## 2. Associate Professor Rajesh Sharma, RMIT University

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I am of the view that doing away with ISDS Arbitration completely is not a good approach. There will be some disputes which must be resolved fully and finally. So there must be a forum to resolve any issues which parties cannot resolve by themselves or with the help of a third party (eg in Mediation or conciliation). This is also important from granting justice to parties.

While keeping ISDS mechanism, the government can emphasise on using negotiation, mediation or any dispute prevention mechanism in its agreements. ISDS Mediation has been widely accepted in the UNCITRAL Group III as the means of resolving ISDS dispute. Even model clauses have been agreed to be used in the future as well as the current BITS and FTAs (investment part). You may note that Australia has been actively participating in UNCITRAL Group III (ISDS Reform) discussions.

Australia is a signatory to the Singapore Convention and during the deliberation of the Singapore Convention there was a consensus that the Singapore Convention will apply on ISDS Mediation. Australia has not taken reservation to exclude Government and government agencies, so it is possible to use mediation as a method of resolving investment disputes. Any settlement agreement resulting from mediation will be final and binding on parties and that can be enforced in any countries which has signed and ratified the Singapore Convention. It is also important to note that mediation can be used even during the arbitration process as well as after arbitral award is issued if parties agree. So, Arbitration and mediation can be used together and as a parallel proceeding. If there is no arbitration process available to parties then in cases where parties do not reach any agreement during negotiation or mediation then there will be no avenue left for parties to seek justice outside of host-state courts.

I also encourage and request the Government should consider ratifying the Singapore Convention as soon as possible so that investors and other commercial partners will be encouraged to use mediation in resolving their disputes with Australian parties including against government in ISDS disputes.