

## Quaker Peace & Legislation Committee



### QUAKER PEACE AND LEGISLATION COMMITTEE

#### TRADE AND FOREIGN INVESTMENT

*Submission to Senate Foreign Affairs, Defence and Trade Legislation Committee Enquiry into the Trade and Foreign Investment (Protecting the Public Interest) Bill 2014 which was introduced to the Senate in March 2014.*

#### **Introduction**

1. The Quaker Peace and Legislation Committee (QPLC) represents Australian Quakers on national peace concerns, and seeks to influence parliamentary and government policies and legislation in a way that promotes peace and justice in the Australian community and globally. This submission reflects ongoing concern about the adverse impact of some aspects of international trade agreements on Australia's capacity to maintain standards of health, environment, consumer protection, and human rights.

2. The focus of this submission is the negotiations on the Trans Pacific Partnership (TPP) agreement in which Australia has been involved in recent years. In particular, we believe the Investor State Dispute Settlement (ISDS) provisions are likely to have a negative effect on central Australian values. For this reason we support the proposed Trade and Investment (Protecting the Public Interest) Bill put forward by Senator Whish-Wilson. The purpose of this Bill is "to prevent the Commonwealth from entering into an agreement with one or more foreign countries that includes investor-state dispute settlement provisions".

#### **ISDS Provisions**

3. Investor State Dispute Settlement is an instrument of public international law that grants a foreign investor the right to initiate dispute settlement proceedings against a foreign government, as part of a trade agreement, if, on the basis of a claim that the investor's business interests will be adversely affected by government policies. According to Wikipedia, many bilateral and regional trade and investment treaties include such provisions, and disputes can be brought before an arbitral tribunal such as the International Centre for Settlement of Investment Disputes of the World Bank, the World Trade Organisation, the London Court of International Arbitration, or the International Chamber of Commerce.

4. The North America Free Trade Agreement (NAFTA) contains ISDS provisions, and as a result companies in the USA, Canada and Mexico have sued signatory governments over environmental protection laws. In May 2013 the United Nations Conference on Trade and Development reported that 244 cases under ISDS have been completed – 42% decided in favour of the State and 31% in favour of the investor. 27% were resolved before arbitration. According to an article by [Martin Khor](#)



(24 March 2014, *The Star Online*) “several countries are reviewing these agreements, prompted by the number of cases brought by foreign companies who claim that changes in government policies affect their future profits”. He lists Indonesia, Malaysia, South Africa, India and Germany as examples.

5. When the US-Australia Free Trade Agreement was negotiated in 2004, ISDS provisions were excluded as a result of strong public pressure. The Australian Fair Trade and Investment Network (AFTINET) has drawn attention to an ISDS provision in the 1993 Hong Kong-Australia investment treaty that has allowed tobacco companies to sue the Australian Government over plain packaging laws. Given this demonstration of cost to Australian taxpayers and potential for harm, and the fact that trade agreements can be concluded without the inclusion of the harmful provisions, we suggest that ISDS can be excluded without jeopardizing an agreement.

### **The Legislation**

6. We applaud the initiative of Senator Whish-Wilson proposing steps to safeguard Australia from international corporate threats to Australia’s capacity to regulate and legislate to protect Australian interests. It has taken many years to establish standards in such areas as public health, environmental protection, quarantine, and food security and safety.

7. In his second reading speech in the Senate on 5 March, Senator Whish-Wilson drew attention to a Productivity Commission report in 2010, and said that that ISDS provisions “mean governments second guess themselves on whether a public policy initiative will cause an arbitration claim to be made against them by a foreign corporation”. We support the view of Senator Whish-Wilson that the formulation of public policy should give priority to the wellbeing of the nation and its citizens, not the interests of foreign companies. There are sufficient avenues for legal redress available within the Australian legal system for corporations whose legitimate activities are unfairly compromised.

8. We endorse Senator Which-Wilson’s statement that “sovereign governments should not be challenged simply for making laws to govern their country or making a decision to protect their environment or the health of their citizens”.

### **Conclusion**

9. We ask that the Parliament take seriously the growing concern in the Australian community about the potential threat of ISDS provisions in trade agreements. These agreements are no longer just about opening trade opportunities, but are increasingly tipped in favour of large multinational corporations that can exert undue influence over Australian public policy.