



4 July 2014

The Committee Secretary  
Joint Standing Committee on Treaties  
PO Box 6021  
**PARLIAMENT HOUSE ACT 2600**

Dear Sir/Madam

**TREATY ON ECONOMIC CO-OPERATION BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF PAPUA NEW GUINEA.**

The Australia Papua New Guinea Business Council notes that the above Treaty with the associated National Interest Analysis was tabled in the Australian Parliament on Tuesday 17 June 2014, and that the Treaties Committee has invited interested persons and organisations to make submissions on the Treaty.

The Australia Papua New Guinea Business Council, formed in 1980, is a not-for-profit association of Australian businesses with interests in Papua New Guinea. The Council works to promote trade and investment between Australia and Papua New Guinea and economic and employment growth in Papua New Guinea, acts as a channel for business to communicate with governments on matters germane to business, and is a centre for information and networking for those Australian companies with business interests in Papua New Guinea. The Council has for more than 30 years worked closely with business in Papua New Guinea towards achievement of these objectives.

The Council has a long relationship with successive Australian Governments at both the political and senior officials level, and continues that relationship.

In 2010 the Council advised the Department of Foreign Affairs and Trade that it supported the recommendation in the Review of the Development Co-operation Treaty that the Treaty should be replaced by an economic relations agreement which reflects the growing maturity of the bilateral relationship, and the fact that the economic relationship now far exceeds the development co-operation relationship. When Australian aid to Papua New Guinea began 35 years ago, it exceeded Papua New Guinea's own revenue, and equalled Papua New Guinea-Australia trade. In 2010 it was one-tenth of government revenue, and one-tenth of bilateral trade.

But the Council has been disappointed with the quality of consultation on this Treaty, and has continually expressed this disappointment to Department of Foreign Affairs and Trade officials.

On 17 January 2011, in response to an invitation from the Department of Foreign Affairs and Trade and following consultation with Council members, the Council put forward to the Department suggestions on issues business considered could be included in the Treaty.

The Council has received no acknowledgement of this correspondence, nor has there been any discussion in the Treaty context about the proposals contained therein. One of the proposals made by the Council has been put in place by ministerial action, but it could just as easily be set aside by ministerial action at some future time. Inclusion in the Treaty would have committed both the Australian and Papua New Guinea Governments to the permanence of this arrangement.

In the National Interest Analysis which forms part of the papers before the Committee on this Treaty it states, inter alia: “Australian businesses were provided briefings on negotiations for the ECT through regular meetings with the Australia Papua New Guinea Business Council in 2011, 2012 and 2013.”

Such meetings certainly took place, but none of the meetings involved discussion of the issues put forward by the Council and were general in nature. Officials declined specifically to discuss any of the substantive text relating to business being negotiated in the Treaty, or to have any discussion on the issues raised by the Council.

The tabling of the Treaty in the Parliament on 17 June 2014 is the first time we have had an opportunity to examine the text which has been negotiated.

Now that we have had an opportunity to examine the text of the Treaty, we are disappointed at the outcome. In our judgement, there is little in the Treaty which will add any further value to the business relationship and indeed there is a risk of creating some confusion between this Treaty and other extant Treaties.

The Council notes potential possible conflicts in the future application of this Treaty in relation to two other current bilateral Treaties between Australia and Papua New Guinea. They are the Agreement on Trade and Commercial Relations between the Government of Australia and the Government of Papua New Guinea [PATCRA II] which entered into force on 20 September 1991, and the Agreement between the Government of Australia and the Government of the Independent State of Papua New Guinea for the Promotion and Protection of Investments which entered into Force on 20 October 1991.

We understand these Treaties will continue in operation, but we have concerns about possible conflicts might arise between them, and how conflicts would be resolved in the event of a dispute over which of the Treaties is paramount on any particular issue.

For example, we consider the new Treaty **provides weaker business protection** for Australian business than that provided in the Agreement on Trade and Commercial Relations between the Government of Australia and the Government of Papua New Guinea (PATCRA II) which entered into force on 20 September 1991. The following table shows the relevant text in each Treaty.

Proposed Economic Co-operation Treaty	PATCRA II
<p style="text-align: center;"><b>Article 2</b> <b>Bilateral Relations</b></p> <p>2. Each Party shall, subject to its laws and regulations, accord nationals of the other Party fair and transparent treatment with respect to matters in connection with their business, immigration and professional activities. Each Party shall endeavour, subject to its laws and regulations, to accord non-discriminatory treatment between nationals of the other Party and nationals of any third country with respect to their business and professional activities.</p>	<p style="text-align: center;"><b>Article 18</b> <b>Promotion of trade</b></p> <p>4. In recognition of the role of business visitors in the promotion of trade investment, each Member State shall accord business visitors who are nationals of the other Member State, fair and equitable treatment with respect to their entry into, stay and travel within and departure from its territory, provided that such treatment shall be in accordance with the Member State's laws and shall not be discriminatory between nationals of the other Member State and nationals of any third country.</p>

Two specific recent examples of Papua New Guinea discriminating against Australian business in breach of its Treaty obligations to provide non-discriminatory treatment for Australian citizens is the removal in March 2014 of the visa on arrival facility for Australian citizens when citizens of other countries continue to enjoy this facility, and a decision in 2013 by the Papua New Guinea Government to provide fee free

visas for nationals of certain countries while requiring Australian citizens to pay an increased visa fee. These matters remain unresolved, and in the Council's view the language in the proposed new Treaty will make it more complicated to resolve them.

The proposed Treaty also appears to provide potential for conflict with the Agreement for the Promotion and Protection of Investments in relation to the Most Favoured Nation provision mandated at Article 14 of that Treaty.

What might be done to clarify these potential conflicts between different Treaties is not clear. But what is clear is the current text of the proposed Treaty appears to diminish the protection afforded to Australian business by previous Treaties, and the Council requests the Committee to undertake further enquiries in this regard.

The proposed Article 4 entitled "Business Co-operation" is weak and makes no commitments about taking any actual action to further develop bilateral business relations, simply making a number of broad statements of goodwill. It fails, especially at Article 4.2, to even acknowledge the work which business has been doing bilaterally for three decades to "find areas of common interest and to meet regularly to encourage further investment and cooperation". For example, the Council holds, in co-operation with the Business Council of Papua New Guinea, an annual Australia Papua New Guinea Business Forum the most recent of which, the 30<sup>th</sup>, was held in Cairns in May 2014 and attracted in excess of 500 participants. At the very least the inclusion of the word "continue" would have been some recognition of this.

This Treaty provided an opportunity for the Australian Government to put some real substance to its rhetoric about business and economic interests being paramount in its diplomacy. In the Council's view this Treaty fails that test, and as noted above might even damage Australian business protection.

Council representatives will be available to meet with the Committee should that be the wish of the Committee.

Yours sincerely

(Geoff Day)  
President