

25 February 2026

AANZFTA Investment Chapter Reform Coordinator
Trade Law and Economic Security Division
Department of Foreign Affairs and Trade
BITreforms submissions@dfat.gov.au

Dear AANZFTA Investment Chapter Reform Coordinator,

The Business Council of Australia (BCA) welcomes the opportunity to input into the Department of Foreign Affairs and Trade's review of the Investor-State Dispute Settlement (ISDS) arrangements in the Agreement establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA).

The BCA represents more than 120 of Australia's major corporations, together employing over 1.1 million people, including some of Australia's top universities and companies operating throughout the Indo-Pacific. The BCA is working towards a stronger Australia that is competitive, productive, fair and inclusive – now and for future generations.

The BCA is a long-standing supporter of deepening Australia's trade and investment relationships with Southeast Asia. Our membership includes many companies with major investment and trade partnerships across the region. The BCA welcomes the steps taken to date under Nicholas Moore's landmark report *Invested: Australia's Southeast Asia Economic Strategy 2040* and supports its full implementation at pace, including initiatives to encourage Australian investment in the region.

In this context, ISDS provisions need to also be considered from the perspective of Australian investors abroad, and not just in terms of the effect of ISDS domestically in Australia. Treaty-backed ISDS provisions provide an important avenue for Australian investors to seek remedy in the event of arbitrary, opaque or unfair decisions by foreign governments. Indeed, Australian investors have needed to use ISDS on several occasions in foreign jurisdictions to protect their interests.

It is worth noting that not all governmental decisions are contestable under existing ISDS provisions in AANZFTA. The decisions that may be contested are those that breach obligations in the investment chapter of the agreement where there is loss or damage arising out of the breach, subject to appropriate safeguards around regulation in the public interest.

ISDS provisions must preserve access and ability of arbitrators to assess cases on their merits, while at the same time including appropriate guidance and thresholds on the operation of the system. They must also balance the need for governments to make decisions in the interests of their citizens and the sovereign risk of investors.

The Business Council considers that the existing ISDS provisions in AANZFTA appropriately balance these various objectives and ensure that Australian investors will have access to dispute settlement

mechanisms that protect their investments in jurisdictions across Southeast Asia. These provisions are an important element for providing confidence to Australian investors in a priority region critical to Australia's future growth and resilience.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Wendy Black', written in a cursive style.

Wendy Black
Executive Director of Policy
Business Council of Australia