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NSW.ACT

**Submission  
to the Joint Standing Committee on Treaties of the Australian Parliament**

**Singapore-Australia Free Trade Agreement.**

Contact Person

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UnitingCare NSW.ACT opposes a number of aspects of the proposed Singapore-Australia Free Trade Agreement, which your committee is currently considering. This is a brief submission. Our full position on current trade negotiations is set out in the position paper we submitted earlier this year to the Senate Inquiry into the WTO GATS and USA-Australia free trade agreement.

We are concerned by the following aspects of the Singapore Australia Free Trade Agreement:

1. There has been inadequate public consultation about the proposed agreement, especially with civil society organizations. The treaty was tabled on 4 March, and submissions were required by 2 May. The process was not well publicized.
2. It uses a negative list approach the inclusion of investment and services. Reliance on "exceptions" as a way of protecting public services and activities is an inadequate and questionable approach, as matters may inadvertently be included that ought to be excluded. Sectors that develop in future are also automatically included. The limits of the agreement are unclear under the negative list approach, since the agreement does not specify exactly what is covered. The "positive list" approach used by the WTO GATS should be the model for all trade agreements on investment and services. A negative list approach makes sound policy analysis and effective community consultation almost impossible.
3. The agreement restricts the rights of governments to regulate services and investment in the future. The Regulation Impact Statement says that Singapore would expect that "a high percentage of trade-restrictive measures would be bound at existing levels" (p 15). This would mean that state governments would not be able to introduce new measures that were more restrictive than the existing measures. There has been no public discussion of the impact of this on state governments and their citizens.
4. The following services are also listed as exceptions in Annexure 4.II (a), but only to the extent that they are "social services established for a public purpose": "Public law enforcement and correctional services, income security or insurance, social welfare, public education, public training, health, child care, public utilities and public transport" (p 6). The worrying thing about the definition of social services is that it implies that other public services could be subject to the agreement. It also reflects the ambiguity of the definition of public services, which does not regard as public services those, which operate on a commercial basis or in competition with other service providers.

We object to this on two grounds.

- (a) As a social justice agency, we object to it as inadequate protection of public services.
- (b) As a provider of community and health services we object to this provision as not protecting not for profit services. The point about "social services" or "community services" is that they should arise out of, reflect and respond to the needs of Australian society and the local community. Care is not a tradable commodity. Community services are about enhancing social capital as they go about the process of meeting individual needs for quality services. Quality services draw on community participation and volunteers as well as their professional staff. This is not possible with commercial provision of services, since volunteerism is compromised by serving the interests of stockholders rather than the community. Any trade agreement must

preserve the right of government to work with the community sector in a different way from working with commercial companies.

5. It allows companies to sue the Australian government. The government 'measures' which can be challenged as infringing on investors' rights, include 'any law, regulation, rule, procedure, decision, administrative action, or any other form' taken by "central, regional or local governments" (Chapter 8, Article 1e), p 59). Disputes can be taken either to national courts or decided in one of two international arbitration panels originally set up for the resolution of disputes between private, rather than public, bodies. These bodies do not provide the levels of openness of national courts. While investors sue governments seeking public money and seeking rulings on the appropriateness of public policy decisions, members of the public are not informed of the disputes or afforded the opportunity to be heard.

We draw attention to the problems that this is creating for North American governments, as has been documented by the Australian Fair Trade and Investment Network.

We reject the idea that it is in Australia's interest for companies to be able to take our governments to court over legislation that is consistent with normal constitutional requirements, especially when the legislation has been enacted to fulfill international obligations or pursue the common good for citizens.

We also reject the view that companies should have access to a one-sided disputes process that does not equally allow governments, civil society organizations or citizens to sue corporations that act against the common good.

6. It requires Australia to change its government procurement policies so that Singaporean companies are treated the same as national companies. It is not in Australia's interest to give up the role of government procurement as a tool for encouraging local industry.

We therefore support the following recommendations:

- (a) *That no legislation relating to SAFTA be introduced or passed by Parliament until after the JSCOT review is completed.*
- (b) *That there be a public community consultation process leading up to the review of the agreement.*
- (c) *The Committee should not support a "negative list" model for services and investment in trade agreements, as it has been decisively rejected by the community as it can lead to unintentional outcomes and undue restrictions on current and future government policies.*
- (d) *The Committee should oppose the restriction of the ability of governments at all levels to regulate essential services and investment.*
- (e) *That the committee should not support an investor state complaints mechanism as it is an unreasonable restriction on democratic governance.*
- (f) *The committee should not support any restrictions on the right of governments to use purchasing policy for industry and regional development.*

End