



Friends of the Earth Australia submission on the Renegotiation of Australia's Bilateral Investment Treaties with Argentina, Pakistan, and Türkiye

Friends of the Earth Australia welcomes the opportunity to make a submission to the review of Australia's bilateral investment treaties with Argentina, Türkiye and Pakistan. Trade and investment policy is crucial to solving the interconnected climate, biodiversity and pollution crisis we face. This submission strongly supports the removal of Investor State Dispute Settlement (ISDS) provisions in these three agreements.

Friends of the Earth Australia is an environmental organization with over 100,000 supporters across the country and part of a global network in 73 countries with over 2 million members advocating for a just and sustainable future. We are a grassroots advocacy group that has been demanding a fair, and sustainable trade policy for decades. Friends of the Earth Australia is a founding member of the Australian Fair Trade and Investment Network (AFTINET).

Threat of ISDS to Australia's environment

Investor-State Dispute Settlement (ISDS) is a dispute resolution method included in hundreds of trade and investment agreements designed to give exclusive legal protection to foreign companies investing abroad, giving them the right to sue host governments in a private tribunal over any perceived breach of the rules around the treatment of investors. This secret corporate court system is a threat to Australia's democracy and environment and we believe it should be banned.

Most investor-state disputes (ISDS) have concerned environmental matters. Corporations are using the ISDS system found in trade and investment agreements to challenge a range of environmental policies, from nature protection to fossil fuel phase outs. As of the end of 2019, 41% of all ICSID cases were energy and natural resources-related.

Click here and see attached document to read in full Friends of the Earth's briefing on [The case for banning Investor State Dispute Settlement in Australia](#)

ISDS is a potent inclusion in investment treaties and trade agreements, giving powerful rights to multinational corporations which allow them to bypass domestic courts and seek compensation through secretive, business-friendly tribunals. Analysis of the current ISDS system demonstrates how the system has dangerously strayed from its original intention; arbitration tribunals lack basic standards of a fair judicial system and corporations have attacked legitimate government measures intended to protect the public and the environment. Any reasonable political measure that impacts a company's projected profits can be equated to expropriation, with cases already launched against the banning of toxic chemicals, restrictions on tobacco advertising, requirements to stem pollution from coal plants and even for the introduction of a minimum wage.

The inconsistency of the ISDS system and the way it can be manipulated by investors has been highlighted by the fact that Australian billionaire Clive Palmer has registered his mining company, Zeph Investments,¹ in Singapore and claims to be a Singaporean investor, using investor rights in two Australian trade agreements with Singapore and ASEAN to claim a total of \$420 billion from the Australian government. These claims can have real world impacts, and are particularly crippling for low-income countries. For example, Pakistan has been ordered to pay Australian mining company Tethyan \$US 5.8 billion in an ISDS dispute.²

The Australian government has a policy against ISDS provisions in new trade and investment agreements and a commitment to review it in existing agreements, recognising that ISDS provisions reduce government scope to regulate in the public interest. Many countries are also taking similar action and have begun to reconsider their current trade agreement regime, and reassess the usefulness of ISDS provisions. Indonesia, South Africa, India, the EU and Poland are among those taking steps to reform their current trade regime.

The ISDS system impedes on national sovereignty, domestic laws and is a threat to our environment. It benefits corporations, yet places no obligations on investors to behave responsibly, creating an asymmetric system that gives multinationals the same rights as sovereign states. The significant increase in ISDS cases worldwide has resulted in more public attention on the once obscure element of international trade agreements, particularly as more cases are brought around issues of land, water security and pollution.

Recommendations

Friends of the Earth Australia recommends that ISDS provisions should be removed from the agreements with Argentina, Pakistan and Türkiye, which were signed in 1997, 1998 and 2009, respectively. They all include ISDS and lack protections for the right of governments to regulate in the public interest.

These agreements have a similar structure. The first 12 Articles deal with aims, definitions and general protections for investment, and a state-to-state process for dealing with disagreements between state parties about the interpretation and application of the agreement. Article 13 deals specifically with disputes initiated by individual investors, Investor-State Dispute Settlement (ISDS).

Article 13 ISDS provisions should be removed from the agreement. The agreement preamble should also include the right of governments to regulate in the public interest, and the safeguards for government regulation should be strengthened in the context of a state-to-state dispute process.

¹ Patricia Randal, 'How Clive Palmer is suing Australia for \$300 billion with the help of an obscure legal clause', the Conversation <https://theconversation.com/how-clive-palmer-is-suing-australia-for-300-billion-with-the-help-of-an-obscure-legal-clause-and-christian-porter-203111>

²Kyla Tienhaara, World Bank ruling against Pakistan shows global economic governance is broken, *the Conversation*, <https://theconversation.com/world-bank-ruling-against-pakistan-shows-global-economic-governance-is-broken-120414>