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Trade and Investment Agreements (Consultation) Bill 2026

Further contribution received after the 11 November 2026 submission

I share Stephanie's concerns with the Bill, and agree that one solution would be to increase efforts to resolve a case either before progressing to arbitration or continuing with settlement discussions through arbitration, as is typically the case with litigation. If the idea is to prioritise the efficient and fair resolution of disputes, then arbitration should be preserved as a backstop last resort option for investor disputes that cannot be resolved amicably despite efforts to do so because of its neutrality. This is critical for Australian outbound investors. As Stephanie has said, legislating to prevent your own government from signing ISDS clauses in future FTAs or BITs, appears not only to undermine your ability to negotiate FTAs and BITs in the national interest, but it means that Australian investors will not benefit from such protections elsewhere, and will be forced to litigate in the courts of a host-state against their government's actions where the Australian investor alleges expropriation or another otherwise protected-against investment intervention.

These comments are Gary Born's own views. They do not imply endorsement of every recommendation in Stephanie Hunt's submission or institutional endorsement.