



Australian Government

Australian Government response to the
Joint Standing Committee on Treaties report 192:

Military Training - Singapore;
Digital Economy Agreement - Singapore

March 2021

**Australian Government response to the Joint Standing Committee on Treaties
Report 192**

Military Training - Singapore; Digital Economy Agreement - Singapore

The Government thanks the Committee for its time and consideration of the *Agreement between the Government of Australia and the Government of the Republic of Singapore concerning Military Training and Training Area Development in Australia* and the *Australia-Singapore Digital Economy Agreement*.

The Government provides the following response to the Committee's recommendations.

Response to the recommendations

Recommendation 1

2.21 The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of Singapore concerning Military Training and Training Area Development in Australia* and recommends that binding treaty action be taken.

Response:

The Government accepts and has implemented this recommendation.

On 10 December 2020, the Government notified Singapore it had completed its domestic requirements to give effect to the Agreement, and Singapore formally advised the Government it had similarly completed its domestic requirements. Accordingly, and pursuant to Article 26(1) of the Agreement, the Agreement entered into force on 10 December 2020.

Recommendation 2

3.41 The Committee requests an update by the end of 2021 on progress towards establishing an ethical governance framework for the use of AI technologies, which is intended to be governed by the existing Memorandum of Understanding.

Response:

The Government agrees to provide an update on progress of implementation of the AI Memorandum of Understanding (MoU) by the end of 2021.

Recommendation 3

3.43 The Committee supports the *Australia–Singapore Digital Economy Agreement* and recommends that binding treaty action be taken.

Response:

The Government accepts and has implemented the recommendation.

On 8 December 2020, the Government notified Singapore that Australia had completed its domestic requirements for entry into force of the *Australia-Singapore Digital Economy Agreement* (DEA). This notification completed the exchange of notes necessary for the Agreement to enter into force, pursuant to Article 5 of the Agreement. The Government has therefore implemented this JSCOT recommendation by undertaking binding treaty action. The Agreement entered into force on 8 December 2020.

Response to the Dissenting Report by the Australian Greens on the Australia-Singapore Digital Economy Agreement

Recommendation 1

1.10 The Australian Greens recommend that:

- There be a more thorough examination of the implications on data privacy and workers rights' in relation to this agreement, and more broadly on the future of Digital Economy Agreements.
- That the Australian Government undertake a more thorough assessment of the implications and impacts of this agreement and any future agreement of this kind on public interest regulations in relation to offshore data storage, cross-border data transfers, and public availability of source code and algorithms.

Response:

The Government notes the recommendation.

The Australia-Singapore Digital Economy Agreement (DEA) does not prevent the Australian Government from regulating the working conditions of digital economy workers.

The DEA does not affect the ability of the Australian Government to enforce or strengthen Australian privacy regulations or require any changes to Australian laws and regulations, including the *Australian Privacy Act 1988*. Provisions that have been negotiated in Australia's free trade agreements (FTAs), including digital economy agreements, do not impact on the operation of the Australian Privacy Act but instead demonstrate a joint commitment to ensuring appropriate privacy protections are in place domestically and to encourage interoperability of those protections and cooperation between countries. Article 17 of the DEA commits each Party to "take into account the principles and guidelines of relevant international bodies, such as the APEC Cross-Border Privacy Rules ("CBPR") System and the OECD Guidelines Governing the Protection of Privacy and Trans-border Flows of Personal Data". This commitment does not prevent Australia from adopting higher standards of privacy protection.

The DEA, and provisions of the Singapore-Australia Free Trade Agreement (SAFTA) more broadly, specifically preserve Australia's ability to regulate key areas of public interest where there are legitimate public policy objectives, including privacy. The DEA also includes exceptions for essential security reasons, prudential reasons and for government information and government procurement. For example, the Government considers that certain data localisation requirements and restrictions on cross-border transfers of information, including for financial market infrastructure, for the treatment of credit information under the Privacy Act and under the My Health Records Act, are examples of legitimate public policy objectives. These exceptions are outlined in the Regulation Impact Statement (RIS), National Interest Analysis (NIA) and the Department of Foreign Affairs and Trade's submission to the JSCOT inquiry on the DEA.

The source code provision in the DEA does not prevent source code from being requested by a government agency, regulatory body or judicial authority for an investigation, inspection, examination, enforcement action, or judicial or administrative proceeding. Source code could implicitly include algorithms, to the extent that algorithms are expressed in that source code. This provision also commits Australia to apply this rule to algorithms expressed in source code only if Australia makes such a commitment in another international agreement (or an amendment thereto) which enters into force after the DEA. The provision does not prevent the Government from disclosing the source code of a government-owned app.

Recommendation 2

1.11 The Australian Greens recommend that no binding treaty action be taken.

Response:

The Government does not accept the recommendation.

The Government notes that it is in Australia's national interest to be a Party to the Australia-Singapore DEA.