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Senate Inquiry reveals community opposition and dangers of foreign investor rights to sue governments despite claimed “safeguards”

“A [Senate Inquiry](#) into foreign investor rights to sue governments for damages over domestic legislation, known as Investor-State Dispute Settlement or ISDS, received 141 submissions and 11,000 letters, which were overwhelmingly critical of ISDS,” Dr Patricia Ranald, Convenor of the Australian Fair Trade and Investment network, said today. The inquiry report was tabled last night.

The Senate Committee inquiry examined the Greens’ *Trade and Foreign Investment (Protecting the Public Interest) Bill 2014*, which seeks to ban governments from agreeing to foreign investor rights to sue governments in trade agreements.

“The Government has a majority on the Senate Legislation Committee on Foreign Affairs, Defence and Trade which conducted the inquiry. Although the majority [report](#) did not support a ban on ISDS, it acknowledged many [flaws in the ISDS system](#), which enables governments to be sued by foreign investors over health and environmental legislation and argued for substantial changes to the existing system. The ALP comments said that ISDS clauses were not needed in trade agreements and reaffirmed ALP policy opposition to ISDS, but did not support the specific wording of the Bill. The Greens minority report supported the legislation to ban ISDS in trade agreements,” said Dr Ranald.

“Community opposition to ISDS has mounted because the Philip Morris tobacco company is using an obscure Hong Kong Australia investment agreement to sue the Australian government for millions of dollars of damages over our plain packaging legislation. This is an attempt to undermine Australia’s High Court decision which found they were not entitled to any payment under Australian law,” explained Dr Ranald.

“ISDS tribunals lack the basic legal protections of domestic legal systems. They consist of investment law experts who can be arbitrators one month and lawyers the next. This means there is no independent judiciary. There are no precedents or appeals, so decisions can be inconsistent. “

“Australia’s High Court Chief Justice French has written a paper entitled [ISDS: A Cut above the Law?](#) expressing his concerns about the impact of ISDS on domestic court systems, citing the Philip Morris case, and the Eli Lilly pharmaceutical company case against a Canadian court decision about a medicine patent. The paper noted governments have not consulted with the judiciary about ISDS,” said Dr Ranald

“The committee heard evidence that many governments are reviewing the inclusion of ISDS in trade agreements. The European Union’s public inquiry on ISDS has received thousands of submissions. [Hundreds of academic experts](#) have argued that the proposed “safeguards” for health and environmental legislation proposed in a trade agreement between the EU and the US are inadequate. But these safeguards are far more extensive than those in the Korea Australia free trade agreement, which has been signed and is being reviewed by two other Parliamentary committees”

“ISDS is also being debated in the Trans-Pacific Partnership (TPP) negotiations next week between Australia, the US and 10 other countries,” said Dr Ranald, “We urge all parliamentarians to acknowledge the overwhelming community opposition to ISDS and reject its inclusion in the Korea FTA, the TPP or any other trade agreement.”

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