



THE SENATE  
SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE  
REFERENCES COMMITTEE

**Inquiry into the proposed Comprehensive and Progressive Agreement for  
Trans-Pacific Partnership (TPP-11)  
Public Hearing –Monday, 30 July 2018  
Questions Taken on Notice  
Public Services International**

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*1* HANSARD, pp. 22 - 23

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**Senator MOORE:** I'm interested, from both of you, in what response you've had back from DFAT when you've raised these issues, your concerns. Ms Higelin, in particular, in terms of the dichotomy that you point out in your submission, about the overall policy of the government to be looking at gender and particularly in the international field to have a focus on gender and it not getting a mention in this trade process, when you did write to the government—because I know you did—did you get a response?

**Ms Higelin:** Not formally, no. We have understood that DFAT has made a commitment around the areas of trying to support women into trade negotiations, particularly in the Pacific, which I think we would see as a positive step. However, what is concerning, that's come out more recently, is that the gender team in DFAT are deprioritising any focus on trade. This is particularly at a time when, even from the recent PACER Plus inquiry to see where that's calling for this sort of attention to gender assessments, now that's being deprioritised internally by the department. That isn't in writing, but that's what we're aware of, from recent discussions.

**Senator MOORE:** So it's not been a DFAT statement that they're deprioritising; it's your assessment, looking at the amount of energy put into different areas?

**Ms Higelin:** That feedback has been given through the ACFID gender community of practice.

**Senator MOORE:** You called for consideration within the process—a gender analysis of the whole process?

**Ms Higelin:** Yes, most definitely.

**Senator MOORE:** Who do you think should do that?

**Ms Higelin:** We believe it's important that it is independent. I note the discussion previously, looking at the potential for something like a panel of experts. We believe it's critical to look across the board and provide a balanced assessment. We also believe that there must be processes to draw on some of the expertise that exists locally, particularly with women's organisations, including in a number of the affected countries, to really document some of the impacts and how they will play out, particularly seeing how they have a potential to undermine some of the broader policies DFAT has through its aid investments.

**Senator MOORE:** There's the statement that was signed in response to the unfortunate date. It never ceases to amaze me. In terms of the engagement with other countries that are part of the agreement—the other 10 countries that are now part of the agreement—did you have discussions with women's organisations and all of those? I looked at the signatories. I can pick a number of countries straightaway that are part of the process, but did you get across to all of them or is that still an evolving process?

**Ms Higelin:** It's still an evolving process. As you would be aware, many women's organisations are grossly underfunded, including to do robust analysis of trade agreements. These were a number of organisations specifically in countries affected by the TPP. From ActionAid's side, obviously we worked with this group of organisations. We also consulted with ActionAid Vietnam, which is a member of our federation, who have also done work to document the potential impacts in Vietnam on women's rights.

**Senator MOORE:** Thank you. Mr Whaites, thank you. I'm interested to see the feedback you've received from DFAT when you raised these particular issues.

**Mr Whaites:** I would have to check my records to see whether I had a formal response from DFAT and get back to you on that.

**Response:**

PSI has not directly written to DFAT, or the Minister, raising our concerns other than through submissions to the relevant inquiries (both Senate and JSCOT). To the best of my recollection PSI Oceania has not received correspondence other than that which relates to these inquiries.

In the interests of transparency; I have, in my capacity as an employee of the ANMF NSW Branch, drafted correspondence to the Minister raising similar concerns. ANMF NSW is an affiliate of PSI. Both the Department and the Ministers' office have responded to the correspondence from the ANMF NSW branch (NSWNMA).

Those responses are attached.



OFFICE OF THE HON ANDREW ROBB AO MP

NSWNMA	
File No: .....	
ED/.....	
Rec'd	30 APR 2014
MINISTER FOR TRADE AND INVESTMENT	
Allocated by:..... to:.....	
Copies to: .....	



24 APR 2014

NSW Nurses & Midwives' Association  
50 O'Dea Avenue  
WATERLOO NSW 2017

Dear

Thank you for your letter to the Hon Andrew Robb AO MP, Minister for Trade and Investment, on 27 March 2014 regarding health issues and the Trans-Pacific Partnership (TPP) Agreement. Mr Robb has asked me to reply on his behalf.

The TPP offers an opportunity to strengthen job-creating trade and investment, and to further integrate Australia into the fast-growing Asia-Pacific region by pursuing common and liberalising policy outcomes.

I note your concerns in relation to pharmaceutical intellectual property and access to medicines in the TPP. The Pharmaceutical Benefits Scheme (PBS) is an integral part of Australia's health system and the Government will not permit an outcome which undermines the PBS or Australia's health system more generally.

The Government is working to negotiate a TPP that is in Australia's national interests, and that supports each Party's right to protect public health and promote access to medicines. At the same time, the Government recognises the role of intellectual property in providing incentives and rewards for investment in pharmaceutical research and development. Ultimately, any outcome on pharmaceutical intellectual property issues in the TPP must strike an appropriate balance for Australia in promoting investment in innovation, and supporting timely and affordable access to medicines.

You also raised the issue of labeling standards in the TPP. Nothing being discussed in the TPP, or other FTAs Australia is negotiating, will weaken Australia's policies on food or alcohol labeling. Regulations on food labeling will not be diminished. All Parties will retain their current rights under the World Trade Organization to make policy related to human health and safety, and the environment.

The Government is considering the inclusion of ISDS provisions in FTAs on a case-by-case basis. ISDS provisions have been included in agreements over the past three decades to provide protection for those who choose to pursue new opportunities for

Australia by investing abroad. Australia has ISDS provisions in place with 28 economies.

Contrary to some public commentary, ISDS does not protect an investor from a mere loss of profits and does not prevent the Government from changing its policies or regulating in the public interest. A loss of profits, by itself, does not amount to a breach of an FTA.

Should the Government agree to the inclusion of ISDS provisions in any of the FTAs currently under negotiation, we will seek to ensure that the Government is not restricted in its ability to protect public health and the environment. Further information can be found at [www.dfat.gov.au/fta/isds-faq.html](http://www.dfat.gov.au/fta/isds-faq.html).

As is standard practice with the negotiations of international treaties, draft negotiating texts of the TPP, which involves 12 countries, are not public documents. The Department of Foreign Affairs and Trade is however making every effort to ensure that stakeholders are adequately consulted and able to express their views. There will be an opportunity for full public and Parliamentary discussion prior to any agreement being ratified. In accordance with the Government's treaty-making process, once the TPP text is agreed it will be tabled in Parliament for 20 joint sitting days to facilitate public consultations and scrutiny by the Joint Standing Committee on Treaties (JSCOT) before any binding treaty action is taken. Once tabled, the treaty text and an accompanying National Interest Analysis will be published on the JSCOT website and in the online Australian Treaties Library. Further information about the TPP can be found on the Department's website, at [www.dfat.gov.au/fta/tpp](http://www.dfat.gov.au/fta/tpp).

Australia's negotiating positions have been, and continue to be, guided by consultations with a range of stakeholders. The Government will continue to take every available opportunity to consult with stakeholders and is always open to receiving written submissions and meeting with interested parties. I note that the Department held a TPP stakeholder briefing on Monday 14 April 2014 that was attended by a member of your Association. I would encourage you to continue to participate in this consultative process.

Thank you for bringing your concerns to my attention. I trust that this information is of assistance.



OFFICE OF THE HON ANDREW ROBB AO MP

MINISTER FOR TRADE AND INVESTMENT

NSW Nurses and Midwives' Association  
50 O'Dea Avenue  
WATERLOO NSW 2017

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**NSWNMA**

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**Rec'd 16 NOV 2015**

Allocated by: *Dr* to: *Jak*

Copies to: *AGI RA MO*

Dear \_\_\_\_\_ and representatives of Australian healthcare workers *AD/15/017889*

Thank you for your correspondence received on 29 September to the Minister for Trade and Investment, the Hon Andrew Robb AO MP, regarding the Trans-Pacific Partnership (TPP) Agreement. The Minister has asked me to respond on his behalf.

Your correspondence raises the issue of the effect of the TPP on Australia's healthcare system. Australia worked hard in the TPP to secure an outcome which is consistent with Australia's existing health laws and policies. As a result, Australia will not be required to make any changes to its domestic laws and practices. The Pharmaceutical Benefits Scheme (PBS) will not be adversely affected and the price of medicines for Australians will not increase.

The TPP Intellectual Property Chapter strikes a balance between promoting medical innovation and investment, and supporting timely access to affordable medicines.

For the first time in a trade agreement, there will be specific protections for biologic medicines, a rapidly-evolving class of medicines that treat difficult to cure diseases and illnesses, such as cancer. For Australia, the TPP reaffirms our existing standard of five years of protection for the regulatory data required to be submitted to the Therapeutic Goods Administration (TGA) to demonstrate a biologic medicine's safety and efficacy. Australia will meet this standard through existing laws and regulatory arrangements on data protection.

This protection complements Australia's patent system and other processes and systems that deliver the right balance between promoting innovation and providing timely and affordable access to medicines. Importantly, these provisions will have no impact on the PBS or the cost of medicines for consumers.

You raised concerns about Investor-State Dispute Settlement (ISDS) in the TPP. The ISDS mechanism in the TPP contains explicit safeguards protecting the Australian Government's right to regulate in the public interest, including in the area of public health. In addition, Australia's tobacco control measures cannot be challenged under the ISDS mechanism in the TPP.

You also raised concerns about food and beverage labeling in the TPP. The TPP does not diminish Australia's ability to regulate food and beverage labelling, including reforms to country of origin labelling. The TPP re-affirms a TPP country's rights and obligations under the World Trade Organization (WTO) Agreement in relation to food labelling.

The State-Owned Enterprises (SOEs) chapter covers large SOEs that are principally engaged in commercial activities. TPP Parties have agreed to ensure that their SOEs make purchases and sales on the basis of commercial considerations, except when doing so would be inconsistent with any mandate under which an SOE is operating that would require it to provide public services, including health services. The TPP will not require Parties to privatise public services.

Detailed information about other outcomes of the TPP can also be found on the Department of Foreign Affairs and Trade website:

<http://dfat.gov.au/trade/agreements/tpp/>

The Minister also provides regular updates on the TPP, which can be accessed via:

<http://trademinister.gov.au>

Thank you for bringing your interest in the TPP to the attention of the Minister, I trust this information is of assistance.

## WHAITES Michael

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**From:** Agreement [TPP@dfat.gov.au] on behalf of Trans-Pacific Partnership  
**Sent:** Friday, 21 March 2014 3:14 PM  
**To:** undisclosed-recipients  
**Subject:** RSVP to TPP State stakeholder consultations in Melbourne and Sydney on the 26 and 27 March respectively [SEC=UNCLASSIFIED]

Dear Stakeholders

Many thanks for expressing your interest in Australian Government's public consultations on the Trans Pacific Partnership Agreement (TPP) negotiations in Melbourne and Sydney on 26 and 27 March 2014 respectively. We regret to inform you that due to limited capacity and a large public response we are unable to accommodate your RSVP.

The Department of Foreign Affairs and Trade (DFAT) plans to undertake further public consultations in capital cities, however no arrangements for these consultations have been made yet.

Once the dates and venues for these consultations are settled they will be advertised on the DFAT website <http://www.dfat.gov.au/fta/tpp/> and TPP stakeholders will be advised via email.

The Government will continue to take every available opportunity to consult with stakeholders and is always open to receiving written submissions and meeting with interested parties. I would encourage you to continue to participate in this consultative process.

Kind regards

The Office of Trade Negotiations  
The Department of Foreign Affairs and Trade