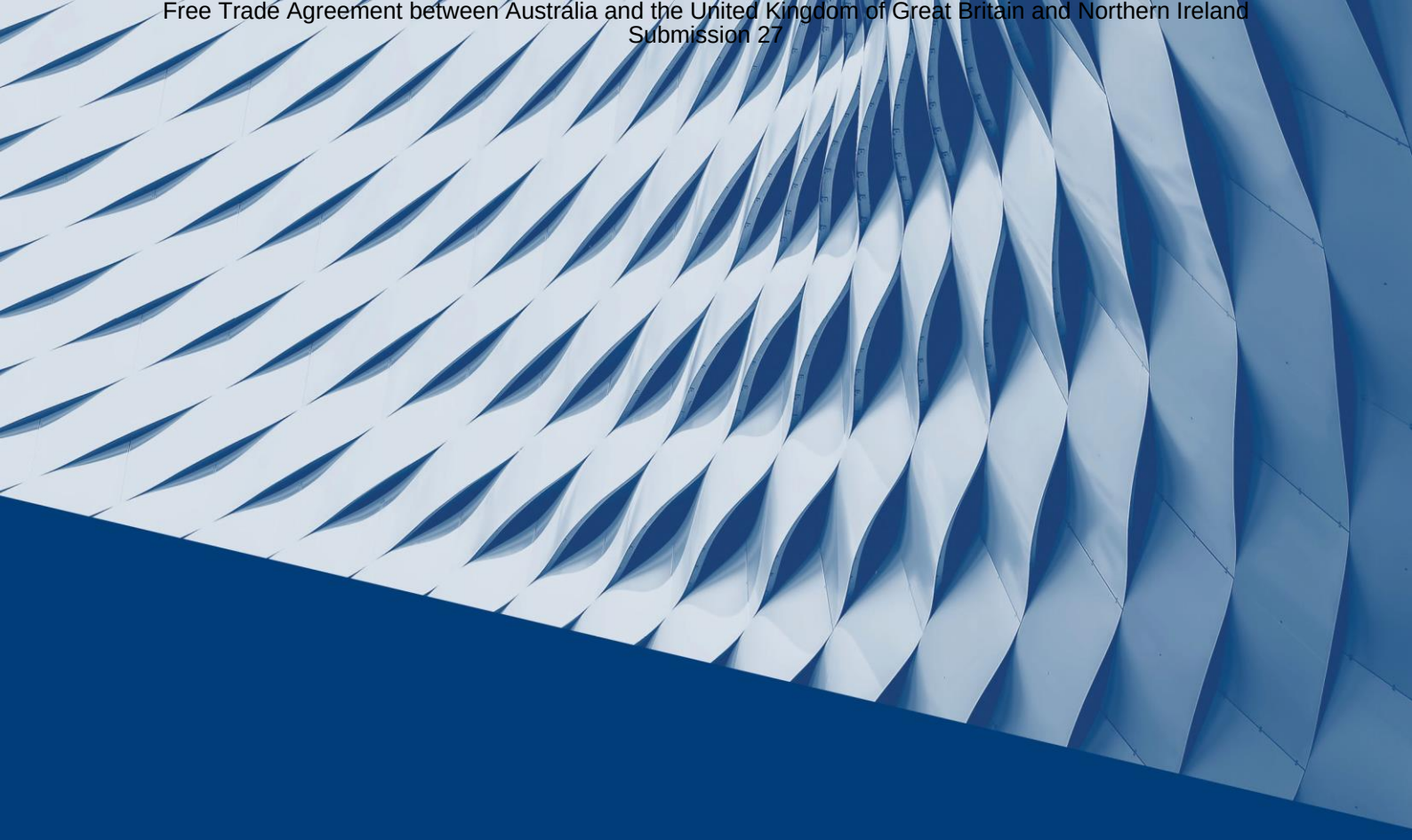

Australia-UK Free Trade Agreement

Submission by the Australian Council of Trade Unions to the Joint Standing Committee on Treaties inquiry

ACTU Submission, 22 March 2022
ACTU D. No 13/2022

ACTU
australian council of trade unions

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Introduction

The Australian Council of Trade Unions (ACTU) is the peak trade union body in Australia, with 43 affiliated unions and states and regional trades and labour councils, representing approximately 2 million workers across the country.

The ACTU welcomes the opportunity to make a submission to the Joint Standing Committee on Treaties inquiry into the ratification of the *Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland* (hereafter, UK FTA).

The ACTU supports fair trade as a vehicle for economic growth, job creation, tackling inequality and raising living standards. The most important objective of trade policy should be to deliver benefits to workers, their communities and the economy by increasing opportunities for local businesses, creating quality local jobs, and protecting public services. We have longstanding concerns, however, about the Australian Government's agenda on trade which places the needs of business before the needs of workers, jeopardising local jobs, undermining working conditions, and compromising the ability of current and future Australian Governments to regulate in the public interest.

The ACTU and our counterpart, the Trades Union Congress (TUC) in the UK, released a joint statement[1] in 2020 as negotiations for the UK FTA commenced, outlining the expectations of workers in both countries about the content of a free trade agreement. These expectations included transparent negotiations and consultation with unions; independent economic modelling to demonstrate that the agreement will create quality jobs in each country; protection of public services and the ability of Governments to regulate services in the public interest; and ensuring workers' rights are respected. Unfortunately, the final deal fails on all of these points. The UK FTA also fails to take into account the lessons of the pandemic regarding the overdependency on global supply chains, lack of local manufacturing capacity, and rules which give pharmaceutical companies a monopoly on medicines, delaying access to cheap generic medicines. There has been no independent assessment of the economic, social, health, gender, regulatory and environmental impact of the agreement, and we are concerned that this agreement will have detrimental impacts on workers in both countries.

[1] https://www.tuc.org.uk/sites/default/files/2020-09/ACTU_NZCTU_TUC_Statement_UK_Trade_Talks_p3.pdf

Australian unions have a number of concerns with elements of the UK FTA, but this submission will focus on the following key issues:

- Lack of consultation with unions
- Trade in services
- Temporary workers
- Investment
- Digital trade
- Government Procurement
- Labour rights

Recommendation 1: The Australian Government should not ratify the proposed UK FTA.

List of recommendations

Recommendation 1: The Australian Government should not ratify the proposed UK FTA.

Recommendation 2: The Australian Government must immediately commission and publish an independent evaluation of the economic, social and environmental costs of the UK FTA.

Recommendation 3: The Australian Government must reform the trade agreement making process to ensure it is transparent and democratically accountable, including by requiring consultation with unions and other stakeholders, the release of draft texts, and Parliamentary debate and vote on the whole agreement.

Recommendation 4: The Australian Government must broaden the definition of 'public service' to ensure that all public services at all levels of Government are excluded from the UK FTA.

Recommendation 5: The Australian Government must list the building and construction industry as an exemption under Annex II.

Recommendation 6: The Australian Government must renegotiate the UK FTA to insert a blanket exemption for all existing State Government non-conforming measures.

Recommendation 7: The Australian Government confirm that the new clauses in Annex I and II on licensing, qualifications and service standards are exemptions for those regulations that apply to all services and will enable Governments to increase regulation in these areas if required.

Recommendation 8: The Australian Government remove Annex 8B from the FTA and rely on the general provision that maritime cabotage is 'carved out' from the Chapter 8 services provisions in the FTA as provided in Annex II.

Recommendation 9: The Australian Government include a more complete definition of cabotage in footnote 23 in Annex II so that it reads as follows:

> *"For the purposes of this entry, "cabotage" is defined as the reservation for Australian registered ships, crewed by Australian nationals, in the transportation of passengers or goods between a port located in Australia and another port located in Australia and traffic originating and terminating in the same port located in Australia"*

Recommendation 10: The Australian Government must remove Chapter 11 from the UK FTA, or restrict its scope by removing the provisions that facilitate increased numbers of temporary workers who are vulnerable to exploitation and remove the provisions waiving labour market testing.

Recommendation 11: A review must be conducted into Australia's skills assessment and licencing institutions and their regulators capacity to maintain appropriate occupational skills testing of overseas workers to ensure it is not compromised. Trade recognition services must be reinstated as a priority.

Recommendation 12: The Australian Government negotiate a side letter with the UK Government exempting both Parties from ISDS if the UK accedes to the CPTPP.

Recommendation 13: The Australian Government must remove provisions in Chapter 14 that restrict the ability of Government's to regulate digital trade.

Recommendation 14: The Australian Government must not include Local Government in the procurement arrangements for the UK FTA, or other future trade agreements.

Recommendation 15: The Australian Government should review the commitments in Chapter 16 to ensure they do not restrict the ability of Governments to preference local suppliers to support the development of local industries.

Recommendation 16: The Labour Chapter must be renegotiated to include an effective and accessible enforcement mechanism, open to all complaints of violations of labour commitments without condition, and the creation of a tripartite consultative body to oversee labour standards. All commitments on labour rights, modern slavery and gender discrimination should be legally enforceable.

Consultation

We continue to hold deep concerns about the way the Australian Government enters into trade agreements: negotiated behind closed doors, with no opportunity for trade unions and broader civil society to have genuine input into the negotiations, and ultimately ratified with very little public scrutiny.[2] This stands in contrast to the much more open approach taken by the UK Government, which seeks the views of unions and other key stakeholders to inform the negotiation process before it begins, and as negotiations progress.

Australian Unions were not genuinely consulted throughout the negotiation process. As the *National Interest Analysis (NIA)* notes, the ACTU was occasionally invited to 'stakeholder consultations' held at the end of each negotiating round, however these were short, high-level briefings with a range of other stakeholder groups, rather than a genuine consultation about the potential impact of the UK FTA on workers. The *NIA* lists[3] 142 stakeholder organisations the Department of Foreign Affairs and Trade (DFAT) consulted with on the UK FTA – neither the ACTU nor any of our affiliate unions are on that list.

The lack of transparency and consultation regarding this agreement is deeply concerning, as is the lack of independent examination of the costs and benefits of Australia ratifying this agreement.

Recommendation 2: The Australian Government must immediately commission and publish an independent evaluation of the economic, social and environmental costs of the UK FTA.

Recommendation 3: The Australian Government must reform the trade agreement making process to ensure it is transparent and democratically accountable, including by requiring consultation with unions and other stakeholders, the release of draft texts, and Parliamentary debate and vote on the whole agreement.

Trade in services

Chapter 8 is aimed at reducing the regulation of services, freezing regulation at current levels unless they are specifically exempted, and opening up the services market to UK companies. It does this through a 'National Treatment'[4] provision, which states that UK service providers must

[2] See the ACTU's submission to the Joint Standing Committee on Treaties inquiry into *Certain Aspects of the Treaty-Making Process in Australia* (2020-21) for more information.
[3] 'Attachment I: Consultation', *National Interest Analysis,* pp. 17-19.
[4] Article 8.3

be treated as if it were local suppliers with full market access and no discrimination, meaning they are not obliged to have a local presence as a condition for supply of the service. Another key provision is the 'Most-Favoured-Nation Treatment'[5] which ensures that if either Government reaches a more favourable agreement on services with another Government, it will extend the same treatment to the other Party to this agreement.

Although this chapter intends to exclude public services, the exclusion narrowly defines public services as a "service supplied in the exercise of governmental authority" which means "any service that is supplied neither on a commercial basis nor in competition with one or more service suppliers."[6] This is ambiguous in the context of increasing privatisation of Government services - there are very few public services that are not supplied on a commercial basis or in competition with one or more service providers.

This agreement takes a highly liberal approach to trade in services by taking a 'negative list' approach, where the services not covered by the agreement must be specifically listed as exemptions in Annex I and II. This is a highly risky approach, where Governments must be very careful to list all services for which they wish to retain the right to regulate. This means new services developed in the future as technology develops, for example, will be automatically covered by the Agreement.

Recommendation 4: The Australian Government must broaden the definition of 'public service' to ensure that all public services at all levels of Government are excluded from the UK FTA.

This chapter also has ramifications for other types of services, such as the building and construction industry, which is not listed as an exemption in Annex II. As our affiliate the Construction, Forestry, Maritime, Mining and Energy Union (Construction and General Division) point out in their submission to this inquiry, this means that UK based companies will be free to tender for and win work on building and construction projects in Australia and, when invoked with articles under Chapter 11, bring in their own workers from the UK without limitation. This could apply on any project where the installation of equipment or machinery can be completed in a period of 3 months or less, such as the installation of components on solar farms or refurbishment of buildings.

[5] Art. 8.4
[6] Art. 8.1

Recommendation 5: The Australian Government must list the building and construction industry as an exemption under Annex II.

The blanket exemption for all existing State Government non-conforming measures regarding investment and services that exists in the CPTPP (Comprehensive and Progressive Trans Pacific Partnership) and RCEP (Regional Comprehensive Economic Partnership) has been removed from the UK FTA, which means that all service exemptions at the State Government level must be listed separately otherwise they are automatically covered by the agreement. There is the danger that not all exemptions that should be listed have been listed.

Recommendation 6: The Australian Government must renegotiate the UK FTA to insert a blanket exemption for all existing State Government non-conforming measures.

Clause 8.5 on Market Access prohibits certain regulation, for instance on numbers of service providers (including monopolies or exclusive service providers), and numbers of staff employed to supply a service (for example, minimum staffing numbers or ratios). Unions have long raised concerns with these rules which could prevent increased regulation of services – for instance, preventing the Australian Government from regulating the Aged Care sector to implement the recommendations of the Royal Commission into Aged Care Quality and Safety, such as standards around minimum staffing time. Neither the CPTPP nor RCEP list aged care as an exemption, which could prevent Government from regulating in this area. The Australian Government appears to have tried to address this concern in the UK-FTA by including new clauses in the introduction to the annexes[7], which state that Governments may have requirements relating to "qualification requirements and procedures, technical standards, authorisation requirements and licensing requirements and procedures" where they do not constitute a limitation in terms of clauses on national treatment (articles 8.3 and 13.5), market access (articles 8.5 and 13.4) or local presence (8.6). The clause goes on to say:

> These measures may include, in particular, the need to obtain a licence, to satisfy universal service obligations, to have recognised qualifications in regulated sectors, to have completed a recognised period of training, to pass specific examinations, including language examinations, to fulfil a membership requirement of a particular profession, such as membership in a professional organisation, to have a local agent for service, or to maintain a local address, or any non-discriminatory requirements that certain activities may not be carried out in protected zones or areas. While not listed, such measures continue to apply.

[7] Annex I Explanatory Notes [4] and Annex II Explanatory Notes [5]

This appears to mean that the range of regulation listed is permitted in all services and does not have to be specifically listed as an exemption, allowing the Government to increase regulation in the future if required. The Australian Government must confirm that this is the case.

Recommendation 7: The Australian Government confirm that the new clauses in Annex I and II on licensing, qualifications and service standards are exemptions for those regulations that apply to all services and will enable Governments to increase regulation in these areas if required.

Maritime Services

We hold concerns about the Annex to Chapter 8, Cross Border Trade in Services, Annex 8B: International Maritime Transport Services. As described in the Maritime Union of Australia's submission to this inquiry, the provisions in this annex provide that for the first time in a free trade agreement Australia is party to, Australia will no longer be permitted to legislate for the exclusive access to certain maritime services covered by the agreement, of Australian registered ships as defined in the *Shipping Registration Act 1981* (SRA), because the agreement requires UK registered ships to be given equivalent access to those specified maritime services.

That feature of this agreement directly undermines Australia's historic support for retention of maritime cabotage. Although maritime cabotage services is listed as an exemption by Australia[8], the definition of 'cabotage' is unsatisfactory[9] and makes no reference to the core principle of cabotage which is the reservation for the ships and associated seafarers of the nation in question in relation to the transportation of goods and services between domestic ports.

In addition, by removing the blanket exemption for all existing state Government non-conforming measures or exceptions as discussed in the previous section, the States and Northern Territory have not separately listed their marine and related laws which regulate the procurement of port service providers, which entitle them to establish conditions for the procurement of those services, including the nation of registration of the ship to be procured for a service. As we suggest in Recommendation 6, the Australian Government should renegotiate the agreement to include a blanket exemption for all State Government non-conforming measures. In the absence of this, the Australian Government must confer again with the States and NT Governments to ensure that

[8] Annex II, 14.
[9] Footnote 23 of Annex II defines cabotage as "the transportation of passengers or goods between a port located in Australia and another port located in Australia and traffic originating and terminating in the same port located in Australia"

State/Territory marine or related law regulating the procurement of port services involving ships, be specially listed for exclusion from the operation of the UK FTA so that States/Territories are permitted to set conditions for the procurement of such port service providers that could include the exclusive use of ships registered under the *Shipping Registration Act 1981*.

Recommendation 8: The Australian Government remove Annex 8B from the FTA and rely on the general provision that maritime cabotage is 'carved out' from the Chapter 8 services provisions in the FTA as provided in Annex II.

Recommendation 9: The Australian Government include a more complete definition of cabotage in footnote 23 in Annex II so that it reads as follows:

> *"For the purposes of this entry, "cabotage" is defined as the reservation for Australian registered ships, crewed by Australian nationals, in the transportation of passengers or goods between a port located in Australia and another port located in Australia and traffic originating and terminating in the same port located in Australia"*

Temporary workers

Chapter 11 on 'temporary entry for business persons' removes the requirement for labour market testing and expands the number of temporary workers who are vulnerable to exploitation. The ACTU's position is that trade agreements should not include provisions on temporary workers but where such provisions exist, strict labour market testing criteria and skills testing requirements must be applied, with strong protections for workers' rights.

This chapter commits to arrangements regarding 'Intra-Corporate Transferees' and 'Contractual Service Suppliers' and independent executives. These workers would enter under the Temporary Skill Shortage visa which covers over 400 skilled occupations, including nurses, engineers, electricians, plumbers, carpenters, bricklayers, tilers, mechanics and chefs. We are concerned that there has been no independent economic analysis on the potential effects on the labour market and Australian workers.

The Chapter provides that neither Party shall impose or maintain limitations on the total number of visas to be granted to 'business persons' of the other Party, meaning UK businesses can bring in an unlimited number of temporary workers in hundreds of occupations, including nursing, engineering, and the trades.

Labour market testing waiver

In addition, this Chapter also states that "neither Party shall require economic needs tests, including labour market tests, as a condition for temporary entry."[10] This means that UK businesses can bring in an unlimited number of temporary visa workers, without first testing the labour market to check if local workers are available.

Labour market testing is an important measure to ensure that employers properly advertise available positions locally to provide local workers with opportunities and to ensure that employers are not building their business model on exploiting short-term visa workers. The exploitation of temporary visa workers in Australia is systemic: they are highly vulnerable to exploitation because of visa conditions which tie them to their employer, meaning they can be deported if they lose their employment.

There is a role for temporary migration where there are critical skill shortages that can be independently verified and the local labour market has been rigorously tested. The current trend towards temporary employer-sponsored migration, however, is effectively outsourcing decisions about our national migration intake to employers and their short-term needs, rather than focusing on the national interest and a long-term vision for Australia's economy and society. Australian Unions have a longstanding view that the migration system should preference permanent, rather than temporary migration.

Australian Unions oppose the removal of labour market testing; instead, labour market testing must be strengthened to close loopholes and better enforced.

Recommendation 10: The Australian Government must remove Chapter 11 from the UK FTA, or restrict its scope by removing the provisions that facilitate increased numbers of temporary workers who are vulnerable to exploitation and remove the provisions waiving labour market testing.

Occupational licensing and mandatory skills testing

Not only will this agreement facilitate the exploitation of migrant workers when it comes to skilled workers, the necessary skills assessments are simply not being performed, putting workers lives at risk and creating the potential for harm to the Australian community. As has been noted by our affiliate the Electrical Trades Union in their submission, Australia's licensing and training

[10] Article 11.4

institutions must be properly resourced to uphold qualification and safety standards before the Australian Government seeks to enter into this agreement. The UK FTA seeks to expand an international mutual recognition framework at a time when Australia is already dealing with a poorly implemented automatic mutual recognition regime. It appears that the intention of the agreement is to provide for rapid expansion of the international mutual recognition framework without mandating for any involvement of unions from the relevant occupations.

Recommendation 11: A review must be conducted into Australia's skills assessment and licencing institutions and their regulators capacity to maintain appropriate occupational skills testing of overseas workers to ensure it is not compromised. Trade recognition services must be reinstated as a priority.

Investment

Chapter 13 is aimed at safeguarding the rights of investors and limiting their regulation. It primarily does this through provisions similar to those described above regarding Trade in Services: 'National Treatment'[11], which states that international investment must be treated as if it were local investment with full market access and no discrimination, meaning Governments cannot generally preference local businesses. The other key provision is the 'Most-Favoured-Nation Treatment'[12] which ensures that if either Government reaches a more favourable agreement on investment with another Government, it will extend the same treatment to the other Party to this agreement. These clauses have the effect of guaranteeing rights for investors and limiting Government's ability to regulate. Although clause 13.17 states that Governments can regulate to ensure that investment is "undertaken in a manner sensitive to environmental, health, or other regulatory objectives", it has the qualification that measures must be "otherwise consistent with this Chapter." The negative-list structure of the Chapter further restricts the ability of Government to regulate, by applying to all areas of investment except those specifically listed as exemptions in Annex I and II – the same exemptions and the same standstill and ratchet structure (where Governments can only freeze or reduce regulation, but not increase it), that apply to the Trade in Services Chapter 8. State Governments must also list exemptions separately in Annex I. This means there is the danger that not all exemptions that should have been listed have been listed, and any new exemptions would have to be negotiated with the UK and require an amendment to the Treaty.

[11] Art 13.5
[12] Art. 13.6

Investor-State Dispute Settlement (ISDS)

We welcome the Australian and UK Government's decision to exclude ISDS from this agreement. ISDS rules enable foreign investors to sue Governments for changes to law or policy they claim will harm their investment. On its website, DFAT has described the exclusion of ISDS as one of the benefits of the agreement: "There is no investor-state dispute mechanism in the A-UKFTA, reflecting the confidence we share in each other's legal systems."[13] Enabling UK companies to sue the Australian Government would be opening us up to enormous risk, given that the UK is the second largest investor in Australia and UK companies are the third highest users of ISDS. As the UK Government is seeking to join the CPTPP, which does include ISDS, there is the risk that ISDS will end up applying between the UK and Australia through that agreement. To reduce the risk of the Australian Government being exposed to a high number of ISDS cases, it should insist as a condition of support for UK accession to the CPTPP that both Governments negotiate a side letter to agree that ISDS provisions are not applied to each other, similar to the CPTPP side letter Australia has with New Zealand regarding ISDS.

Recommendation 12: The Australian Government negotiate a side letter with the UK Government exempting both Parties from ISDS if the UK accedes to the CPTPP.

Digital trade

Chapter 14 provides that neither Government will not restrict or prohibit the cross-border transfer of information by electronic means[14]; require a business to use or locate computing facilities in that Party's territory[15]; or require the transfer of or access to source code of software owned by a business from the other country[16].

Australian Unions oppose rules on digital trade which lock in the deregulation of the digital economy and entrench the power of technology companies to consolidate exploitative 'gig economy' business models; extract and control personal data; evade regulation including the payment of taxes; and expand power through monopolies.

[13] 'Australia-UK FTA outcomes documents: benefits for service suppliers and investors', DFAT, https://www.dfat.gov.au/trade/agreements/not-yet-in-force/ukfta-outcomes-documents/benefits-service-suppliers-and-investors
[14] Article 14.10
[15] Article 14.11
[16] Article 14.18

Governments must preserve the right to regulate the rapidly evolving digital economy in order to protect workers' rights and hold Big Tech companies accountable for complying with domestic laws, including on workers' rights, privacy, taxation, and consumer safety standards.

See the ACTU's submission to the Joint Standing Committee on Treaties inquiry into the Australia-Singapore Digital Economy Agreement[17] for further discussion of these issues.

Recommendation 13: The Australian Government must remove provisions in Chapter 14 that restrict the ability of Government's to regulate digital trade.

Government Procurement

Chapter 16 provides that Government purchases of goods and services above a certain value must be subject to a competitive tendering process open to UK bidders. The rules in this chapter apply to the list of Commonwealth, State and Territory departments and entities listed in Annex 16-A. The Commonwealth, State and Territory Governments have listed more entities than in the CPTPP, meaning they are giving more market access for UK companies to compete with Australian companies for government contracts. The most significant of the additional entities listed is NSW TAFE, which has a note that provides for an implementation period of 24 months "to allow for necessary changes to technology systems, policies and processes."[18] This long lead in time indicates that the NSW Government may be making a decision to contract out more training services.

Local Government entities are always exempted from international procurement arrangements and are not currently included in the Agreement, however a side letter[19] states that if the Australian Government agrees to give procurement access to Local Government in another agreement (for example the EU-Australia FTA currently being negotiated), then Australia will enter into consultations with the UK with a view to providing the same access.

This chapter is opening up government procurement markets further, meaning local businesses have to compete with UK suppliers. All levels of Government should actively preference Australian

[17] https://www.actu.org.au/media/1449300/d49-actu-submission-australia-singapore-digital-economy-agreement.pdf
[18] Annex 16-A, p. 8.
[19] https://www.dfat.gov.au/sites/default/files/aukfta-side-letter_government-procurement.pdf

businesses where possible to support local jobs and the development of local industries and sovereign capacity to respond to national priorities and events such as pandemics.

Recommendation 14: The Australian Government must not include Local Government in the procurement arrangements for the UK FTA, or other future trade agreements.

Recommendation 15: The Australian Government should review the commitments in Chapter 16 to ensure they do not restrict the ability of Governments to preference local suppliers to support the development of local industries.

Labour rights

Chapter 21 is closely modelled on the labour chapter in the CPTPP, which does not contain an effective enforcement mechanism. While the Parties recognise that it is inappropriate to encourage trade and investment by weakening labour protections, this article only applies to a weakening of labour laws 'in a manner effecting trade or investment' between the Parties[20], and through a 'sustained and recurring course of action or inaction'[21]. These narrow provisions mean that workers in non-trade related areas of the economy, for example the public service, are not covered and that there must be a recurring pattern of action or inaction before any action can be taken through the consultation and dispute process.

The dispute settlement process is long and convoluted, rendering the mechanism very weak. A Party (the 'requesting Party') may request in writing consultations with the other party regarding a matter arising in the labour chapter, and Parties shall begin consultations in good faith no later than 30 days after receipt of the request.[22] If the Parties are unable to resolve the matter, either Party may request a joint committee to convene after another 30 days to seek to resolve the matter.[23] If the matter is not resolved after 60 days, the requesting Party may request the establishment of a dispute panel[24] under the terms in the Dispute Settlement Chapter.[25] This means there is a delay of at least four months before any action being taken. A similarly long delay before proceeding to lodge a dispute exists in the Environment Chapter, but not the other chapters to which dispute settlement applies.

[20] Article 21.5
[21] Article 21.6
[22] Article 21.16.4
[23] Article 21.16.9
[24] Article 21.16.10
[25] Article 30.8

Although the labour chapter does contain statements on the mutual ambition of the Parties to tackle forced labour and modern slavery, there are no substantive commitments in this regard. The Parties merely will 'strive to ensure' that private and public entities operating in its territory take appropriate steps to prevent modern slavery in their supply chains and will 'to the extent it considers appropriate adopt or maintain measures to this effect.'[26] Similarly, although there are provisions acknowledging the importance of gender equality at work, they are aspirational rather than legally binding commitments.[27]

Article 21.15 provides that Parties shall "establish or maintain, and consult, a labour consultative or advisory body or similar mechanism, for members of its public, including representatives of its labour and business organisations, to provide views on matters regarding this Chapter." The Australian Government must establish a tripartite consultative body, with equal numbers of union and employer representatives, and consult regularly to oversee commitments to labour standards in order to make this an effective form of engagement.

We recommend the Australian Government renegotiate the Labour Chapter to contain an effective, timely, and accessible labour arbitration mechanism, where unions in both countries can challenge exporters for violations of fundamental labour standards. The arbitration processes should be developed with the participation of union representatives from partner countries. Unions in both countries must be able to make a complaint if they believe there has been a violation of the labour commitments in the agreement, and the eligibility of complaints should not be conditional to their impact on trade. Exporters found violating labour rights should be blacklisted until violations are remedied.

Recommendation 16: The Labour Chapter must be renegotiated to include an effective and accessible enforcement mechanism, open to all complaints of violations of labour commitments without condition, and the creation of a tripartite consultative body to oversee labour standards. All commitments on labour rights, modern slavery and gender discrimination should be legally enforceable.

[26] Article 21.7.2
[27] Article 21.8.1

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