The RCEP and public services

Almost all services will be affected

The RCEP has a trade in services chapter which aims to open up services to private international investment, increase trade in services and reduce regulation of services, which is seen as a barrier to trade.

The RCEP could set rules affecting almost all service provision including education, healthcare, transport, water, telecommunications, postal services, aged care, childcare, energy, and banking services. All of these services are covered unless specifically listed as exemptions. These rules are legally binding, and would be enforced by government-to government disputes

These are services which many of us use each day, and which need regulation to ensure they are accessible to all. It's claimed that "public services" are not included in the negotiations but the definition of what constitutes a public service includes only those services provided by government that are not provided on a commercial basis, nor in competition with private providers. Many public services like health and education are now provided on a competitive basis.

De-regulation is the aim

The RCEP aims treat government regulation on services as if it were a tariff, by freezing regulation at current levels and reducing it over time. This suits global services corporations but not peoples' needs.

Many services require regulation or public provision to ensure that they are delivered safely and equitably. For example, we expect governments to ensure that everyone has access to services like healthcare and education. Likewise, natural monopolies, such as electricity generation, water and transport require regulation to ensure access and protect consumers, and to reduce carbon emissions.

The RCEP could prevent or limit future regulation needed to achieve these goals, or to respond to changes like climate change or the Banking Royal Commission.

Re-regulation not an option

The RCEP would stop governments from putting stronger regulations in place in the future, limiting their ability to respond to future crises or changed circumstances.

For example, such rules would have limited government regulation of the financial sector in response to the global financial crisis in 2008, and could limit future government responses to the Banking Royal Commission.

Deregulation and private tendering for Australian vocational education services resulted in fraudulent advertising, failure to provide courses to students and misuse of government funds. If the RCEP had been already in force, it could have prevented the government from re-regulating the vocational education sector, because of commitments which prevent future increases in regulation.

Hidden privatisation agenda

The RCEP would not force privatisation, but would support privatisation of public services in many ways: through its ambiguous definition of what constitutes a "public" service, by allowing greater investment in services by global corporations and through rules which will make reversing a decision to privatise almost impossible.

Privatisation is a politically sensitive issue in Australia where, according to the chair of the Australian Competition and Consumer Commission, it has often failed to deliver promised outcomes, led to price rises for consumers and damaged the economy. RCEP rules could prevent governments from resuming services after a failed hospital privatisation or from re-introducing pubic provision of vocational education services.

Any decision to privatise or to reverse a privatisation should be made through an open democratic process and should not be bound by rules made in secret trade negotiations.

Services exclusions do not exclude ISDS cases

The exclusions for public interest legislation do **not** prevent foreign corporations from claiming millions of dollars in compensation from governments over changes to regulation, using separate ISDS provisions in the RCEP for changes introduced at national, state or local government level.

Even if a service were exempted from state-to-state disputes, this would not prevent the possibility of an ISDS dispute. For example, a future government might make further changes to regulation of vocational education services. If the RCEP were in force, and there were a private vocational education service provider from an RCEP country that could argue that the reregulation of services meant the value of its investment had been reduced, it could launch an ISDS case by alleging indirect expropriation and/or lack of fair and equitable treatment.

Changes in energy regulation to address climate change, or stronger controls on gas exports, would also be open to ISDS disputes from RCEP countries. Mining and energy companies from RCEP countries Japan, Canada, China , India and Singapore have investments in Australian resources and energy services, and could claim compensation for reduced investment value and reduced future profits. Australian legal firms specialising in ISDS are already canvassing those options. There are also international examples. The US Westmoreland company is using ISDS in the north America Free Trade agreement to sue Canada for $441 million because the Alberta provincial government is phasing out coal -powered energy.

Race to the bottom on quality, safety, more temporary workers

The RCEP rules for licensing, qualifications and service standards not to be "burdensome" for emplloyers could prevent future improvements in staffing and qualifications in industries like child care and aged care.

The RCEP may also have provisions to increase numbers of temporary overseas “contractual service providers” without testing if local workers are available. Studies show these workers are vulnerable to exploitation which can undermine wages and conditions in those industries.

Limited regulation for “gig economy “ services

Trade agreements like the RCEP bind governments for decades, limiting their ability to respond to future challenges like climate change, corporate tax evasion or another financial crisis. The RCEP could also prevent regulation of future new services in the gig economy like Uber and food delivery services.