

To Labor MPS and Senators as addressed

Re Regional Comprehensive Economic Partnership trade agreement (RCEP)

The undersigned 13 national organisations representing millions of Australians are asking you to consider the following issues and delay voting on the RCEP so that changes to the text can be made.

The RCEP involving Australia, China, Japan, South Korea, New Zealand and the 10 ASEAN countries including Myanmar and the Philippines was negotiated with minimal consultation and the text was not released until after it was signed.

Since Australia already has free trade agreements with all RCEP members, there is no additional market access for Australian exports and there has been no independent study of the economic or social costs and benefits of the agreement, including gender, health and environmental impacts. It is now being reviewed by the Joint Standing Committee on Treaties which will report to parliament in late August before parliament votes on the implementing legislation.

The RCEP has no commitments at all by governments to uphold human rights and labour rights and its ratification would legitimise a brutal military regime in Myanmar at a time when the US and other allies are implementing [economic sanctions](#). The RCEP also ignores serious violations of human rights and labour rights in China, the Philippines and other RCEP countries.

RCEP rules also restrict local industry development. It was negotiated before the COVID-19 pandemic which has revealed our dependence on imports for essential products. The Australian government acted during the pandemic to [assist local manufacturing](#) of medical equipment, vaccines and other essential products. There is now bipartisan support for [longer term policies to develop local industry capacity](#) to make vaccines and other essential products. But the RCEP text contradicts these intentions because it entrenches rules which discourage government assistance to local industries at a time when many argue [that more active industry policies](#) are needed to rebuild the economy. The RCEP also expands the numbers of temporary workers (contractual service providers) vulnerable to exploitation by removing labour market testing (Annex IV).

RCEP rules on trade in services will apply to the [aged care industry](#) because unlike other publicly funded essential services aged care has not been specifically exempted from those rules.

Aged Care is in the spotlight now because the [Final Report](#) of the Royal Commission into Aged Care Quality and Safety in March 2021 exposed extensive neglect and mistreatment in residential aged care resulting from a lack of regulated standards. It made specific recommendations for legally enforceable quality of care standards, higher levels of staffing, especially qualified nurses, and improved training standards (Summary pp. 126-30).

RCEP rules for trade-in-services are designed to encourage foreign investment in services. They lock in current levels of regulation, and restrict future changes. These rules suit the needs of international investors but could restrict the changes needed for dealing with the Aged Care crisis.

The DFAT RCEP [Regulation Impact Statement](#) acknowledges that the RCEP imposes “obligations to ‘lock-in’ and not adversely modify existing regulation in particular services sectors” (p. 6).

Australia included all services unless they are specifically reserved. The reservations are listed in [Annex III](#) which includes “the specific sectors and sub sectors or activities for which Australia may maintain existing, or adopt new or more restrictive, measures” (p. 24).

The reservations list for essential services includes income security or insurance; social security or insurance; social welfare; public education; public training; health; childcare; public utilities; public transport and public housing. It is puzzling that aged care, with similar funding and structure to childcare, is not included in the list of reservations (p. 32).

RCEP rules restrict governments from regulating numbers of staff in all services. [Chapter 8, Article 8.5 d\)](#) states that governments “shall not adopt or maintain 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”. Article 8.15 states that qualifications, licensing and technical quality standards cannot be “more burdensome than necessary” for the investor. These clauses could restrict the implementation of the Royal Commission recommendations.

The failure to explicitly reserve Aged Care may be related to the fact that when the RCEP negotiations began in 2012, the aged care industry was dominated by local providers, and not exposed to trade rules.

This has now changed. A [2018 study](#) showed almost half of all aged care beds are now provided by for-profit providers and that international investors are growing rapidly. One of the largest companies is the Singapore jointly-owned company Opal. Singapore is a party to the RCEP and since regulation cannot be discriminatory, RCEP rules apply to the whole sector.

If the government makes regulatory changes to improve staffing and quality of care that are contrary to RCEP rules, Singapore could initiate a state-to-state dispute before an international tribunal as specified in the RCEP. If the tribunal finds the complaint valid, Singapore could ban or tax Australian products. This would be an unacceptable restriction on the right of the Australian government to regulate Aged Care. To avoid any doubt aged care should be explicitly listed as an exemption.

The same arguments apply to State government regulation of emissions from power stations, which have not been excluded (Annex III, Appendix A p. 54). This could restrict state government regulation to reduce carbon emissions or other forms of pollution. These regulations should be clearly excluded from the RCEP.

There is a precedent for amendments to a signed trade agreement. In 2004 the Labor, Democrat and Green majority in the Senate required amendments to the medicines patent provisions of the Australia-US Free Trade Agreement that were then [agreed by the US government](#).

The RCEP contradicts [Labor’s 2021 trade policy platform](#). The platform condemns the military coup in Myanmar as disastrous, (p. 146), supports internationally-recognised labour rights, opposes the waiving of labour market testing for temporary workers, opposes provisions that limit the right of the Commonwealth to regulate in the interests of public welfare and says that Labor in opposition will actively campaign against trade agreements that do not conform to these policies (pp. 88-9). A copy of the relevant clauses is attached as Appendix 1.

The government acknowledges that the RCEP provides no additional market access for Australian exports and there are no clear economic benefits to be weighed against the costs outlined above. We are asking you to support the postponement of the implementing legislation so that the RCEP can be amended to exclude Myanmar, to include commitments to human rights and labour rights, to remove the waiving of labour market testing, to remove restrictions on local industry policy and to clearly exclude aged care and state government regulation of power stations from RCEP rules.

We request a meeting with you to discuss these issues and look forward to your response.

Yours sincerely



Appendix 1 ALP Platform Clauses on trade

<https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf>

Pages 88-9

7. Labor will prohibit through legislation the Commonwealth signing trade agreements that:

- a. Waive labour market testing;
- b. Include investor state dispute settlement provisions;
- c. Include provisions that require the privatisation of any public services;
- d. Include provisions that undermine the Pharmaceutical Benefits Scheme;
- e. Include provisions that undermine any law of the Commonwealth, a State or a Territory relating to anti-dumping;
- f. Include provisions that limit the right of the Commonwealth to regulate in the interests of public welfare or in relation to safe products;
- g. Include provisions that have the effect of restricting the Commonwealth's procurement arrangements from any form of preference for the purpose of:
 - i. Protecting Australia's essential security interests;
 - ii. Benefiting local small and medium enterprises;
 - iii. Protecting national treasures
 - iv. Implementing measures for the health, welfare and economic and social advancement of Indigenous people;
 - v. Promoting ethical standards and sustainable development through ethical procurement
 - vi. Providing for the full, fair and reasonable participation of local enterprises in government contracts as outlined in Commonwealth, state and territory industry participation policies and successor programs and policies; and
 - vii. Maintaining the Australian industry capability programs and its successor programs and policies.

8. Labor will legislate so that trade agreements signed by the Commonwealth:

- a. Require skills assessments (including practical and theoretical testing) to be undertaken in Australia and not restrict such skills assessments for temporary visa holders.
- b. Must include in any future bi-lateral trade agreement a labour chapter with enforceable internationally recognised labour standards.
- c. Should seek to include a labour chapter with enforceable internationally recognised labour standards in any regional or multilateral trade agreements.

9. Labor believes that the process of developing, negotiating and finalising trade agreements should be transparent, consultative and subject to the processes of the parliament. However, under the current framework, trade agreements are the prerogative of Executive Government, and the

Parliament only determines enabling legislation designed to give effect to certain limited provisions of the agreement.

10. Labor in Opposition will:

a. Seek written confirmation from the government that any trade agreement signed by the government does not violate clauses 7 and 8;

b. Undertake formal consultation with affected unions about the impact of any proposed trade agreement;

c. Labor will actively campaign against trade agreements that do not comply with clauses 7 or 8 above, including by making shadow ministerial statements, participating in public campaigns, demanding that the Commonwealth conduct rigorous independent economic analysis and debating the merits of the agreement in the Parliament and Parliamentary Committees;

d. Amend parliamentary procedures to require an independent economic assessment of the impact of each agreement to be included in the report of the Joint Standing Committee on Treaties to the parliament; and

e. Vote against any enabling legislation for agreements, where the enabling legislation itself does not comply with clauses 7 or 8 above.

11. If prior to the election of a Labor government, trade agreements are signed which are not consistent with the above, Labor in government will seek the renegotiation of the agreement to ensure it is consistent with the above points before bringing any enabling legislation before the Parliament.