Electrical Trades Union

A Fair Approach to Free Trade Negotiations

SEPTEMBER, 2023

Submission to the Inquiry into the Australian Government's approach to negotiating trade and investment agreements

29 September 2023

About the ETU

The Electrical Trades Union of Australia ('the ETU')[1] is the principal union for electrical and electrotechnology tradespeople and apprentices in Australia, representing well over sixty-thousand workers around the country.

The safety, job security, and future conditions of ETU members across the country is dependent on the Australian Government ensuring that our economic sovereignty is not compromised by unfavourable agreements that sacrifice our ability to regulate licensed trades, labour migration, essential services, and government procurement in Australia's national interests.

Acknowledgement

In the spirit of reconciliation, the ETU acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples today.

Contents

[1] Being a division of the CEPU, a trade union registered under the *Fair Work (Registered Organisations) Act 2009* (Cth).

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Background

Australia's recent record on Free Trade Agreements (FTAs) has been one lacking in transparency and broad consultation, and failing to deliver real benefits for workers, governments, and the wider public. In short, Australia has prioritised agreements which provide for free trade, at the expense of our own sovereign interests and the pursuit of a fairer economy.

Well calibrated trade policy has the potential to drive job creation, improved living standards, economic growth, and lower inequality. Sharing the benefits of trade across the Australian economy, uplifting workers and communities at home and abroad, is not something that simply happens naturally as a result of removing barriers to international trade. Fair trade must be actively pursued as a distinct policy objective, distinct from our current approach of prioritising the needs of investors and private businesses above broader national interest considerations.

As the scope of trade and investment agreements expands to increasingly deal with matters regarding migration, economic regulations, and government procurement, it is critical that Australia takes positive steps towards ensuring that these agreements do not undercut the ability of our democratically elected representatives to govern in the interests of their constituents. Greater transparency and accountability is needed from those actually at the negotiating table, allowing oversight and input from important stakeholders and the wider public on deals that will affect their futures before, during, and after negotiations take place.

Recommendations

1. The Australian Government must legislate a set of non-negotiable minimum requirements for all trade and investment agreements, including
    a. Provisions undermining domestic occupational licensing and mandatory skills testing regimes must not be included.
    b. Provisions undermining Australian skilled migration program settings and requirements, such as labour market testing waivers, must not be included.
    c. A labour chapter with internationally recognised labour rights and meaningful enforcement mechanisms must be included. Such chapters should be based on the ILO Conventions on basic labour rights including:
        i. freedom of association and the right to organise;
        ii. the right to collective bargaining;
        iii. safe hours of work;
        iv. health and safety standards;
        v. freedom from forced labour;
        vi. freedom from child labour, and;
        vii. freedom from discrimination in the workplace.
    d. Provisions limiting the ability of Australian governments to regulate essential services and industries in the interest of public welfare or safety must not be included.
    e. Provisions incentivising the privatisation of public assets and services, or disincentivising the expansion of public ownership and delivery of essential services must not be included.
    f. Agreements must not restrict the ability of Australian governments to offer preferential treatment in procurement arrangements as part of programs aimed at local industry development, emissions reductions, First Nations advancement,

protection of the environment and national treasures, and improving ethical workplace standards.

g. Any provisions that confer legal rights on foreign businesses or include Investor State Dispute Settlement clauses must not be included.

2. The Australian Government must legislate a transparent and consultative process for negotiating trade agreements including requirements to:
    a. Prior to the negotiation of any new trade agreements, an initial preliminary national interest assessment setting out the Government's priorities and objectives should be tabled in the Parliament for debate, consultation, and review by Parliamentary committees. Assessments should consider an agreement's economic, regional, social, regulatory, health, labour and environmental impacts, and impacts on First Nations peoples.
    b. An advisor accreditation scheme modelled after the "Cleared Advisor" program in the US should be established to facilitate regular close consultation with union, industry, and civil society groups throughout the trade agreement negotiation process.
    c. Public updates, including the release of proposals, discussion papers, and where feasible, draft texts should be provided for public comment and discussion throughout the negotiation process.
    d. DFAT should be required to provide a comprehensive briefing to the Joint Standing Committee on Treaties (JSCOT) following each round of negotiations during the agreement process.
3. The Australian Government must legislate a transparent and consultative process for the review of negotiated trade agreements before they are authorised and signed by Cabinet, including:
    a. Undertake a comprehensive national interest assessment reviewing the likely impacts, costs, and benefits of the negotiated agreement
    b. Release the final text of the agreement and national interest assessment to the public
    c. Conduct a JSCOT inquiry into the proposed agreement to inform recommendations to the Parliament
    d. Allow Parliament to debate and vote on whether Cabinet should approve the signing of an agreement, as well as any required enabling legislation.
4. The Australian Government must legislate a process for the review and renegotiation of existing trade agreements including:
    a. A requirement for a further independent national interest assessment to be conducted every 5 years following the adoption of trade agreements
    b. A requirement to renegotiate existing trade agreements in line with the legislated minimum standards set out in Recommendation 1

A Positive Negotiating Mandate

In order to ensure that Australian trade agreements are negotiated in the best interests of workers and the broader public, a set of agreed national priorities needs to apply to guide their development. Introducing legislative guardrails on the content of trade agreements is an essential step to prevent future Governments from dealing away critical labour protections and policy sovereignty at the negotiating table.

Protecting workers and local jobs

Of particular concern to the ETU is the role trade agreements have played in exacerbating issues of temporary worker exploitation, displacement of Australian workers, and domestic skills shortages. The electrical trades have faced significant ongoing skills shortages for decades and will continue to do so over coming years without serious interventions to lift apprentice numbers as we embark on an ambitious energy transition.

Trade agreements must complement Australia's immigration regime to ensure that skilled migration:

A. Enhances, and not undermines, industry labour standards;
B. Enhances, and not undermines, training opportunities for Australians; and
C. Does not lead to the exploitation of migrant workers.

Our Union recognises the important role of skilled migration has played and will continue to play in meeting Australia's electrical workforce needs. We also recognise the necessity of maintaining robust guardrails to ensure that migrant workers are ethically treated, appropriately qualified, and genuinely needed. Previous agreements' inclusion of waivers on the responsibility to conduct Labour Market Testing prior to engaging a migrant workforce, removal of mandatory Australian skills assessments for high-risk licensed trades, and failure to include labour chapters with enforceable labour rights have eroded these guardrails.

Occupational Licensing and Mandatory Skills Testing

Licensing requirements and mandatory skills testing regimes for high-risk trades such as electricians serve a critical role in keeping workers and consumers safe by ensuring that all workers are suitably qualified and aware of Australian standards and regulations. FTA provisions removing mandatory skills testing requirements, such as those in the China-Australia Free Trade Agreement, introduce significant concerns around safety and quality assurance, putting migrant workers, their colleagues, and end users at risk of harm from faulty installations.

Other agreements, such as the Australia-UK Free Trade Agreement, have also sought to expand a regime of international mutual recognition of occupational licenses, prioritising the free movement of labour over worker and consumer safety. English homes face a 3x higher likelihood of experiencing an electrical housefire than those in NSW[2][3], in no small part owing to looser standards and licensing requirements in the UK. In a context where Australia is still ironing out issues with automatic mutual recognition of electrical licenses between it's own states, it makes little sense to consider expanding this to other countries with vastly different licensing requirements and industry standards.

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[2] Ghassempour, N., Tannous, K., Agho, K. E., Asvar, G., & Harvey, L. A. (2022). Comparison of causes, characteristics and consequences of residential fires in social and non-social housing dwellings in New South Wales, Australia. Preventive Medicine Reports, 28

[3] UK Home Office (2023). FIRE STATISTICS TABLE 0605: Cause of fire and source of ignition of accidental primary fires by location group, ignition power and area of damage, England

Failure to confirm that migrant workers are appropriately skilled to perform licensed work also reduces the likelihood that these workers will be able to contribute to domestic skill development by transferring useful knowledge to their Australian colleagues, further hampering our ability to meet future skills needs.

Recommendation 1a: Provisions undermining domestic occupational licensing and mandatory skills testing regimes must not be included.

Labour Market Testing

Labour Market Testing (LMT) is a long-standing requirement for the use of temporary migrant labour, designed to ensure that migrant workers are only used in instances where a local shortage of necessary skills can be demonstrated. The Department of Home Affairs website currently lists 14 countries with LMT exemptions under international trade obligations.

Trade agreements waiving the need for LMT means that employers are free to overlook hiring Australian workers in favour of cheaper, more easily exploitable overseas workers. In practice, these provisions serve to further hollow out the skilled workforce for occupations already in shortage by allowing employers to rely on migrant workers who leave after the job is done rather than investing in training to permanently grow Australia's skills base.

The ETU recognises work being done by the current Government to address deficiencies in the migration system with regard to LMT through the migration strategy in development. We support moves towards centralising this process within Jobs and Skills Australia to ensure that temporary migrants are only engaged to fill genuine labour shortages, not those artificially manufactured by low pay, poor conditions, and a failure to train new workers. The Commonwealth cannot continue to allow international trade agreements to undercut their ability to effectively regulate the migration of skilled workers if these new upcoming reforms are to work properly.

Recommendation 1b: Provisions undermining Australian skilled migration program settings and requirements, such as labour market testing waivers, must not be included.

Case Study

Construction Project – Melbourne VIC (2016)

In 2016 the ETU encountered a group of Chinese nationals working on a construction site in Melbourne installing car stackers. This group of workers was brought to Australia under claimed "unique highly specialised skills" despite the fact they were performing routine mechanical fitting work and electrical work that could have been performed by any number of Australian workers. Car stackers are a common installation in high rise residential dwellings that allow cars to be stacked on top of each other in limited garage space.

These workers were brought to Australia with:

- No Labour Market Testing
- No verification of skills
- A requirement to be paid Chinese wages

When an ETU representative became involved it was discovered that not only were these workers performing high risk construction work without the requisite licences and qualifications, but they were also struggling to afford the basics of living on their meagre wages. ETU further discovered that the workers were not performing highly specialised work but were performing routine mechanical fitting work, boiler making work, and that it was the workers intention to also wire, test and commission the electrical components of the equipment which is licenced electrical work once they progressed to that stage of the project.

If the company's claim that these workers had specialist skills not available in Australia are to be believed, then this raises the secondary issue of the impact of trade agreements on developing domestic skills. There is no requirement in the trade agreement and there was no plan in place at this project to transfer the skills the Chinese workers were purported to have to a domestic workforce.

After the ETU got involved the company swiftly sent them back to China never to be found again therefore hiding the full extent of exploitation that was apparently occurring. It is unlikely that this level of malpractice and exploitation would ever have been possible without provisions in the China-Australia Free Trade Agreement waiving the need for Labour Market Testing and mandatory skills testing.

Enforceable Labour Rights

As part of Australia's commitment to being a responsible and ethical trading partner, trade agreements need to entrench the importance of maintaining strong labour rights to ensure that Australia is not contributing to exploitation at home or abroad. Many of Australia's international trade agreements, including those with China, India, Indonesia, and Malaysia fail to recognise international labour rights, let alone provide any avenue for enforcement. Other agreements that do include labour chapters also include serious deficiencies, such as the US-Australia FTA failing to reference ILO conventions when defining international recognised labour rights.

Trading partners should be required to demonstrate adherence to fundamental workers' rights before Australia agrees to begin negotiating an agreement with them. At a minimum, parties should be expected to adopt and maintain laws consistent with the International Labour Organisation's Fundamental Conventions. These conventions include:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Forced Labour Convention, 1930 (No. 29) (and its 2014 Protocol)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)
- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Occupational Safety and Health Convention, 1981 (No. 155)
- Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

A separate chapter recognising and ensuring compliance with these same ILO Conventions should be included in all agreements, including provisions for effective and accessible enforcement that offers union participation and redress for individual workers. Genuine accountability with material consequences in line with the other conventional agreement settings is critical. Countries and businesses profiting off the violation of labour rights should not be able to benefit from preferential trade agreements with Australia.

Highlighting the value Australia places on the rights of workers in our international agreements will help to ensure that Australian trade meaningfully lifts conditions for our trading partners' working classes. It also protects Australia from perverse outcomes such as domestic production being undercut by exploited overseas workforces or the erosion of our own labour standards at home.

Recommendation 1c: A labour chapter with internationally recognised labour rights, and meaningful enforcement mechanisms must be included. Such chapters should be based on the ILO Conventions

on basic labour rights including: freedom of association and the right to organise; the right to collective bargaining; safe hours of work; health and safety standards; freedom from forced labour; freedom from child labour; and freedom from discrimination in the workplace.

Failed Skills Provisions

Routinely Australia agrees to include provisions on skills transfer often in the form of last-minute side letters which DFAT claim to be beneficial to transferring skills between nations and in particular, increasing labour mobility. These provisions are never developed in consultation with the relevant industrial parties and are rarely operationalised due to how poorly they are constructed. This presents two risks, the first being that no benefit is derived from their existence, wasting a valuable opportunity for genuine skills transfer and development between nation states. The second is that the way they are constructed means that if they were to be enacted, they would in fact likely lead to an erosion of skills and standards in Australia.

Case Studies – Inoperable Skills Agreements

IACEPA

The Indonesia Australia Comprehensive Economic Partnership Agreement (IACEPA) contains a side letter on technical vocational training. This side letter on technical vocational training at Point 6 says Australian providers can provide all Australian qualifications under the Australian Qualification Framework in Indonesia however it does not stipulate if the training must be delivered in accordance with the training rules and procedures that are mandatory in Australia.

This could lead to training being provided in Indonesia to Indonesian citizens in a purely academic context through training courses which are only meant to be delivered as part of an indentured apprenticeship, via employment and by using a combination of classroom and practical training.

In addition to our concerns with the side letter above, the IACEPA also includes a pilot workplace-based training visa arrangement which has provisions to allow for 1,500 visa's to be issued over 5 years under the pretence of developing a skills transfer program that purports to be for the purpose of increasing Indonesian workers skills.

The problems with this pilot program are numerous, including;

- The assessment of Australian employers' compliance with workplace laws is exempted in the memorandum of understanding;
- The provision of accredited training is entirely optional;
- The program is not available to any other sector other than private, for profit members companies of the employer association;
- The requirement to document the terms and conditions of each skills transfer program is optional;
- Where accredited training is provided there is not requirement for the employer to provide the worker with the qualification issued by the registered training organisation;
- It is optional for the employer to provide written evidence that the training occurred;
- The whole process is not required to be transparent with the only requirement being for the two member countries to "endeavour to" take steps to be transparent;
- Annual reviews of the program do not include consultation with relevant Unions, regulators and civil society organisations; and
- The onus of compliance with the pilot rests with the worker rather than the employer.

The ETU met with the Department of Foreign Affairs and Trade (DFAT) recently and they advised that there had been no uptake in this program to date, but that Australia and Indonesia were reviewing the program. We believe that this program needs to be strengthened to address the issues outlined above and inserting a mechanism that ensures relevant Australian and Indonesian Unions would be the best way to safeguard against these initiatives being implemented poorly or to the detriment of workers.

UK-Aus FTA
The ETU recently found out that the UK-AUS FTA innovation Chapter (Chapter20) is being brought to life through a pilot by DFAT.

In essence there are two streams for a pilot which allows for 1,000 X 403 VISA applicants in the first year and 2,000 each year after.

The two streams of applicants includes:

- Innovation Stream for ANZSCO 1 Occupations, and
- Early Career Stream which includes tertiary qualified workers including ANZSCO 2 & 3 occupations

The Early Career Stream can include occupations with licencing outcomes, for example electrical occupations. During discussions with DFAT it became apparent that in the program design, the department had very little understanding of the risks such a program presented or how to mitigate those risks.

Australia-India Mutual Recognition

This agreement contains a mutual recognition provision which was developed with no consultation with industry and no connection to how the program will work, be monitored or be implemented.

Protecting Australia's national interests

Trade should be a mechanism for furthering Australia's own national interests, not an impediment to governing in the public interest. Australian governments must have the freedom to pursue policy agendas in line with the national interest and a democratically determined public mandate. At present, international trade obligations may serve to limit government's ability to effectively implement important policy levers aimed at advancing public health and safety, local economic development, supporting domestic industry, and reducing national emissions.

ISDS Clauses
Australia is currently party to 25 agreements, including both FTAs and "Investment Protection and Promotion Agreements", which allow foreign investors and private companies to sue governments for pursuing laws, policies, and regulations that may impact their profits. Where companies are profiting from practices and/or products that produce negative externalities that Australians are forced to bear, it is the responsibility of Government to intervene and rebalance markets in the public interest. These Investor State Dispute Settlement Clauses act as a constant threat hanging over policymakers, introducing the risk of costly and drawn-out legal battles for the crime of protecting people, environmental, and economic interests.

ISDS clauses are perhaps most infamous in Australia for their use by Philip Morris in response to the introduction of plain packaging restrictions for tobacco products, costing the taxpayer millions in legal fees. Policies that would serve to protect the Australian public from perverse market outcomes and promote domestic industry development, such as the renationalisation of privatised electricity networks or domestic reservation policies for natural resources would also likely expose governments to legal action under these ISDS provisions.

Privatisation

Investment and market access provisions also have the capacity to distort Government decisions around the provision of essential public services through incentivising the exposure of these services to competitive market structures and opening them up to foreign investment. The Australia-US FTA restricts the ability to impose common-sense conditions like employment requirements and foreign ownership limits on the sale of public assets. There is nothing currently stopping any future governments from pushing ahead with a privatisation agenda that would be made more damaging and costly to the Australian economy by our trade obligations.

For the avoidance of doubt, the ETU is not opposed to foreign investment in the Australian economy. Our Union is however opposed to the blind pursuit of competition, marketisation, and financialisaton when it comes to essential public services.

Procurement

Government spending and procurement is an important lever used at all levels to support local businesses, develop priority industries, and uplift workplace conditions and safety standards. The Albanese Government's 2022 election platform included a promise to introduce a "Buy Australian Plan" to "back Aussie businesses and create more local jobs". The process of rolling out this initiative is needlessly complicated by international trade obligations that restrict the ability to offer preferential treatment in procurement processes.

The Government's response to a 2014 Senate inquiry into procurement policies and procedures indicated that "international agreements limit the extent to which the Government can preference local suppliers." There are 2 ways that Australia can implement a "Buy Australian" policy for Government procurement, according to the Parliamentary Library[4]:

- "Re-negotiation of existing FTAs to include broader 'buy Australian' exemptions, and
- Ensuring that future agreements include broader 'buy Australian' exemptions".

Recommendation 1d: Provisions limiting the ability of Australian governments to regulate essential services and industries in the interest of public welfare or safety must not be included.

Recommendation 1e: Provisions incentivising the privatisation of public assets and services, or disincentivising the expansion of public ownership and delivery of essential services must not be included.

Recommendation 1f: Agreements must not restrict the ability of Australian governments to offer preferential treatment in procurement arrangements as part of programs aimed at local industry development, emissions reductions, First Nations advancement, protection of the environment and national treasures, and improving ethical workplace standards.

Recommendation 1g: Any provisions that confer legal rights on foreign businesses or include Investor State Dispute Settlement clauses must not be included.

[4] Hamilton, Philip. "Government Procurement and Free Trade Agreements." In Briefing Book: Key Issues for the 45th Parliament. Parliamentary Library, 2016.

A collective decision to negotiate

The decision to commence trade agreement negotiations, and the defined negotiating mandate and objectives to be pursued throughout negotiations, is not subject to any parliamentary oversight or democratic processes. Despite trade and investment agreements having significant, far-reaching implications on Australian workers, consumers, and businesses, it is rare for key stakeholders, let alone elected representatives, to have a say on whether signing on is in our best interests before it is too late.

National Interest Assessments (NIAs) of the costs and benefits that agreements may provide are only provided after they are signed, and consistently present flawed analyses that unsurprisingly always recommend that agreements be ratified. The fact that the same Government department responsible for negotiating trade agreements, DFAT, is tasked with presenting a balanced assessment of whether those agreements will deliver positive outcomes is a conflict of interest that must be addressed. A new process should be established to commission fully independent NIAs that more comprehensively assess a broad range of potential impacts and implications from trade agreements. This robust analysis should include consideration of the economic, social, environmental, labour, regional, regulatory, and First Nations impacts of agreements across every sector, region, and strata of Australian society.

Further, beyond simply being released as a post-hoc justification for agreements that are already signed, there should be a requirement to conduct these independent National Interest Assessments prior to the commencement of any negotiations on anticipated or likely potential outcomes. This initial pre-emptive NIA should be required to be made public and tabled in the Parliament for JSCOT review and Parliamentary debate to inform a more open and transparent decision around whether to pursue an agreement, and which priorities and objectives should be incorporated into a negotiating mandate for DFAT.

Recommendation 2a: Prior to the negotiation of any new trade agreements, an initial preliminary national interest assessment setting out the Government's priorities and objectives should be tabled in the Parliament for debate, consultation, and review by Parliamentary committees. Assessments should consider an agreement's economic, regional, social, regulatory, health, labour and environmental impacts, and impacts on First Nations peoples.

Transparent and Consultative Negotiations

Trade agreements in Australia are largely negotiated and finalised in secret without significant scrutiny from the public or the Parliament prior to being signed. As has been outlined repeatedly during the campaign for an Indigenous Voice to Parliament and is increasingly being learned by agencies carrying out projects for the energy transition, engaging affected stakeholders openly and acting constructively on feedback received is the best way to achieve strong policy outcomes and create buy-in from the wider community for a policy agenda. This lesson is seemingly yet to make its way to the realm of foreign relations policy and has led Australia to sign on to agreements with serious deficiencies that were unable to be rectified by the time affected parties had an opportunity to identify them.

Tripartite consultation

DFAT has, on occasion, conducted stakeholder briefings during the process of negotiating agreements and the Albanese Government has taken the welcome step of creating key stakeholder advisory groups for more targeted consultation. These processes seldom offer any detail, and most information is still kept confidential during the entire process.

The advisory committee system that has been in operation in the United States for close to half a century is a more effective model of institutionalising input from a tripartite array of domestic stakeholders. Targeted advisory groups focussed on industry sectors and interest areas are tasked with providing expert information and advice to negotiating teams prior to and throughout negotiations. Incorporating such an advisory structure into the infrastructure of Australia's trade negotiation framework would be an invaluable asset to negotiators and produce better outcomes in the national interest.

Recommendation 2b: An advisor accreditation scheme modelled after the "Cleared Advisor" program in the US should be established to facilitate regular close consultation with union, industry, and civil society groups throughout the trade agreement negotiation process.

Public transparency

But for the occasional leak during negotiations, the general public has almost no exposure to what a trade agreement may entail or mean for their lives before it is signed and comes into force. Setting affirmative "red-lines" in legislation as per Recommendation 1, as well as publishing an independent NIA in advance of negotiations commencing will afford the average person some peace of mind as to what may or may not be included, but the process will still remain opaque at best for the years-long process of hammering out details.

Public updates in the form of plain English summaries and, where feasible, copies of draft texts and proposals should be released for public review periodically throughout the negotiating process. The release of issue-based discussion papers for public consultation and feedback should also be incorporated as a means of involving the public in the process and ensuring their views are represented at the negotiating table. Taking this step of improving transparency will allow people and businesses to begin planning sooner for changes that an agreement may bring, and may work to counteract the growing distrust of institutions that has been observed in Western democracies.

Recommendation 2c: Public updates, including the release of proposals, discussion papers, and where feasible, draft texts should be provided for public comment and discussion throughout the

negotiation process.

Parliamentary consultation and input

As negotiations progress, comprehensive briefings should be provided to members of the JSCOT to keep elected members informed of ongoing developments and proposals being made. The Committee should be required to hold negotiators accountable for complying with the predetermined negotiating mandate and content restrictions. Keeping the cross-party membership of JSCOT abreast of proceedings will also ensure a smoother transition in the event of a change in Government during the course of negotiations.

Recommendation 2d: DFAT should be required to provide a comprehensive briefing to the Joint Standing Committee on Treaties (JSCOT) following each round of negotiations during the agreement process.

Public Assessment and Review

Approval and Ratification

Upon the settlement of a final negotiated text, but before the signing of an agreement, it is crucial that there is adequate opportunity for proper consideration of what the agreement entails and its likely implications. For the same reasons outlined above with respect to the necessity of transparent consultation when making significant policy decisions, everyday Australians, key stakeholders, and elected representatives should be provided with the time and information needed to assess a proposed agreement and judge whether it should be signed.

Following the finalisation of negotiations, the final text of the agreement and a further independent National Interest Assessment based on the agreed provisions should be made public and published online. These documents should also be tabled in the Parliament for inquiry and review by JSCOT, allowing submissions and evidence to be given by concerned stakeholders and DFAT representatives before formulating a recommendation to the Government. Finally, after taking into account the final text, NIA, and submissions and recommendations from the JSCOT review, Parliament should be required to debate and vote on the signing of an agreement and any relevant enabling legislation.

This proposal would bring international trade agreements into the public sphere and instil transparency and democracy to a process that until now has been confined to the shadows. Trade agreements carry far-reaching implications and creating these additional layers of oversight will better allow elected representatives to communicate these with their constituents and be held accountable for bad deals.

Recommendation: 3a: Undertake a comprehensive national interest assessment reviewing the likely impacts, costs, and benefits of the negotiated agreement

Recommendation 3b: Release the final text of the agreement and national interest assessment to the public

Recommendation 3c: Conduct a JSCOT inquiry into the proposed agreement to inform recommendations to the Parliament

Recommendation 3d: Allow Parliament to debate and vote on whether Cabinet should approve the signing of an agreement, as well as any required enabling legislation.

Later Review

Taking full advantage of the benefits of hindsight and recognising that changing conditions over time will affect the impact agreements have, regular periodic reviews of ratified agreements should also be instilled as a legislative requirement of the Parliament. Every 5 years following the ratification of trade agreements, a process of review involving a further independent NIA and JSCOT inquiry should be conducted to assess the impacts an agreement has had, the need for modifications, and the merits or otherwise of maintaining an agreement moving forward.

This process should apply to new agreements as well as those already in-force, providing an opportunity to flag the need for renegotiations where existing agreements are inconsistent with legislated agreement content requirements outlined in Recommendation 1.

Recommendation 4a: A requirement for a further independent national interest assessment to be conducted every 5 years following the adoption of trade agreements

Recommendation 4b: A requirement to renegotiate existing trade agreements in line with the legislated minimum standards set out in Recommendation 1.