



Public Health Association
AUSTRALIA

Public Health Association of Australia submission on the Regional Comprehensive Economic Partnership Agreement

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The **Public Health Association of Australia** (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public's health in Australia.

The PHAA works to ensure that the public's health is improved through sustained and determined efforts of our Board, National Office, State and Territory Branches, Special Interest Groups and members.

We believe that health is a human right, a vital resource for everyday life, and a key factor in sustainability. Health equity and inequity do not exist in isolation from the conditions that underpin people's health. The health status of all people is impacted by the social, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the unfair and unjust effects of conditions of living that cause poor health and disease. These determinants underpin the strategic direction of the Association.

Our mission as the leading national organisation for public health representation, policy and advocacy, is to promote better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health. Members of the Association are committed to better health outcomes based on these principles.

Our vision is for a healthy population, a healthy nation and a healthy world, with all people living in an equitable society underpinned by a well-functioning ecosystem and a healthy environment, improving and promoting health and wellbeing for all.

The reduction of social and health inequities should be an over-arching goal of national policy, and should be recognised as a key measure of our progress as a society. Public health activities and related government policy should be directed towards reducing social and health inequity nationally and, where possible, internationally.

Introduction

PHAA welcomes the opportunity to provide input to the Joint Standing Committee on Treaties inquiry into the Regional Comprehensive Economic Partnership Agreement. A fair regime of regulating trade, investment and intellectual property should prioritise health and social and ecological sustainability as well as economic development. Trade agreements and their dispute settlement mechanisms, should be consistent with international law with regard to health, human rights, the environment, and worker protection. Trade and investment agreements must:

- Prioritise equity within and between countries for global population health improvement
- Not limit or override a country's ability to foster and maintain systems and infrastructure that contribute to the health and well-being of its citizens, nor penalise a government for doing so
- Preserve policy space for governments to regulate to protect public health
- Be negotiated in a transparent fashion, with opportunities for public and parliamentary scrutiny before commitments are made
- Be subject to health and environmental impact assessments, carried out by parties independent of corporate interests.

Recent trade agreements have gone beyond goods and services to include areas that affect government regulation including investment, economic and technical cooperation, and expanded intellectual property rights [1,2,3,4]. Thus, trade agreements have the potential to affect many aspects of health care and public health. These include, but are not limited to:

- Access to affordable medicines and other health technologies
- The equitable provision and quality of health care services
- The ability of governments to regulate health damaging products such as tobacco, alcohol, gambling products, ultra/highly processed foods, and unsafe medicines
- Access to sufficient and safe nutritious food
- Capacity to legislate or regulate to protect the natural environment
- Other determinants of health such as employment and working conditions.

PHAA Response to the RCEP Agreement

1) Endorsement of issues raised in AFTINET submission and its recommendations

PHAA endorses the submission made by the Australian Fair Trade and Investment Network (AFTINET) which highlights the following issues:

- The current process for negotiating trade agreements in Australia (and therefore for negotiating the RCEP) lacks transparency and accountability;
- The economic, social and environmental impacts of the RCEP should be evaluated;
- The RCEP lacks commitments to internationally-recognised human rights, labour rights and environmental standards;
- The RCEP may impact Australia's ability to support local industries to respond to the COVID-19 pandemic; and
- Provisions in the RCEP Trade in Services chapter may compromise effective regulation of aged care and carbon emissions.

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We wish to particularly highlight AFTINET's points about the treaty-making process and remind the Joint Standing Committee on Treaties that PHAA's previous submissions on the trade negotiating process have sought:

- The release of treaty text before it is signed by the Cabinet, in sufficient time for independent assessment of the implications before it is finalised; and
- Processes for systematic consultation and for release of position papers and composite drafts of treaty texts at key points during the negotiating process.

We support the recommendations made by AFTINET, as follows:

Recommendation 1

That the government commission and publish an independent evaluation of the economic, social and environmental costs and benefits of the RCEP.

Recommendation 2

That the Australian government should follow the example of the economic sanctions imposed by the EU and US and refuse to legitimise through a preferential trade agreement the military regime in Myanmar which has overthrown a democratically elected government.

That the Australian Government should not ratify a preferential trade agreement that includes Myanmar, China, the Philippines and other RCEP countries where human rights and labour rights are being violated through repression, forced labour, and detention and killing of trade unionists and other human rights activists.

Recommendation 3

That the RCEP be re-negotiated to include enforceable commitments to labour rights based on ILO conventions enforced through the state-to-state dispute process which applies to other chapters in the agreement.

Recommendation 4

That the RCEP be renegotiated to include enforceable commitments to agreed international environmental standards, including the Paris Climate Agreement, enforced through the state-to state dispute process which applies to other chapters in the agreement.

Recommendation 5

That the RCEP rules on national treatment and market access be reviewed and re-negotiated to ensure that they do not prevent the implementation of bipartisan proposals for active government industry policies needed to ensure local industry capability and to rebuild the economy in the wake of the pandemic.

Recommendation 6:

That the Australian government seek an amendment to Services Chapter 8 Annex III list B, page 32 to list aged care in reservations excluded from obligations in the Services Chapter.

Recommendation 7

That the Australian government review services chapters in existing bilateral and regional trade agreements like the Singapore Australia Free Trade Agreement, the CPTPP and other agreements to ensure that aged care is listed as a reservation excluded from obligations in the services chapter.

Recommendation 8

That the Australian government ensure that aged care is reserved from obligations in the services chapter in current negotiations with the EU and the UK, and in any other future trade agreements.

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Recommendation 9

That the Australian government seek an amendment to Annex III appendix A, p. 54 to ensure that state government regulation of carbon emissions and other pollution is excluded from obligations in the Services Chapter.

Recommendation 10

That the Australian government review services chapters in existing bilateral and regional trade agreements like the Singapore Australia Free Trade Agreement, the CPTPP and other agreements to ensure that state government regulation of carbon emissions and other pollution is excluded from obligations in the services chapter.

Recommendation 11

That the Australian government ensure that state government regulation of carbon emissions and other pollution is excluded from obligations in the services chapter in current negotiations with the EU and the UK, and in any other future trade agreements.

Recommendation 12

Given the lack of independent assessment of economic and social costs and benefits, the lack of any enforceable commitments to internationally recognised human rights, labour rights or environmental standards, restrictions on local industry development and restrictions on regulation of aged care, power station carbon emissions and other forms of pollution the parliament should not proceed with enabling legislation. The government should instead seek re-negotiation of these issues as outlined in recommendations 1-11.

2) Intellectual Property and access to pharmaceuticals

We are pleased to see that the final Intellectual Property (IP) Chapter of RCEP does not include the provisions applying specifically to pharmaceuticals that appeared bracketed in previous leaked drafts of the negotiating text (such as patent term extensions and data exclusivity provisions) – provisions which can lengthen monopolies on new pharmaceuticals and delay generic competition [5, 6].

We are pleased also to note that Parties to the RCEP will be able to avail themselves of TRIPS transition periods (Art. 11.78) and that there are party-specific transition periods for certain provisions.

However, there remain a number of TRIPS-Plus provisions which are potentially of concern for the low and middle-income countries (LMICs) participating in the agreement. These include:

- Requirements for ratification of/accession to various multilateral agreements including the Patent Cooperation Treaty;
- Relatively strong TRIP-Plus IP enforcement measures (Section J), including:
 - Civil measures to enforce IP rights; criminal procedures and penalties for counterfeiting on a commercial scale (including imprisonment);
 - Destruction of counterfeit goods without compensation; forfeiture/destruction of associated implements, labels, packaging; and
 - Suspension of release of suspected counterfeit goods by customs authorities at the border (on application of rights holder or by custom authorities' initiative).
- Cooperation on grace periods for patents (Art. 11.76)

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The enforcement measures are a concern for access to medicines in LMICs, particularly where there is potential for seizure of generic medicines suspected to be counterfeit drugs at the border, which can result in delays in accessing medicines. Complex administrative and enforcement activities are also costly in terms of resources for low-income countries [7], and we are concerned to see public resources in low-income countries directed towards the enforcement of private rights. It is also unclear how adequate the transition periods for implementing RCEP obligations will be for Least Developed Countries.

The COVID-19 pandemic has highlighted how the current global intellectual property regime, underpinned and enforced through trade agreements including TRIPS and TRIPS-plus provisions in agreements such as RCEP, does not serve the interests of LMICs well. The RCEP IP chapter represents a lost opportunity to design trade-related IP rules in a way that supports rather than undermines access to medicines in LMICs.

3) The need for health impact assessment

Given the significant impact that trade agreements can have on many aspects of health, we believe it is essential that health impact assessment of all treaties be undertaken during negotiation, after final agreement is reached and after implementation.

We believe the issues raised above and their potential impacts on the health of Australians and those in other RCEP Parties, particularly LMICs, warrant health impact assessment before the Agreement is ratified.

Conclusion

PHAA supports the submission and recommendations made by the Australian Fair Trade and Investment Network. We also raise concerns about the potential impact of certain TRIPS-Plus provisions in the RCEP Intellectual Property Chapter on access to medicines in low and middle-income countries. Due to a number of health-related concerns, we recommend that an independent health impact assessment be undertaken before the Agreement is ratified.

The PHAA appreciates the opportunity to make this submission.

Please do not hesitate to contact me should you require additional information or have any queries in relation to this submission.

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23 April 2021

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