



United Voice Submission:
Senate Inquiry into the TPP
20 October 2016

About United Voice

United Voice is a union of workers organising to win better jobs, stronger communities, a fairer society and a sustainable future. Members work in a diverse range of industries including aged care, early childhood education and care, cleaning, hospitality, healthcare, security, emergency services and manufacturing.

United Voice welcomes this important inquiry and the opportunity to make a submission.

For more information on this submission, please contact Frances Flanagan

David McElrea
National Assistant Secretary

United Voice endorses the submissions made by the ACTU and AFTINET to this inquiry.

We also wish to draw the Senate Committee's attention to several matters relating to the potential impact of the Investor State Dispute Settlement (ISDS) provisions of the TPP on our members and Australian society at large.

United Voice strongly opposes ISDS mechanisms because they erode the quality of our democracy and limit Australia's future capacity to improve wages, standards and conditions for workers. They place matters that are rightly considered political in an apolitical, secretive sphere, which may only be accessed by a select few, free from the accepted legal conventions of precedent or appeal. ISDS represent a break from the basic tenets of representative democracy.

At the core of our industrial relations system are a set of minimum rights, including the minimum wage, limits on the hours of work, and penalty rates which have been the product of over two hundred years of political contest between institutional actors within a democratic system. In recent years, unions such as United Voice have also argued for and won significant improvements to quality standards in key industries, such the introduction of the National Quality Framework in Early Childhood Education and Care.

Our movement will continue to fight for improvements such as these in the future. In some cases these struggles will be over familiar matters, such as wage levels and holiday time, but inevitably they will also extend to matters we cannot yet know, because they will be responses to political, economic, environmental and technological circumstances that are different to our own. By allowing foreign corporations to sue the Australian government for changes to laws that potentially hurt their interests, ISDS mechanisms unreasonably privilege laws that exist at a particular moment in time. They apply pressure on governments to refrain from introducing new social and environmental protections, akin to a ratchet that pushes regulation only downwards and never up.

The threat ISDS mechanisms pose to democratic processes is well illustrated by the case currently being made by the French multinational water and waste management company Veolia against the Egyptian government, where compensation is being sought for raised expenses incurred by Veolia as a consequence of a rise in the Egyptian minimum wage. Under a fully-operative TPP, the Australian government would be exposed to the possibility of similar litigation if it attempted to introduce regulation in the public interest that could be shown to impact the potential profitability of foreign investments from TPP countries. Such regulation might include an increase in the minimum wage, the introduction of a carbon price, the imposition of ratios in aged care, increased qualification requirements in disability care or the requirement to provide universal access for children to early childhood education and care. Even if such laws were passed with the democratic mandate of the Australian people, they would be potentially subject to litigation that would force the government to compensate corporations for any anticipated financial losses they might occasion as a result. Such litigation would be conducted in private, without independent judges, without any appeal mechanism, and at the cost of the Australian government, regardless of the outcome of the case.

The anti-democratic impact of ISDS mechanisms is heightened by the fact that ISDS claims are open to third-party funding, which means that it is possible for speculative investors, who have no stake in the proceedings, to effectively place bets on the outcomes of court cases. Third-party funding is likely to accelerate the number and aggressiveness of ISDS claims, since it shields corporations from the upfront cost of litigation and makes it easier to sue.

ISDS provisions are fundamentally inappropriate for Australia. They were originally developed in trade agreements to protect investors who were investing in developing countries with a weak rule

of law, in circumstances where investments might be seized by a dictator or rogue government. These conditions do not apply to Australia, and we do not think it is in the public interest for Australia to be a signatory to any international agreement with ISDS as a provision.

For these reasons, in addition to those articulated by AFTINET and the ACTU, we urge the Senate committee to reject the TPP.