

2016-2017-2018

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

A Fair Go for Australians in Trade Bill 2018

**EXPLANATORY MEMORANDUM
and
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

Circulated by authority of
Jason Clare

A Fair Go for Australians in Trade Bill 2018

OUTLINE

The bill will improve the way that the Australian Government negotiates trade agreements by prohibiting the inclusion of clauses that undermine the temporary skilled migration system and the protection of public services and allow foreign corporations to sue the Australian Government. It will also increase independent assessment and scrutiny of trade agreements.

FINANCIAL IMPACT

The bill will have no financial impact.

NOTES ON CLAUSES

Clause 1: Short Title

1. This clause is a formal provision specifying the short title of the Bill. It provides that the Bill, once enacted, may be cited as the *A Fair Go for Australians in Trade Act 2018*.

Clause 2: Commencement

2. This clause provides that the Act will commence the day after it receives Royal Assent.

Clause 3

3. This clause prohibits the waiver of labour market testing in trade agreements.

The Government's policy is that labour market testing is required before a foreign worker can be employed unless an international obligation applies.

This has allowed the government to use trade agreements to waive requirements for an employer to first check if an Australian can do a job before bringing in a worker on a skilled visa.

It is only fair that if an employer wants to bring in a worker like a plumber, mechanic or electrician from overseas into Australia – they are required to first check if there's an Australian who can do the job.

Clause 4

4. This clause prohibits the government from signing trade agreements that include Investor State Dispute Settlement provisions

These provisions provide foreign corporations with an avenue by which to sue the Commonwealth for legitimate policy decisions taken by the government. This is not in line

with community expectations and this clause makes clear that they should not be included in Australian trade agreements or bilateral investment treaties.

Clause 5

5. This clause prohibits the government from signing trade agreements that includes provisions requiring the privatisation of any public services.

Clause 6

6. This clause prohibits the government from signing trade agreements with provisions that undermine the scheme for the supply of pharmaceutical benefits established under Part VII of the National Health Act 1953.

Clause 7

7. This clause prohibits the government from signing trade agreements which would undermine any law of the Commonwealth, a State or Territory relating to anti-dumping.

Clause 8

8. This clause prohibits the government from signing trade agreements which would limit the right of the Commonwealth to regulate in the interests of public welfare or in relation to safe products.

Clause 9

9. This clause prohibits the government from signing trade agreements which would restrict the Commonwealth's procurement arrangements from any form of preference for the purpose of:

- a. protecting Australia's essential security interests; or
- b. benefiting local small and medium enterprises; or
- c. protecting national treasures; or
- d. implementing measures for the health, welfare and economic and social advancement of Indigenous people; or
- e. promoting ethical standards and sustainable development through ethical procurement; or
- f. 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; or
- g. maintaining the Australian industry capability programs and its successor programs and policies.

Clause 10

10. This clause requires the Australian Government to include in all bilateral trade agreements a labour chapter with internationally recognised labour principles. The Australian Government should also seek to include a labour chapter in any regional or multilateral trade agreement it signs.

Clause 11

11. This clause specifies that it is mandatory for governments to enforce practical and theoretical testing of a foreign worker's skills in Australia in all future trade agreements.

Clause 12

12. This clause requires the Minister to commission an Independent National Interest Assessment of any proposed trade agreement. This assessment would provide independent analysis of the economic, strategic and social impacts of a proposed trade agreement. Social impacts would include, but are not limited to, an agreement's impact on workers, the environment and gender. This analysis would be tabled before an agreement is signed.

Clause 13

13. To get better outcomes from trade agreements and ensure proper consultation and scrutiny of trade agreements, this clause provides for the establishment of an accredited trade advisers program. The intention is that the Minister would consult with accredited advisers from unions, civil society groups and industry in relation to draft trade agreements. The aim of this program is to allow accredited advisers to provide real-time feedback on trade agreements as they are being negotiated.

Clause 14

14. This clause ensures that the bill would not limit the executive power of the Commonwealth except to the extent explicitly set out in clauses 3 to 12.

Clause 15

15. This clause would allow regulations to be made to give effect to the Act, for example, to establish the accredited trade advisers program provided for by clause 6.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

A Fair Go for Australians in Trade Bill 2018

This bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the bill

The bill will improve the way that the Australian Government negotiates trade agreements by prohibiting the inclusion of clauses that undermine the temporary skilled migration system and the protection of public services and allow foreign corporations to sue the Australian Government. It will also increase independent assessment and scrutiny of trade agreements.

Human rights implications

The bill engages article 7 of the International Covenant on Economic, Social and Cultural Rights which relates to enjoyment of just and favourable conditions of work.

Conclusion

This bill is compatible with human rights because it does not raise any human rights issues.

Jason Clare