

Appendix A: Questions in writing for Professor Jane Kelsey

1. In your evidence during hearing week six, you noted that Australia had renegotiated the bilateral investment treaty (BIT) with China, and you noted that Australia's BIT with China did not include Investor-State Dispute Settlement (ISDS).

1.1 Would you agree that Article XIII (Settlement of disputes between Contracting Parties) provides at (2) that:

The Contracting Parties shall endeavour to resolve any dispute between them on the interpretation or application of this Agreement by prompt and friendly negotiations and consultations. If a dispute is not resolved by such means within sixty days of one Contracting Party seeking in writing such negotiations or consultations, it shall be submitted at the request of either Contracting Party to an Arbitral Tribunal established in accordance with the provisions of Annex B of this Agreement, or, by agreement, to any other international tribunal.

1.2 Would you agree that Article XIII of the Australia-China BIT provides for ISDS?

2. You also referred to the termination of the 1996 Australia-Hong Kong BIT and the negotiation of a new BIT, signed in 2019. You said that the renegotiated Australia-Hong Kong BIT did not provide for ISDS.

2.1 Would you agree that Article 24 of that BIT provides that:

If an investment dispute has not been resolved within six months of the receipt by the respondent of a written request for consultations in accordance with Article 23.2:

the claimant, on its own behalf, may submit to arbitration under this Section a claim that:

the respondent has breached an obligation under Section A (Definitions and Substantive Obligations); and

the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

the claimant, on behalf of an enterprise of the respondent that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim that:



the respondent has breached an obligation under Section A (Definitions and Substantive Obligations); and

the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

- 2.2 Would you agree that the 2019 BIT, while it updates the rules and includes new safeguards, still includes ISDS?