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‘SAFEGUARDS’ IN PROPOSED TPP CHAPTER SLAMMED

Eight health and community organisations* have written to the Minister for Trade and Investment, Andrew Robb, expressing “grave concerns” about the latest leaked document from the Trans Pacific Partnership negotiations.

The late-stage [draft of the investment chapter of the TPP](#), dated 20 January 2015 and released by Wikileaks last week, includes the controversial investor-state dispute settlement (ISDS) mechanism which allows foreign corporations to sue governments in offshore tribunals over their health and environmental policies.

The draft contains a footnote proposing to exempt Australia from ISDS, but includes a note indicating that deletion of the footnote “is subject to certain conditions” (which are not specified).

The eight organisations last month released the report of [a health impact assessment study](#) which found that ISDS was a threat to public health policies, and strongly recommended that ISDS be excluded from the TPP altogether.

“We have serious concerns about the purported safeguards to protect public health in this draft chapter”, said Michael Moore, CEO of the Public Health Association of Australia (PHAA). “If ISDS is to be included in the TPP, what we want to see is safeguards that prevent corporations from making claims against governments over policies like tobacco plain packaging, limits on alcohol advertising and food labelling requirements. But as it stands, the chapter appears to allow these sorts of policies to be challenged.”

“The chapter includes too many loopholes for corporations,” explained Dr Deborah Gleeson, spokesperson for PHAA. “For example, a clause that appears to exclude public welfare objectives, such as public health, safety and the environment, includes the phrase ‘except in rare circumstances’. This invites corporations to argue that their circumstances are indeed rare – as has happened in a case against Costa Rica over measures taken to protect an endangered species.”

The letter points out a number of other problems with the draft chapter, including its broad definition of investment, which includes intellectual property such as trademarks and patents. “This, along other language in the chapter, facilitates cases like Philip Morris Asia’s challenge to Australia’s tobacco plain packaging laws, and Eli Lilly’s challenge to Canadian court decisions on patents” said Dr Gleeson.

“A proposal to exclude certain Australian programs, like Medicare and the Pharmaceutical Benefits Scheme, could also leave other programs and policies exposed to risk” said Michael Whaites from the New South Wales Nurses and Midwives Association. “What about future public health programs and policies that are not specifically named?”

The letter also calls on Minister Robb to make the text public before it is signed by Cabinet, and for a comprehensive health impact assessment to be undertaken before the TPP is finalised.

“The leaked document demonstrates exactly why this level of public scrutiny is needed” said Michael Whaites. “Vague reassurances that Australian health policy will not be adversely affected are just not good enough.”

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