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**Supplementary Submission to the Joint Standing Committee on Treaties
Inquiry into the Regional Comprehensive Economic Partnership (RCEP)**

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AFTINET supplementary submission to the JSCOT inquiry on the RCEP

In the public hearing on July 27, 2021, it was suggested that AFTINET's submission and evidence were quoting some provisions of the text of the agreement out of context and that the text of the agreement protected the right of governments to regulate staffing levels, qualification requirements and procedures, technical standards, and licensing requirements.

This is not the case, as is shown by the full text of Chapter 8 Articles Article 8.5.2d and 8.15 copied below.

The right to regulate staffing levels is limited in Article 8.5.2d) and the right to regulate qualification requirements and procedures, technical standards, and licensing requirements is qualified in Article 8.15, in that requirements must not constitute unnecessary barriers to trade, must be based on objective and transparent criteria, and not be more burdensome than necessary, or a restriction on the supply of the service.

If these limitations and qualifications did not restrict regulation, there would be no need for the Annex III list of exceptions on p. 32 which is also quoted below, which reserves the right to "adopt or maintain any measure" with respect to a specific list of essential services which is also copied below. Aged care is not included in this list.

Our submission makes the point that aged care cannot be assumed to be included under health care or welfare services, since it has a separate UN industry classification code from both health and welfare services. The UN codes are used in trade agreements. We also noted that childcare, which has a similar structure of publicly-funded private providers, is specifically listed as an exception.

Aged care may have been omitted from the list because when RCEP negotiations began, aged care was a domestic industry. This has now changed, and significant international investment means that RCEP rules apply.

In the context of the recommendations of the Royal Commission into Aged Care Quality and Safety for significant increases in regulation, the government should remove any doubt that aged care is exempted from the provisions in Chapter 8 by seeking an amendment to the agreement to list aged care as a specific exception in Annex III.

Below are copied the full text of the relevant articles in the text with relevant subsections highlighted, and the list of Annex III exceptions which do not include aged care.

Provisions in the Text of the RCEP which place limitations on regulation of staffing levels of service suppliers for all services, (Article 8.5.2d) and provisions which qualify the right of governments to regulate qualification requirements and procedures, technical standards, and licensing requirements (article 8.15)

Chapter 8, Article 8.5.2

The measures which a Party shall not adopt or maintain either on the basis of a regional subdivision or on the basis of its entire territory, either in sectors where market access commitments are undertaken and in accordance with its specific commitments, as provided in Article 8.7 (Schedules of Specific Commitments), or subject to its non-conforming measures, as provided in the Article 8.8 (Schedules of Non-Confirming Measures), **are defined as**⁷:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;⁸
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment. Article 8.6: Most-Favoured-Nation Treatment 1. A Party making commitments in accordance with A

7 If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (r)(i) of Article 8.1 (Definitions) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (r)(iii) of Article 8.1 (Definitions), it is thereby committed to allow related transfers of capital into its territory. 8-9 service suppliers or the requirements of an economic needs test;

8 This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

Chapter 8, Article 8.15.5

With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, while recognising the right to regulate and to introduce new regulations on the supply of services in order to meet its policy objectives, each Party shall endeavour to ensure that any such measures that it adopts or maintains are:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service; and
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

Reservations or exceptions listed in RCEP Annex III by Australia to the above provisions in the text which do not include aged care (p.32):

“Australia reserves the right to adopt or maintain any measure²³ with respect to the provision of law enforcement and correctional services and the following services²⁴ to the extent that they are social services established or maintained for a public purpose:

- income security or insurance;
- social security or insurance;

- social welfare;
- public education;
- public training;
- health²⁵;
- childcare;
- public utilities;
- public transport and
- public housing.

23. For greater certainty, measures adopted or maintained with respect to the provision of services covered by this entry include measures for the protection of personal information relating to health and children

24. For the avoidance of doubt, this includes any measure with respect to the collection of blood and its components, the distribution of blood and blood related products, including plasma derived products, plasma fractionation services, and the procurement of blood and blood related products and services

25. For greater certainty, the subsidies programs under Australia's pharmaceutical benefit scheme and Medicare Benefits Scheme, or successive programs, are not subject to chapter 8 (Trade in Services) consistent with article 8.2 (Scope) or Chapter 10 (Investment) consistent with article 10.2 (Scope)."