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MEDIA RELEASE

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Don't let foreign investors sue governments over domestic laws, fair trade groups tell Senate inquiry

“Foreign investors should not have special rights to sue Australian governments for millions of dollars in international tribunals over domestic laws,” Dr Patricia Ranald, Convenor of the Australian Fair Trade and Investment Network (AFTINET) said today. “The Philip Morris tobacco company is currently using such rights in an obscure Australia-Hong Kong investment agreement to sue the Australian government over plain packaging legislation, despite the fact that the Australian High Court found that they were not entitled to compensation under Australian law. Such investor rights, known as investor state disputes or ISDS, are an attack on our democracy and sovereignty”.

Dr Ranald is giving evidence in Canberra today to a Senate inquiry into the *Foreign Investment Protecting the Public Interest Bill*, which seeks to prevent Australian governments from agreeing to ISDS as part of bilateral and regional trade agreements like the [Korea-Australia Free Trade Agreement](#) and the Trans-Pacific Partnership Agreement.

“Our [submission](#) (no. 105) to the Senate inquiry shows that these international tribunals lack the independence and consistency of national legal systems. They are made up of investment law experts who can be lawyers one month and arbitrators the next, and there is no system of precedents or appeals, resulting in inconsistent decisions which generally favour investors,” added Dr Ranald.

“Over the past 12 months many governments have announced that they will review ISDS clauses and will not include them in future trade agreements,” said Dr Ranald. “These include Indonesia, India, South Africa and 10 Latin American countries. The European Union is currently conducting a review of proposed ISDS clauses in the US- EU Trans-Atlantic partnership agreement”.

“The Howard government did not agree to include ISDS in the Australia-US Free trade agreement in 2004, and the Productivity Commission recommended against it in 2010. The previous ALP Government had a policy against it, but the current Coalition Government is prepared to negotiate it on a case-by-case basis, and has included in the Korea FTA, but not the Japan FTA,” explained Dr Ranald.

“Claimed safeguards for health and environment legislation in recent agreements have not prevented foreign investors from suing governments over health and environmental laws. 120 European and North American [academic experts](#) have analysed the more extensive safeguards proposed in the US EU Transatlantic trade agreement, and have concluded that they will not protect health and environment laws”, said Dr Ranald. “The new European Commission President has also said he [opposes ISDS](#), and will not accept that the jurisdiction of courts in the EU Member States is limited by special regimes for investor disputes. He says the rule of law and the principle of equality before the law must also apply in this context”.

“Australia should follow these examples and not agree to include ISDS in the Korea free trade agreement, the Trans-Pacific Partnership or any other trade agreement.”

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