



27 January, 2016

Hon. Andrew Robb, AO MP
Minister for Trade and Investment
Parliament House
Canberra ACT 2600
Email: Andrew.Robb.MP@aph.gov.au

Dear Minister,

The Australian Education Union (AEU), Independent Education Union (IEU) and National Tertiary Education Union (NTEU) represent over 250,000 teachers, academics and professional staff working in schools, colleges, early childhood and vocational settings, universities and research institutes in all states and territories of Australia. Following announcements in November 2015 about the finalisation of the TPP text, the NTEU, IEU and AEU have joined with education unions from around the world to condemn the Trans-Pacific Partnership (TPP).

We express our concern that the implementation of the TPP will fundamentally limit the capacity of Australian governments to protect and preserve the quality of education in Australia.

To protect the public interest, existing and future Australian governments, from the Commonwealth government to local councils, must be able to regulate across the education sector, from kindergartens to schools, from TAFEs to universities; whether these institutions are public or private, for-profit or not for-profit, on campus or online.

To protect the public interest, it is necessary for Australian governments to be able to legislate without fear of paying compensation to foreign corporations. The TPP includes Investor-State Dispute Settlement provisions known as ISDS. This creates binding obligations that limit this right, and allows corporations to sue Australia where laws created for a public purpose interfere with their property rights and profitability. This could be particularly dangerous considering that governments and third parties do not have comparable rights to sue corporations in those same international tribunals.

As Australia's national education unions, we have reserved specific criticism for the Australian government because of the absence of a comprehensive carve-out in relation to education and we dispute the language used by the Department of Foreign Affairs and Trade that "certain Investor State Dispute Settlement (ISDS) claims in specific policy areas in Australia cannot be challenged including social services established or maintained for a public purpose, such as public education". In fact, claimed "safeguards" in the TPP to protect public interest law are weak and will not prevent future cases against public interest laws and policies. The only area where there is no ambiguity about a complete exclusion is in relation to future tobacco

regulation (Article 29.5), an exception which shows that general safeguards will not prevent cases in other areas.

The reservations for public education and other services in the investment and services chapters listed in the TPP by the Australian government in Annex II do not apply to the ISDS section of the investment chapter, only to those sections of the investment chapter specifically listed at the beginning of Annex II.

ISDS clauses have the effect of locking-in and intensifying the pressures of commercialisation and privatisation. For example, if a government decided to address the current problems with private providers in the VET system through new regulation and/or a return to public provision, foreign private providers could have the option of suing for damages.

The worst implication for Australian public education is that in spite of limited additional reservations, ISDS obligations expose signatory governments to international tribunals that do not operate with the same authority as courts, having no independent judiciary, no precedents and no appeals, and which diminish the pre-eminence of our judicial system. We note with disdain that the Australian Minister for Trade has consistently rebuffed the risks of implementing ISDS through the TPP, unlike the former Australian government, the Productivity Commission in 2010, and 2015, or the European Commission who suspended equivalent Transatlantic Trade and Investment Partnership (TTIP) negotiations on investment in January 2014 until it could be proved that the TTIP would not limit the jurisdiction of European courts.

The Australian Government does not have the mandate to sign and commit existing and future generations of Australians to these kinds of binding legal obligations. Becoming a signatory to the most controversial and comprehensive regional agreement that has been negotiated in the Asia-Pacific region without a plebiscite or an election illustrates the Australian Government's contempt for democratic accountability.

In the wake of the TPP negotiations, Australians must now realise that this is a harbinger of future trade agreements. If Commonwealth governments are allowed to act secretly, with impunity and without accountability, to enforce market liberalisation, to limit regulatory action, and to empower the rights of foreign corporations at the expense of everyday Australians, these agreements could intensify in frequency and scope.

There is no room to simply trust existing or future Australian governments on trade matters because it is clear that merely through the stroke of a pen, politicians can transform and diminish the integrity of our education system. We insist on the immediate introduction of legislative reforms to Australia's treaty-making system that bring accountability and transparency to Australia's international trade agreement process.

We reject any implementing legislation that is created as a result of the TPP as an attack on Australia's democratic processes and call for comprehensive studies into the impacts of the TPP on Australian society.

Yours sincerely,



JEANNIE REA
NTEU National President



CORRENA HAYTHORPE
AEU Federal President



CHRIS WATT
IEU Federal Secretary