



AFTINET Submission to the JSCOT inquiry on the Australia-UAE Comprehensive Economic Partnership Agreement January 2025

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Introduction

AFTINET is a national network of 60 community organisations and many more individuals supporting fair regulation of trade consistent with democracy, human rights, labour rights and environmental sustainability.

AFTINET supports the development of fair-trading relationships with all countries based on the principles above. We recognise the need to regulate trade through the negotiation of international rules.

AFTINET supports the principle of multilateral trade negotiations, provided these are conducted within a transparent and democratically accountable framework that recognises the special needs of developing countries and is founded upon respect for democracy, human rights, labour rights and environmental sustainability.

In general, AFTINET advocates that non-discriminatory multilateral rules are better than preferential bilateral and regional negotiations that discriminate against other trading partners. We are concerned about the continued proliferation of bilateral and regional preferential agreements and their impact on developing countries, which are excluded from negotiations and then pressured to accept the terms of agreements negotiated by the most powerful players.

AFTINET welcomes the opportunity to make a submission to this inquiry into the Australia-UAE Comprehensive Economic Partnership Agreement (CEPA).

Summary and recommendations

The CEPA is contrary to the Labor Government's policy on human rights, labour rights, and the environment.

AFTINET does not support the ratification of this agreement for the reasons and evidence presented in our three submissions to DFAT and a letter to the Minister signed by eight peak national organisations in July this year. They were the ACTU, the Australian Fair Trade and Investment Network, the Australian Conservation Foundation, Amnesty International Australia, the Uniting Church, the Catholic Office for Justice Ecology and Peace, ActionAid and the Family Planning Alliance¹.

The Labor government has a policy of including enforceable labour rights and environmental standards in trade agreements, and of safeguarding the interests of women and First Nations peoples². However, the government has negotiated a preferential trade agreement with the UAE despite gross violations of human rights and labour rights and weak environmental standards. Recent changes, including the

¹AFTINET (2024) Letter to the Trade Minister, July 1,
<https://aftinet.org.au/sites/default/files/2024-07/240625%20UAE%20civil%20society%20letter%20final%20logos%20with%20signature.pdf>

² Trade Minister Farrell (2022) Trading our way to greater prosperity and security, November 14,
<https://www.trademinister.gov.au/minister/don-farrell/speech/trading-our-way-greater-prosperity-and-security>

2022 labour law, have failed to address these issues.³ Australia should not reward these violations with a preferential trade agreement.

Human rights, labour rights and environmental standards

Recommendation:

That the committee should not support the ratification of the agreement, because the chapters on labour, environment, women and First Nations People have weak commitments and are not enforceable in the same way as other chapters in the agreement, which is contrary to Labor Government policy.

Chapter 9 Trade in Services

Recommendations

- ***That the committee seek confirmation that the reservations in the CEPA trade-in-services chapter ensure that governments retain the right to regulate and reregulate all government-funded and other essential services as circumstances change.***
- ***That aged care services be listed as a specific reservation in List B of the CEPA Annex 9E***

Chapter 10 Entry and Temporary Stay of Business Persons

Recommendation:

The committee should seek confirmation that the commitment Labour market testing may be required “to the extent that this is not inconsistent with Australia’s WTO commitments.” is consistent with Labor Government policy not to remove labour market testing for temporary workers in trade agreements and is consistent with its wider migration policy to ensure that temporary entry addresses genuine temporary labour market shortages.

Chapter 12 Digital Trade

Recommendation:

That the committee should seek confirmation that the deregulatory commitments for digital trade in CEPA do not restrict the government’s ability to regulate in the following areas:

- ***Regulating the cross-border flow of data where needed to protect consumer privacy***
- ***setting standards for the security of electronic transactions and preventing cybercrime***
- ***Regulating the use of Artificial intelligence to prevent fake news and other abuses***
- ***access to source code and algorithms if needed to prevent the misuse of social media algorithms to exploit young people and other vulnerable groups***
- ***protecting workers’ privacy, preventing intrusive surveillance and ensuring that workers have access to data collected about them***

³ US Department of State (2023) 2022 *Country Reports on Human Rights Practices: United Arab Emirates*, Bureau of Democracy, Human Rights and Labour, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/united-arab-emirates/#:~:text=Significant%20human%20rights%20issues%20included,in%20another%20country%3B%20unlawful%20government>

Human rights, labour rights and environmental standards not effectively protected

Labour rights

The UAE is an absolute monarchy and is not a signatory to key UN and ILO Conventions protecting civil rights, freedom of association, the right to organise and the right to collective bargaining. Temporary migrant workers form more than 90% of the private sector workforce. Most non-professional migrant workers are employed under the *kafala* system, which ties them to individual employers who act as their visa sponsors, with the penalty of deportation if they leave. The *kafala* system has been classified as a system of modern slavery.⁴

The *kafala* system has been classified as a system of modern slavery.⁵ The 2024 US *Trafficking in Persons Report* found that employers exploit some migrant workers through conditions indicative of labour trafficking, such as passport retention, non-payment of wages and unpaid overtime, restrictions on movement, contract switching, fraudulent employment promises, substandard food and housing provisions, debt bondage or a failure to meet other contractual agreements.⁶ The 2023 Global Slavery Index estimates that on any given day in 2021, there were 132,000 individuals living in modern slavery in the UAE. This equates to a prevalence of 13.4 people in modern slavery for every thousand people in the country. The UAE has the second highest prevalence of people in modern slavery of 11 countries in the Arab States region and the seventh highest prevalence out of 160 countries globally.⁷

Despite a new Labour Law in 2022, the new law does not protect key labour rights:

- There is no national minimum wage, and the law does not include the right to organise or bargain collectively or the right to form or join unions.
- Workers experience non-payment of wages, unpaid overtime, failure to grant legally required time off, threats, including threats of deportation, and in some cases, psychological, physical, or sexual abuse. Contrary to the law, employers routinely withheld employees' passports, thus restricting their freedom of movement and ability to leave the country or change jobs.
- The new labour law does not apply to domestic workers, who comprise more than 12% of the total workforce and 42% of the female workforce, so they have even less protections than other workers, experiencing labour abuses, forced labour, sexual abuse and human trafficking and can be legally made to work for up to 72 hours a week.
- The main change in the 2022 labour law is that migrant workers have the right to file labour-related grievances with the Human Resources Ministry. However, the US State Department report notes, "The threat of deportation discouraged noncitizens from expressing work-related grievances" (p.38)

⁴ International Trade Union Confederation (2021) UAE labour law reforms fail to address abuses of workers' rights, 22 November, <https://www.ituc-csi.org/uae-labour-law-reforms-fail>

⁵ International Trade Union Confederation (2021) UAE labour law reforms fail to address abuses of workers' rights, 22 November, <https://www.ituc-csi.org/uae-labour-law-reforms-fail>

⁶ <https://www.state.gov/reports/2024-trafficking-in-persons-report/united-arab-emirates/>

⁷ <https://www.walkfree.org/global-slavery-index/country-studies/united-arab-emirates/>

Women's rights

Repeated investigations and reports have documented systemic discrimination against women in the UAE. Despite some recent anti-discrimination laws, significant discrimination against women and girls remains:

- Muslim women must have the consent of their guardians to marry. The law permits a man to have as many as four wives, but women may not have more than one husband.
- To obtain a divorce with a financial settlement, a woman must prove her husband inflicted physical or moral harm upon her. Physical abuse claims require medical reports and two male witnesses. Judges have the discretion to consider women as full witnesses or half witnesses.

Criminalisation of homosexuality and transgender expression

The UAE criminalises homosexuality and gender expression of trans people.⁸ The law does not extend anti-discrimination protections to LGBTQI+ individuals based on their sexual orientation, gender identity or expression, or sex characteristics; LGBTQI+ persons could face arrest, since homosexual activities are illegal.

UAE inaction on climate change and conflict-of-interest at COP 28 meeting

With 30% of the Gross Domestic Product (GDP) based directly on oil and gas exports, the UAE has been widely criticised for its record on climate action. The UAE's climate policies and commitments are not consistent with the Paris Agreement's 1.5°C temperature limit and lead to *rising* rather than *decreasing* emissions, even taking into account the recently announced net-zero ambitions of the UAE.⁹

When the UAE hosted the 2023 COP 28 climate summit, the summit President was both the chief executive of the UAE national oil company ADNOC and the UAE's climate envoy. In the lead-up to the summit, leaked briefing documents were revealed for meetings with summit participants to increase ADNOC's exports of oil and gas.¹⁰ This dual role has been criticised as a conflict of interest.

The CEPA chapters on labour rights, the environment, women and First Nations have weak commitments and are not enforceable through the state-to-state disputes process which applies to the rest of the agreement

The text¹¹ of the agreement does contain short chapters on labour, women, First Nations peoples, and the environment (Chapters 17-20). These chapters refer to those international agreements both governments have ratified, which is welcome. However, these chapters have weak commitments and, unlike other chapters in the agreement, are not enforceable, meaning that there is no obligation to implement them.

There are no clear commitments (indicated by using the word "shall") to implement the international agreements. Instead, the text uses weaker language like 'recognise', 'promote', 'encourage', and

⁸ Human Dignity Trust (2020) UAE: Types of Criminalisation of homosexuality, London
<https://www.humandignitytrust.org/country-profile/united-arab-emirates/>

⁹ Climate Action Tracker (2021) Country summary: UAE, November 9, <https://climateactiontracker.org/countries/uae/>

¹⁰ Rowlett, J., (2023) UAE plan to use COP28 climate talks to make oil deals, *BBC News*, November 27,
<https://www.bbc.com/news/science-environment-67508331>

¹¹ DFAT (2024) Text of the Australia-UAE Comprehensive Economic Partnership Agreement (CEPA)
<https://www.dfat.gov.au/trade/agreements/not-yet-in-force/australia-uae-comprehensive-economic-partnership-agreement-cepa/australia-uae-cepa-official-text>

‘endeavour to’, and establishes contact points for future dialogue and cooperation. There is no means of enforcing these intentions, as the state-to-state dispute process, which enforces other chapters of the agreement, does not apply to these chapters.

The only definite commitment in the Labour chapter is that each government shall not “fail to enforce its labour laws through a sustained or recurring course of action or inaction”, but the governments have discretion about resources allocated to achieve this (Article 20.7). Each government will provide a means for individual worker complaints (Article 20.11.2). In the UAE, individuals can make complaints, but as reported by the US State Department study quoted above, the threat of deportation means that few migrant workers complain¹².

In short, if the UAE fails to implement its commitments on tariffs, Australia can take action under the state-to-state dispute process. However, the lack of definite commitments and the absence of a dispute mechanism means there is no equivalent enforcement action available for the labour, women’s, First Nations and environment chapters. This contrasts with fully enforceable rights¹³ in these areas still being negotiated in the Australia-EU Free Trade Agreement.

Recommendation: That the Committee should not support the ratification of the agreement, because the chapters on labour, environment, women and First Nations People have weak commitments and are not enforceable, which is contrary to Labor Government policy.

We also bring to the attention of the Committee the following issues in other chapters of the agreement, where commitments in the agreement could restrict public interest regulation.

Chapter 9 Trade in Services

The objectives of trade-in-services rules in the CEPA, as in other agreements, are to open services to international investment, and to reduce regulation of them. These rules treat the regulation of services as a tariff, to be frozen at current levels and to be reduced, not increased, in the future.

The CEPA uses a negative list structure for Australia, meaning that *all* services, including those which may be developed in the future, are included in the rules of the agreement, except those that governments list as specific exclusions or reservations. The reservations are listed in Annex 9E. List A exempts current regulation which can be retained but not increased in future. List B specifies reservations for which the government can both retain existing regulation and increase regulation in the future¹⁴.

This means that governments have to be very careful to list all reservations, including for emerging new services, in agreements. Public services are intended to be excluded, but a public service is defined as “a service supplied in the exercise of governmental authority, which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.”¹⁵ This definition can

¹² US Department of State (2023) 2022 *Country Reports on Human Rights Practices: United Arab Emirates*, Bureau of Democracy, Human Rights and Labour, p. 38.

¹³ European Commission (2023) Sustainable development in EU trade agreements, https://policy.trade.ec.europa.eu/development-and-sustainability/sustainable-development/sustainable-development-eu-trade-agreements_en

¹⁴ Department of Foreign Affairs and Trade (2020) *Text of the Australia-UAE CEPA, Annex 9E* <https://www.dfat.gov.au/trade/agreements/not-yet-in-force/australia-uae-comprehensive-economic-partnership-agreement-cepa/australia-uae-cepa-official-text>

¹⁵ Department of Foreign Affairs and Trade (2020) *Text of the CEPA*, Chapter 9 article 9.1 (v)

result in ambiguity about which services are covered by the reservations. In Australia, as in many other countries, some public and private services are provided side-by-side.

Without very specific reservations, trade-in-services rules can restrict new forms of regulation needed when circumstances change, as has occurred with the need for increased financial regulation following the Global Financial Crisis and the Royal Commission into the Banking and Financial Services Industry,¹⁶ the Royal Commission into Aged Care Quality and Safety discussed below, and governments' responses to climate change through regulation of energy services' carbon emissions.

Trade-in-services rules also use a 'ratchet' structure which treats the regulation of services as if it were a tariff, to be frozen at current levels and not raised in future unless particular services are specifically reserved from this structure in List B. This can prevent governments from addressing the failures of privatisation or deregulation. For example, the deregulation and privatisation of vocational education services in Australia resulted in failures in service delivery for students and fraudulent use of public funds, and the Turnbull government had to reregulate to address these failures in 2016.¹⁷ The increased regulation of vocational education could have been contrary to trade-in-services rules in the Trans-Pacific Partnership (TPP). The government responded to this unintended consequence and the need for re-regulation in the TTP and subsequent agreements like the RCEP and the Australia-UK FTA, by including a new reservation in the second Annex, which retained the right to regulate the funding and standards of education services.¹⁸

The inclusion of essential services, like health, education, energy, water and aged care, in trade agreements also limits the ability of governments to regulate these services by granting full 'market access' and 'national treatment' to transnational service providers of those services. This means that governments cannot specify any levels of local ownership or management, and there can be no regulation regarding the numbers of services, location of services, numbers of staff or relationships with local services. This can reduce the right to regulate to ensure equitable access to essential services, to regulate service standards and staffing levels, and to meet social and environmental goals.¹⁹

Another example of possible unintended consequence occurred in aged care services in 2021, when a debate emerged about whether aged care services were specifically excluded from trade-in-services rules in the Regional Comprehensive Economic Partnership (RCEP) and other trade agreements. Aged care is funded by the federal government but managed largely by private providers. The 2021 Report of the Royal Commission into Aged Care Quality and Safety²⁰ exposed multiple scandals caused by a lack of qualified staff and poor-quality care and recommended increases in staffing levels, increases in qualifications of staff and changes to licensing arrangements. Some of these recommendations have now been implemented, including measures to increase

¹⁶ United Nations (2009) "Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System", https://www.un.org/en/ga/econcrisissummit/docs/FinalReport_CoE.pdf.

¹⁷ Conifer, Daniel (2016) "Parliament Passes Bill to Overhaul Vocational Education Sector", *ABC News*, December 1, 2016. Retrieved from <https://www.abc.net.au/news/2016-12-02/parliament-passes-bill-to-scrap-troubled-vet-loans/8085860>.

¹⁸ DFAT (2015) Text of the Trans-Pacific Partnership (incorporated into the CPTPP) Annex II, p. 1. <https://www.dfat.gov.au/sites/default/files/annex-ii-australia.pdf>.

¹⁹ Ranald, P (2021) "How a New Trade Deal Could Make It Harder to Improve Life for Australians in Aged Care", *The Conversation*. <https://theconversation.com/how-a-new-trade-deal-could-make-it-harder-to-improve-life-for-australians-in-aged-care-164947>.

²⁰ Royal Commission into Aged Care Quality and Safety (2021) "A Summary of the Final Report". <https://www.royalcommission.gov.au/system/files/2021-03/final-report-executive-summary.pdf>

staffing levels through legislation requiring a registered nurse to be on-site in residential aged care at all times and mandated minimum care minutes. Reform of the aged care sector is ongoing.

These increases in regulation could have been prevented by the market access and national treatment rules listed above, unless aged care was specifically reserved from the agreement in the second section of the Annex, which reserves current and future regulation. Aged care was not listed in the specific reservation with other specific services like childcare in the RCEP and the TPP.²¹ The government argued that aged care was excluded under the more general category of social services, but the Joint Standing Committee on Treaties noted the ambiguity. It recommended that ‘such inconsistencies give rise to public concern, and it would be better if they were avoided’.²² To ensure that there is no potential threat to ongoing reform of the aged care sector in line with the Royal Commission recommendations, aged care should be listed as a specific reservation in Annex 9a List B of the CEPA.

Recommendation

- ***That the committee seek confirmation that the reservations in the CEPA trade-in-services chapter ensure that governments retain the right to regulate and reregulate all government-funded and other essential services as circumstances change.***
- ***That aged care services be listed as a specific reservation in List B of the CEPA Annex 9E.***

Chapter 10 Entry and Temporary Stay of Business Persons

Annex 10A allows entry of Contractual Service Providers for up to 12 months, which can be extended. This is for a list of eligible occupations for which there are labour shortages. Government policy is to ensure that temporary workers address temporary labour market shortages, that temporary workers do not become an exploited underclass and that the rights of temporary workers are protected. Labour market testing may be required “to the extent that this is not inconsistent with Australia’s WTO commitments.”

Recommendation

The committee should seek confirmation that the commitment Labour market testing may be required “to the extent that this is not inconsistent with Australia’s WTO commitments.” is consistent with Labor Government policy not to remove labour market testing for temporary workers in trade agreements and is consistent with its wider migration policy to ensure that temporary entry addresses genuine temporary labour market shortages.

Chapter 12 Digital Trade

The provisions are very similar to those in the Singapore-Australia Free Trade Agreement but have been updated to include provisions on Personal Data Protection, Artificial intelligence, Online Safety and Security and Cybersecurity. However, there are commitments to deregulation supported by the Big Tech companies, including deregulation to enable cross-border data flows, forbid requirements

²¹ DFAT (2015) Text of the Trans-Pacific Partnership (incorporated into the CEPA) Annex II, p. 8. Retrieved from <https://www.dfat.gov.au/sites/default/files/annex-ii-australia.pdf>.

²² Joint Standing Committee on Treaties (2022) Report 196 on the Regional Comprehensive Economic Partnership, p.27. https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/RCEP/Report_196/section?id=committees%2Freportint%2F024720%2F76916.

for data to be stored onshore, and forbid access to source code or algorithms, which could clash with regulation in these areas.

There are some exemptions for these deregulatory commitments for government data, personal data, regulation for legitimate public policy objectives, and for those areas of trade in government services and other services exempted from the trade in services chapter discussed above. However, it is unclear whether these are adequate to address the rapidly changing digital environment, especially the development of Artificial intelligence.

This is both controversial and topical, as the Australian government and other governments are grappling with regulation of the fast-changing digital domain in many of the areas listed above, including the exploitation of young people, and need to retain the regulatory space to do so, without being constrained by deregulatory trade commitments.

Recommendation:

That the committee should seek confirmation that the deregulatory commitments for digital trade in CEPA do not restrict the government's ability to regulate in the following areas:

- ***Regulating the cross-border flow of data where needed to protect consumer privacy***
- ***Setting standards for the security of electronic transactions and preventing cybercrime***
- ***Regulating the use of Artificial intelligence to prevent fake news and other abuses***
- ***Regulatory access to source code and algorithms, if needed, to prevent the misuse of social media algorithms to exploit young people and other vulnerable groups***
- ***Protecting workers' privacy, preventing intrusive surveillance and ensuring that workers have access to data collected about them***