government in this process and ensuring that Australia employs the full suite of policy tools to progress gender equality, human rights and poverty eradication in Australia and internationally.

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²¹ La Via Campesina and Grain (2015) *Seed Laws that Criminalise farmers: Resistance and Fightback*, p. 4, <https://www.grain.org/article/entries/5142-seed-laws- that-criminalise-farmers- resistance-and-fightback>