

26 February, 2026

Submission to the review of the Investor-State Dispute Settlement mechanism in the Second Protocol to Amend the ASEAN-Australia New Zealand Free Trade Agreement (AANZFTA)

I write on behalf of the Australian Religious Response to Climate Change (ARRCC), a multi-faith Charity dedicated to acting to protect the earth's climate. Our organisational members include the Federation of Australian Buddhist Councils, Brahma Kumaris Australia, Australian Federation of Islamic Councils, Quakers Australia, Wellspring Community, Islamic Sciences and Research Academy, Angligrreen, Catholic Religious Orders and dozens of local congregations.

We welcome the opportunity to make a submission to the review of the Investor-State Dispute Settlement (ISDS) mechanism in the Second Protocol to Amend the ASEAN-Australia New Zealand Free Trade Agreement (AANZFTA).

The injustice of ISDS in trade agreements

ARRCC is dedicated to protecting the earth's climate from all threats, including those posed by unjust economic structures such as Investor-State Dispute Settlement arrangements in trade agreements. These arrangements are increasingly being used by companies against legitimate government initiatives to protect the public interest.

Our concern is for the human rights implications of these unfair structures as well as the climate outcomes. Unfortunately, ISDS rules in many trade agreements allow companies currently to claim billions from governments in compensation for law or policy changes if they can convince an international tribunal that the change will reduce their future profits. This holds even if the change is for health, environmental or other public interest reasons.

The ISDS tribunals lack the safeguards of national legal systems and have no independent judges, precedents or the right of appeal.

Disproportionately, it is corporations based in the global North that are making the claim, and it is low-income countries that are being targeted.

National governments intending to regulate for higher wages for workers or to make low-cost medicines available, or to reduce fossil fuel mining and export, are too often being faced with demands for millions - or billions - in compensation from greedy companies who judge that their future profits may be affected. This is clearly unjust.

More fundamentally, the rightful purpose of national finances is to serve the public good, not to be made available for plunder by greedy companies.

At a time when urgent climate action is needed, threats of ISDS are used by mining companies to create a chilling effect on democratically-decided climate and environmental policies.

The growing threat of ISDS to climate action

Since the 2022 general review of AANZFTA, which did not include a full review of ISDS, there have been important new developments which add substantially to the evidence against ISDS and to the imperative of removing ISDS from AANZFTA.

The most egregious example is the use of ISDS in the AANZFTA by Clive Palmer, who has registered his mining company in Singapore and, since 2023, has made four claims totalling \$420 billion against the Australian government, three of which involve the refusal of coal mining and energy licenses.

Huge claims against developing countries are increasing. In 2019, an ISDS tribunal ordered Pakistan to pay \$US 5.8 billion to a mining company. This was almost equivalent to an emergency loan from the International Monetary Fund to address Pakistan's economic crisis. There have been new claims by fossil fuel companies against the UK and the Netherlands. ASEAN countries, rich in critical mineral deposits, have in the past faced ISDS cases against industry development policies to add value to these minerals by limiting exports of unprocessed products.

There is a danger of more such cases with the increasing demand for critical minerals needed for the transition to renewable energy.

Global resistance and Australian Government policy

We are thankful that Australian government policy excludes ISDS from new trade agreements and pledges to review ISDS in existing agreements. The Government correctly recognises that ISDS reduces the right of governments to regulate in the public interest. The 2025 UNFCCC COP 30 report, Baku to Belém Roadmap to 1.3T on climate financing, has explicitly called out ISDS in trade agreements as a systemic barrier to financing climate action in developing countries.

The Colombian and Dutch governments are sponsoring a conference to promote the Belem Statement on Phasing out of Fossil Fuels, supported by 24 countries at COP 31 – including Australia. The Statement recognises ISDS as a threat to that objective.

There is an agreement between Australia and New Zealand to have a legally binding side-letter in which they agree not to apply ISDS provisions to each other. Other countries have applied selective modifications to the application of ISDS provisions in the text of the agreement.

Recommendations:

Given the increasing evidence against ISDS and the threat it poses to the urgent climate action required to reduce carbon emissions, ARRCC advocates for the removal of ISDS provisions from AANZFTA. Existing modifications indicate that there may be a number of ASEAN countries willing to discuss the removal of ISDS and/or to negotiate legally binding side letters not to apply ISDS provisions.

We therefore recommend:

1. The Australian government should support the removal of ISDS provisions (Section B in investment chapter 11) from AANZFTA

2. Australia and New Zealand already have a legally binding side letter in which they agree not to apply the ISDS provisions of AANZFTA to each other. If consensus is not reached to remove ISDS, the Australian government should seek the same side letters with all ASEAN countries.

Acknowledgement

ARRCC is grateful for the trustworthy, well-researched and enduring work of AFTINET which has informed the above submission.

Yours sincerely



Thea Ormerod
President, ARRCC (Australian Religious Response to Climate Change)
264 Pitt St
Sydney. NSW. 2000.
E: chair@arrcc.org.au
Ph: 02 9150 9713
M: 0405 293 466
W: www.arrcc.org.au