Steph Hunt ***Litigation, Mediation & Arbitration Practice***
Gateway, Level 36, 1 Macquarie Place, Sydney NSW 2000
The Commons, 55 Collins Street, Melbourne VIC 3000
T +61 2 8051 3091 | M +61 429 931 151 | law@stephhunt.com

11 November 2026

Senator the Hon Don Farrell, Minister for Trade and Tourism
Senator the Hon Matthew Canavan
Shadow Minister for Trade, Investment and Tourism
Parliament House, CANBERRA ACT 2600

Dear Minister and Shadow Minister

Trade and Investment Agreements (Consultation) Bill 2026

I recommend that the Bill not proceed as drafted. I share concerns about the cost and duration of investor-State dispute settlement (ISDS) arbitration, but the proposed signing prohibitions would remove future investor protections and Australia's ability to freely negotiate.

I write in my personal capacity as an Australian litigator, arbitrator and mediator. My 2015 MIDS thesis, lodged with DFAT, proposed compulsory mediation, specialist government capability to prevent disputes, and arbitration as an enforceable backstop.

I recommend that:

- The categorical prohibitions in clauses 16(2)(a) and 23(2) not be passed as drafted, despite the cost risks posed by ISDS arbitration, noting its benefits for Australian investors overseas;
- Instead, Australia use early negotiation and mediation, ad hoc or under the ICSID Mediation Rules, to reduce defence costs, and support consent awards where appropriate;
- Future ISDS clauses require early consultation and mediation, authorise Ministers to approve settlements and negotiations with disputing parties, and retain an arbitral backstop protecting Australians investing overseas, including SMEs, and investors in Australia; and
- Australia ratify the Singapore Convention without excluding government-party settlements, with any reservation limited to article 8(1)(b). Parties should be able to agree to its application, including through an ISDS clause.

I have included a one-page summary of my position, and an addendum with wider views.

Yours sincerely



Stephanie Hunt MCIArb
International arbitrator and mediator (LLB (Hons) ANU, LLM University of Geneva; and the Graduate Institute of Geneva; Harvard Program on Negotiation; FCIArb & CIArb Oxford Diploma candidate)

Submission on Future Investor State Dispute Settlement Policy

Trade and Investment Agreements (Consultation) Bill 2026

Proposed sections 16(2)(a) and 23(2) would prevent the Minister from signing future free trade agreements (FTAs) or bilateral investment treaties (BITs) containing ISDS provisions, unless Australia were to join existing negotiations, subject to clauses 12(2), 12(4) and 22. The Bill does not terminate existing treaties, extinguish accrued rights or disapply survival clauses. For such agreements containing ISDS clauses, the signing prohibitions leave no ministerial discretion.

My primary recommendation is that the Bill not pass as drafted. I also have concerns about delegated decision-making power and the composition of the Trade Advisory Group. The Bill must also define ISDS clause, and clarify whether its proposed prohibitions encompass mediation and negotiation, or only arbitration. I recommend against prohibiting any ISDS clause.

If the Government's primary intention is to reduce the legal costs of defending ISDS claims, it should engage in mediation or other conciliatory measures before such costs accumulate. Lawful expropriation still requires compensation, and costs should be proportionate.

Removing legal investor protections inbound is not costless. Even if you do not agree that protection results in more investment, treaty protections clearly affect sovereign-risk allocation alongside contracts, insurance and domestic courts, and project finance and viability. Australian SMEs lack bargaining power for bespoke deals and would be forced to take their grievances in host-State courts, against the same government for expropriation of their investment.

The government's policy analysis should consider Australia as a respondent State, a maker of international rules and the home State of investors abroad. In my view, the Bill gives insufficient weight to the latter two roles. A robust national-interest assessment should weigh all three.

Future ISDS clauses could preserve legitimate public-interest regulation, with appropriate compensation where relevant, and require early consultation, negotiation and mediation. Ministers should be authorised to settle appropriate claims. Arbitration should remain a last resort where settlement fails, preserving access to a neutral international tribunal.

The ICSID Mediation Rules, effective from 1 July 2022, are available for investment disputes involving a State where the parties consent in writing, including through a treaty or contract. In existing ICSID Convention arbitration, the parties may jointly ask the tribunal to embody their signed settlement in an award, subject to the applicable requirements.

Australia signed the Singapore Convention on 10 September 2021 but has not ratified it. Australia should ratify without an article 8(1)(a) exclusion for government-party settlements, limiting any reservation to article 8(1)(b). Implementation would support enforcement of qualifying international mediated settlements, subject to the Convention's requirements.