

# Chapter 1

## Introduction

### Referral and consideration of the bill

1.1 On 6 March 2014, the Trade and Foreign Investment (Protecting the Public Interest) Bill 2014 was referred to the Senate Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by 16 June 2014.<sup>1</sup> The inquiry was subsequently granted an extension by the Senate until 27 August 2014. The reasons for referral cited by the Selection of Bills Committee were:

Investor State Dispute Settlement [ISDS] clauses are extremely complex parts of trade agreements. There is community concern about what the clauses in the recently signed free trade deal with Korea means for environmental and health regulation. The Trans Pacific Partnership Agreement which Australia is negotiating currently also may include ISDS cases.

Australia is still fighting a high profile ISDS case against Phillip Morris regarding plain packaging for cigarettes.<sup>2</sup>

1.2 The bill was introduced as a private senators' bill by Senator Whish-Wilson on 5 March 2014.<sup>3</sup> The Explanatory Memorandum for the bill states that:

The purpose of this Bill is to prevent the Commonwealth from entering into an agreement with one or one more foreign countries that includes investor-state dispute settlement provisions.<sup>4</sup>

1.3 In his second reading speech, Senator Whish-Wilson argued that:

Foreign investment is an important part of trade and in fact it has become a more central part of trade agreements than the traditional exchange of goods and services. The conflict between corporations and policy sovereignty is a very complex and sensitive area. Foreign investment is important for Australia and many other countries. Sovereign risk is an important consideration for companies who want to invest in foreign countries; risk is a part of doing business. The purpose of ISDS clauses is to push more of that risk onto governments and away from corporations.<sup>5</sup>

### Conduct of inquiry

1.4 The committee advertised the inquiry on its website and in the *Australian* newspaper. The committee also wrote to individuals and organisations likely to have

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1 *Journals of the Senate*, 6 March 2014, p. 576.

2 Selection of Bills Committee, *Report No. 2 of 2014*, 6 March 2014, Appendix 13.

3 *Journals of the Senate*, 6 March 2014, p. 561.

4 *Explanatory Memorandum*, p. 2.

5 Second reading speech, *Senate Hansard*, 5 March 2014, p. 902.

an interest in the bill, drawing their attention to the inquiry and inviting them to make written submissions.

1.5 The committee received 141 submissions to the inquiry. These submissions are listed at Appendix 1, and are available on the committee's website. The committee held a public hearing on 6 August 2014. Witnesses who appeared at the public hearing are listed at Appendix 2.

1.6 The committee also received over 11,000 emails from individuals using an online tool by which people could express their opposition to ISDS clauses in trade agreements to the committee. Due to the large number of emails received, it was not possible for the committee to accept them as submissions and publish them on the committee's website. The committee, however, agreed to accept the emails as correspondence, and acknowledge them on the committee's website.

### **Acknowledgements**

1.7 The committee thanks all those who assisted with the inquiry.