



## Investor-state dispute settlement (ISDS)

Investor-state dispute settlement (ISDS) is a mechanism in a [free trade agreement](#) (FTA) or [investment treaty](#) that provides foreign investors, including Australian investors overseas, with the right to access an international tribunal to resolve investment disputes.

### Why is ISDS included in agreements and treaties?

Australia has negotiated ISDS provisions over the past three decades to provide protection for Australian companies investing abroad. ISDS promotes investor confidence and can protect against sovereign or political risk. If a country does not uphold its investment obligations, an investor can have their claim determined by an independent arbitral tribunal, usually comprising three arbitrators.

### What does ISDS apply to?

A foreign investor in Australia, or an Australian investing overseas, can use ISDS to seek compensation for certain breaches of a country's investment obligations. For example:

- Obligations setting parameters on expropriation of a foreign investor's property;
- non-discrimination and minimum standards of treatment (such as protection against denial of justice);
- a commitment to ensure foreign investors will be able to move capital relating to their investments freely, subject to appropriate safeguards.

An ISDS tribunal cannot overturn domestic laws and regulations. The tribunal is limited to determining breaches of certain investment obligations. ISDS does not give foreign investors the right to enforce other provisions of the FTA, including, for example, the [intellectual property chapter](#).

### Does Australia have ISDS provisions?

Australia has ISDS provisions in seven FTAs:

- [Comprehensive and Progressive Agreement for Trans-Pacific Partnership](#)
- [China–Australia Free Trade Agreement](#)
- [Korea–Australia Free Trade Agreement](#)
- [Australia–Chile Free Trade Agreement](#)
- [Singapore–Australia Free Trade Agreement](#)
- [Thailand–Australia Free Trade Agreement](#)
- [ASEAN–Australia–New Zealand Free Trade Agreement](#)

There are also ISDS provisions in the [Peru-Australia Free Trade Agreement \(PAFTA\)](#), which is yet to enter into force.

Australia also has ISDS provisions in 18 Investment Protection and Promotion Agreements (IPPAs) with Argentina, China, Czech Republic, Egypt, Hong Kong, Hungary, Indonesia, Laos, Lithuania, Pakistan, Papua New Guinea, Peru, Philippines, Poland, Romania, Sri Lanka, Turkey, and Uruguay.

Australia's IPPA with India was unilaterally terminated by India on 23 March 2017. The provisions of the Agreement will continue to apply to investments made on or before 22 March 2017 for a period of 15 years from the date of termination of the Agreement. Investments made on or after 23 March 2017 are not covered by the Agreement.

Australia agreed to terminate its IPPAs with Mexico, Peru and Vietnam, subject to transitional arrangements, upon the entry into force of the CPTPP as between Australia and Mexico, Peru and Vietnam respectively. Accordingly, Australia's IPPA with Mexico was terminated on 30 December 2018 and Australia's IPPA with Vietnam was terminated on 14 January 2019. Further information is available at [Australia's bilateral investment treaties](#).

## How is ISDS different from other forms of dispute resolution?

ISDS is an extra mechanism that enables an investor to bring a claim against a host state that is a party to the treaty. Dispute settlement is otherwise a state-to-state process.

## Does Australia apply ISDS in all FTAs?

The Government considers ISDS provisions in FTAs on a case-by-case basis in light of the national interest.

## Is ISDS a threat to Australia's sovereignty?

No. It does not prevent the Government from:

- changing its policies;
- regulating in the public interest;
- regulating in the interests of the environment;
- regulating in the interests of the Pharmaceutical Benefits Scheme or health system.

ISDS does not freeze existing policy settings. ISDS claims must be based on breach of an investment obligation. It is not enough that an investor does not agree with a new policy or that a policy affects its profits.

## Have Australian companies used ISDS overseas?

Yes. Australian-based companies have used ISDS in proceedings against other countries to protect their investments overseas. The Australian Government is not a party to these disputes.

## Has Australia been subject to ISDS disputes?

Yes. Over the past 30 years there has been just one ISDS tribunal hearing against Australia. The dispute was brought by Philip Morris Asia challenging Australia's tobacco plain packaging legislation. On 18 December 2015, the tribunal issued a unanimous decision agreeing with Australia's position that the tribunal had no

jurisdiction to hear Philip Morris Asia's claim. More information on this case is available at [Investor-state arbitration - tobacco plain packaging](#)