

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

Joint Standing Committee on Treaties

FIRST REPORT

Australian Government Publishing Service

August 1996

© Commonwealth of Australia

ISBN

COMMITTEE MEMBERS:

Mr W L Taylor MP (LP, QLD) (Chairman)

Mr R B McClelland MP (ALP, NSW) (Deputy Chairman)

Senator E Abetz (LP, TAS)

Senator V W Bourne (DEM, NSW)

Senator K Carr (ALP, VIC)

Senator K Denman (ALP, TAS)

Senator C M Ellison (LP, WA)

Senator B J Neal (ALP, NSW)

Senator W G O'Chee (NP, QLD)

Hon D G H Adams MP (ALP, TAS)

Mr K J Bartlett MP (LP, NSW)

Mr L D T Ferguson MP (ALP, NSW)

Mr G D Hardgrave MP (LP, QLD)

Mr A C Smith MP (LP, QLD)

Mr W E Truss MP (NP, QLD)

Mr C W Tuckey MP (LP, WA)

COMMITTEE SECRETARY

Mr Peter Stephens

INQUIRY STAFF

Principal Research Officers	Mr Patrick Regan Ms Cheryl Scarlett
Research Officer	Mr Bob Morris
Executive Assistant	Ms Helen Collins

FIRST REPORT

CONTENTS

COMMITTEE MEMBERS:	iii
RECOMMENDATIONS	vii
CHAPTER 1: INTRODUCTION	1
The Senate Committee Report.....	1
The Committee	1
Reforms to the treaty making process	2
National Interest Analyses	3
The Committee's approach	4
CHAPTER 2: TREATIES TABLED ON 21 MAY 1996	7
Extradition agreements	9
Agreement Establishing the International Institute for Democracy and Electoral Assistance.....	10
Agreement with the Korean Peninsula Energy Development Organization regarding an Australian Financial Contribution	11
General Agreement on Trade in Services	12
Agreement with Indonesia on Maintaining Security	12
CHAPTER 3: TREATIES TABLED ON 18 JUNE 1996	13
Agreement with the Government of Singapore concerning the use of the Shoalwater Bay Training Area.....	14
Importation and Management of Hazardous and Radioactive Waste within the South Pacific Region (Waigani Convention).....	14
Urgent treaty: Subsidiary Agreement with Japan on Tuna Long-Line Fishing	14
Future Challenges	15
APPENDIX 1	
List of Submissions	17
APPENDIX 2	
National Interest Analysis Pro Forma.....	19

RECOMMENDATIONS

1.17 The Joint Standing Committee on Treaties recommends that:

National Interest Analyses should also include a discussion of the legal effects and potential areas of conflict with State and Territory laws;

National Interest Analyses identify the Commonwealth department or agency with primary carriage for a particular treaty along with relevant contact details; and

National Interest Analyses include specific details of organisations and individuals consulted and how such consultation occurred, particularly with the Treaties Council.

2.12 The Joint Standing Committee on Treaties recommends that:

An assessment of the performance and effectiveness of the International Institute for Democracy and Electoral Assistance be provided to the Committee, including the extent to which its activities are focused in countries of significance to Australia and the level of Australian involvement in its activities, before any further financial contributions are made.

2.18 The Joint Standing Committee on Treaties recommends that:

The Department of Foreign Affairs and Trade provide the Committee with details of contracts tendered for and awarded to Australian companies, the number of qualified Australians occupying staff positions with the Korean Peninsula Energy Development Organization, together with the schedule of payments of Australian contributions.

CHAPTER 1

INTRODUCTION

THE SENATE COMMITTEE REPORT

1.1 In November 1995, the Senate Legal and Constitutional References Committee tabled its report **Trick or Treaty? Power to Make and Implement Treaties**. This important report dealt with a subject which was causing concern in the Australian community, as can be seen from the number (157) of submissions which it considered, and the amount of evidence it took, during its deliberations.¹

1.2 The Senate Committee made eleven recommendations. The most significant of these dealt with increasing Government efforts to identify and consult groups which may be affected by a treaty, and the establishment by legislation of a Joint Parliamentary Committee on Treaties. The report also recommended that this legislation require the preparation of treaty impact statements for each treaty tabled in Parliament.²

1.3 Although the Government did not accept the detail of all of its recommendations, it is clear that the Senate Committee paved the way for the formation of the Joint Standing Committee on Treaties (JSCT), as can be seen from an examination of the revised procedures for treaty making.³

THE COMMITTEE

1.4 The JSCT was first established in the 38th Parliament on 30 May 1996 and met for the first time on 17 June 1996. Its Resolution of Appointment allows the Committee to inquire into and report upon:

- (a) matters arising from treaties and related National Interest Analyses and proposed treaty actions presented or deemed to be presented to the Parliament;
- (b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament; or
 - (ii) a Minister; and
- (c) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.⁴

¹ Appendix 1, pp. 307-313; Appendix 2, pp. 317-328

² pp. 302, 303, 304

³ House of Representatives, *Hansard*, 2 May 1996, pp. 231-235

⁴ House of Representatives, *Votes and Proceedings*, No.15, 30 May 1996, p 235

REFORMS TO THE TREATY MAKING PROCESS

1.5 The Committee's establishment was foreshadowed by the Minister for Foreign Affairs, the Hon Alexander Downer MP, in a statement to the House of Representatives on 2 May 1996 which outlined reforms to the treaty making process.⁵

1.6 Instead of tabling the texts of the treaties which had been entered into twice yearly, as was past practice, treaties will now be tabled in Parliament at least 15 sitting days before the Government takes binding action. This means that texts will be tabled after treaties have been signed for Australia, but before action is taken which would bind Australia under international law. This arrangement applies to both bilateral and multilateral treaties and to all actions which amend a treaty if the amendment would alter obligations with a legally binding impact on Australia, including termination or denunciation of a treaty.

1.7 The Government also indicated that special procedures will exist when it needs to take treaty action urgently. Where tabling in advance of such binding action is not possible, the documents will be tabled as soon as possible with an explanation of the reasons for urgent action. The Government undertook to use such procedures sparingly and only where necessary to safeguard Australia's national interests, be they commercial, strategic or foreign policy.

1.8 In June 1996 the Council of Australian Governments (COAG) agreed to revised procedures for consultation on treaties.⁶ Under these arrangements, the Commonwealth is to inform States and Territories in all cases and at an early stage of any treaty discussions in which Australia is considering participation. Where available, information on the long term treaty work program of international bodies will also be provided.

1.9 Information on treaty negotiations will be provided in various ways: information about treaty discussions will be forwarded to Premiers'/Chief Ministers' Departments regularly by the Department of Prime Minister and Cabinet and the Department of Foreign Affairs and Trade. Every six months the Commonwealth will provide States and Territories with a list of current and forthcoming negotiations (forecasting 12 months ahead) and matters under consideration for ratification etc. States and Territories will be consulted on the preparation of National Interest Analyses for treaties in which they have an interest. The Commonwealth will provide States and Territories, on a confidential basis, reports of international negotiating sessions of concern to them.⁷

1.10 There will be a Treaties Council consisting of the Prime Minister, Premiers and Chief Ministers which will meet at least once a year. A Standing Committee on Treaties, consisting of senior Commonwealth, State and Territory officers, will meet at least twice a year to determine treaties and other international instruments of sensitivity and importance to the States and Territories. In appropriate cases, State and Territory representatives may be included in delegations to international conferences.⁸

⁵ House of Representatives, *Hansard*, 2 May 1996, pp. 231-235

⁶ COAG Communique, 14 June 1996, p 4; Attachment C, pp. 24-31

⁷ *ibid.*, p 25

⁸ *ibid.*, pp. 26, 27

1.11 The Government also announced the establishment of a treaties database to facilitate the dissemination of treaty information and as a vehicle for community consultation via the Internet.⁹

1.12 In addition, the Government announced its proposal to establish the JSCT to consider tabled treaties, their National Interest Analyses and any other question relating to a treaty or international instrument referred to it by either House of Parliament or a Minister.¹⁰

1.13 In accordance with these arrangements, 20 treaties were tabled on 21 May 1996 and a further five on 18 June 1996. These are dealt with in Chapters Two and Three respectively.

NATIONAL INTEREST ANALYSES

1.14 Treaties will be tabled in Parliament with a National Interest Analysis (NIA) in order to facilitate scrutiny and to demonstrate the reasons for the Government's decision that Australia should enter into legally binding obligations. An NIA should include: a discussion of the economic, environmental, social and cultural effects of the treaty where relevant; the obligations imposed; its direct financial costs to Australia; how it will be implemented domestically; what consultation has occurred and whether the treaty provides for withdrawal or denunciation. The Committee considers that the NIA should also include a discussion of the legal effects and potential areas of conflict with State and Territory laws. An NIA pro forma is attached at Appendix 2.¹¹

1.15 The NIA is an important mechanism for the Committee to be able to assess, in the first instance, the implications of a proposed obligation and whether or not sufficient support exists for the proposed action. Clearly, a more comprehensive NIA will ensure that both the Committee and the general public are better informed.

1.16 With the benefit of further experience, the content of NIAs may vary, although the Committee would not wish to see their content expanded to such an extent that they contain extraneous detail. Based on its initial experience, however, the Committee believes that NIAs should also include details of the appropriate Commonwealth department or agency with primary carriage for a treaty, together with contact details for the relevant area and specific details of organisations and individuals consulted, and how consultation occurred.

1.17 The Joint Standing Committee on Treaties recommends that:

National Interest Analyses should also include a discussion of the legal effects and potential areas of conflict with State and Territory laws;

National Interest Analyses identify the Commonwealth department or agency with primary carriage for a particular treaty along with relevant contact details; and

⁹ House of Representatives, *Hansard*, 2 May 1996, pp. 233-234

¹⁰ *ibid*, p 233

¹¹ COAG Communique, *op cit*, p 4, Attachment C, p 25; House of Representatives, *Hansard*, 2 May 1996, p 233

National Interest Analyses include specific details of organisations and individuals consulted and how such consultation occurred, particularly with the Treaties Council.

THE COMMITTEE'S APPROACH

1.18 Once details of treaty actions are tabled, the Committee intends to proceed promptly to review them by seeking further information and/or taking evidence from Commonwealth departments and agencies, State and Territory Governments and interested organisations and individuals where appropriate. It will then report its findings to both Houses.

1.19 In some instances, it may resolve to investigate particular treaty actions further and undertake a broader inquiry, inviting submissions and holding public hearings.

1.20 The Committee will not examine all tabled treaties in detail. Some treaties or 'executive agreements', such as extradition agreements or double taxation agreements, will not warrant separate scrutiny on each occasion. Nonetheless the Committee reserves the right to examine the operation of such arrangements in general terms, should it so desire. This report does not comment on all the treaties which were tabled on 21 May and 18 June 1996. Future reports will adopt a similar approach.

1.21 On 18 June 1996, the Committee advised the Minister for Foreign Affairs of its concerns that, in some circumstances, the 15 sitting day period in which treaties remain tabled could be insufficient for an inquiry and report to Parliament before binding treaty action is taken.

1.22 The Committee therefore intends to advise the Minister as early as practicable after each tabling that:

- **it does not propose to comment on specific treaties within a group which has been tabled;**
- **it expects to table a report commenting on a treaty or other treaties in that group on a particular date; and**
- **if it is not possible to report within the 15 sitting day period on a particular treaty or treaties in a group, that a report will be tabled as soon as practicable.**

1.23 It remains the Committee's expectation that binding action in the latter cases would be delayed until its report has been tabled.

1.24 The Minister's reply agreed with the approach set out above, noting the Committee's concern about the adequacy of 15 sitting days for inquiry and report. In many such cases, the Minister indicated it would be possible for the treaty action to be delayed. Such delays, he noted, would not be necessary often and the Government would accommodate requests for delays to taking binding action where compatible 'with national interests'.

1.25 The Minister also pointed out that there was nothing in the Committee's Resolution of Appointment to prevent it inquiring into completed treaty actions which had been tabled in Parliament.

1.26 At its meeting on 15 July 1996, the Committee resolved to inquire into and report on the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa. Australia signed this Convention on 14 October 1994 but has it has not yet been ratified. It was tabled in Parliament on 5 December 1994.

1.27 The Committee intends to report to the Parliament as early as practicable in 1997 on this Convention.

CHAPTER 2

TREATIES TABLED ON 21 MAY 1996

2.1 The following 20 treaties and/or NIAs were tabled in both Houses under the new arrangements on 21 May 1996. (The "15 sitting day" period elapsed on 27 June 1996).

Bilateral

Treaty with South Africa on Extradition, done at Brisbane on 13 December 1995. The Treaty will enter into force 30 days after an exchange of Notes, pursuant to Article 16.1.

Treaty with Hungary, on Extradition, done at Budapest on 25 October 1995. The Treaty will enter into force 30 days after Notes are exchanged, pursuant to Article 16.1.

Agreement with Romania on Trade and Economic Cooperation, done at Bucharest on 8 November 1995. The Agreement will enter into force when Notes are exchanged, pursuant to Article 12.

Agreement with New Zealand Establishing a System for the Development of Joint Food Standards, done at Wellington on 5 December 1995. The Agreement will enter into force on an exchange of Notes, or date therein agreed, pursuant to Article 13.

Treaty with Hungary on Mutual Assistance in Criminal Matters, done at Budapest on 25 October 1995. The Treaty will enter into force 30 days after Notes are exchanged, pursuant to Article 22.1.

Treaty with Indonesia on Mutual Assistance in Criminal Matters, done at Jakarta on 27 October 1995. The Treaty will enter into force 30 days after Notes are exchanged, pursuant to Article 22.1.

Treaty with Brazil on Extradition, done at Canberra on 22 August 1994. The Treaty will enter into force 30 days after an exchange of Notes pursuant to Article 21.1. The text of this Treaty was tabled in the Senate on 30 November 1994 and the House of Representatives on 5 December 1994.

Treaty with Ecuador on Mutual Assistance in Criminal Matters, done at Quito on 16 December 1993. The Treaty will enter into force 30 days after an exchange of Notes pursuant to Article 22.1. The text of this Treaty was tabled in the House of Representatives on 29 June 1994 and in the Senate on 23 August 1994.

Multilateral

Agreement Establishing the International Institute for Democracy and Electoral Assistance [International IDEA], done at Stockholm on 27 February 1995.

Signed for Australia 10 November 1995. The Agreement, which entered into force generally on 27 February 1995, will enter into force for Australia 30 days after notification that the formalities required by national legislation have been completed, pursuant to Article XVII.3.

Convention for the Pacific Settlement of International Disputes [Hague I], done at The Hague on 18 October 1907. The Government is considering adhering to this Convention.

Second Protocol to the General Agreement on Trade in Services, done at Geneva on 6 October 1995. The Government is considering accession to this Protocol.

Third Protocol to the General Agreement on Trade in Services, done at Geneva on 6 October 1995. The Government is considering accession to this Protocol.

Agreement establishing the Association of Tin Producing Countries (ATPC), done at London on 29 March 1983. Withdrawal of Australia's membership of the ATPC is under consideration. The text of this Agreement was tabled in both Houses of Parliament on 12 November 1985.

2.2 The texts of the following treaties along, each with an explanatory note, were tabled; action was completed before the commencement of the 38th Parliament:

Bilateral

Exchange of Notes constituting an Agreement with Hong Kong, done at Hong Kong on 4 December 1995, to further extend the Agreement concerning the Investigation of Drug Trafficking and the Confiscation of the Proceeds of Drug Trafficking of 22 April 1991. The Agreement entered into force on 4 December 1995, the date of the Note in reply.

Exchange of Notes constituting an Agreement with Papua New Guinea, done at Kavieng on 9 December 1995, pursuant to Articles 3 to 5 of the Treaty on Development Cooperation of 24 May 1989. The Agreement entered into force on 9 December 1995, the date of the Note in reply.

Exchange of Notes constituting an Agreement with New Zealand, done at Canberra and Wellington on 25 and 29 January 1996, to extend the Agreement concerning Royal New Zealand Air Force Skyhawk Aircraft involvement in Australian Defence Force Air Defence Support Flying of 13 July 1990. The Agreement entered into force on 1 March 1996, the date specified in the Notes.

Exchange of Notes constituting an Agreement with the United States of America concerning Certain Mutual Defence Commitments, done at Sydney

and Canberra on 1 December 1995. The Agreement entered into force on 1 December 1995, the date of the Note in reply.

Exchange of Notes constituting an Agreement with the Korean Peninsula Energy Development Organization (KEDO) regarding an Australian Financial Contribution to KEDO, done at Canberra and New York on 8 and 19 December 1995. The Agreement entered into force on 19 December 1995, the date of the Note in reply.

Agreement with Indonesia on Maintaining Security, done at Jakarta on 18 December 1995. The Australian Note, pursuant to Article 4, was deposited on 18 December 1995.

2.3 Explanatory Note tabled; the text of the Treaty was tabled previously:

Withdrawal

International Agreement on Jute and Jute Products, done at Geneva on 3 November 1989. Instrument of withdrawal deposited for Australia on 26 January 1996. The withdrawal entered into effect on 25 April 1996, ninety days after the deposit of the instrument pursuant to Article 43.2. The text of the 1989 Agreement was tabled in both Houses of Parliament on 26 November 1991.

2.4 The Committee wrote to the Minister for Foreign Affairs on 26 June 1996 indicating that it did not wish to delay the Government taking definitive action on these 20 treaties. It indicated, however, that some matters may be taken up later and that it may make comments of a general nature in this report on some agreements.

EXTRADITION AGREEMENTS

2.5 The current group of extradition agreements prompted interest in a range of matters concerning the operation of these treaties and, in particular, the nature of extraditable offences and the protections available to potential extraditees.

2.6 In relation to the latter, the Attorney-General's Department outlined the concept of double criminality which is a fundamental requirement of extradition. It requires that the conduct alleged to have occurred in the Requesting state for which extradition is sought must also amount to a criminal offence in the Requested State had it occurred in the latter. Further, in the case of extradition treaties, the "timing test" in each agreement requires that the conduct which is subject of extradition must constitute an offence in the Requesting State at the time it occurred.¹²

¹² p S3

AGREEMENT ESTABLISHING THE INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE

2.7 The International Institute for Democracy and Electoral Assistance (IDEA) was founded in February 1995 by Australia, Barbados, Belgium, Chile, Costa Rica, Denmark, Finland, India, The Netherlands, Norway, Portugal, South Africa, Spain and Sweden. Its headquarters are in Stockholm. The Institute's overall objective is to work for the promotion and advancement of sustainable democracy worldwide, and within this context, to improve and consolidate electoral processes.

2.8 The four main fields of activity for the Institute will be: to create a databank and provide information services to governments and NGOs around the world on matters pertaining to democratic institution-building and the holding of elections; to undertake research into electoral systems, political parties, democracy and economic development, and lessons learned from transition to democracy; to establish and promote guidelines for good electoral services and otherwise assist states in getting democracy to move forward in those countries undergoing transition. Members of the Joint Standing Committee on Foreign Affairs, Defence and Trade were briefed by the Secretary-General of the Institute in the 37th Parliament.

2.9 As a founding state, Australia agreed to provide \$A250,000 per annum for three years to the Institute's core budget in May 1995. That contribution would be funded under the aid program administered by the Australian Agency for International Development (AusAID) which has already paid \$A500,000. The current subscription notified to the Committee is \$A250,000 for the 1996/97 financial year, to have been paid in July 1996 subject to budgetary circumstances.¹³

2.10 The Committee accepts the view that, as Australia has decided to become a member of the Institute, it needs to become actively involved in its operations. This is particularly so if we are to influence its direction and ensure that the Institute's activities are targeted at countries of significance to Australia. To do otherwise risks seeing its activities directed mainly towards countries where assistance with good governance and democracy are of marginal interest to this country. At this stage, however, it was not possible to demonstrate to the Committee that this objective was being met.

2.11 The Committee raised other concerns with officials about our obligations to the Institute:

- Australia is entering into further commitments with the Institute at a time when there is no guarantee that ongoing funding will be available. Given pressure on the aid budget, the possibility exists for funding to be directed to areas of greater priority.

¹³ p S8

- Although this may well prove to be a cost effective mechanism for providing this type of assistance, which Australia is well placed to do, this has not yet been demonstrated. In twelve months time, the Committee will be better placed to make such judgements.

2.12 The Joint Standing Committee on Treaties recommends that:

An assessment of the performance and effectiveness of the International Institute for Democracy and Electoral Assistance be provided to the Committee, including the extent to which its activities are focused in countries of significance to Australia and the level of Australian involvement in its activities, before any further financial contributions are made.

AGREEMENT WITH THE KOREAN PENINSULA ENERGY DEVELOPMENT ORGANIZATION REGARDING AN AUSTRALIAN FINANCIAL CONTRIBUTION

2.13 The Korean Peninsula Energy Development Organisation (KEDO), founded in March 1995, is the international organisation established to implement most of the "Agreed Framework" signed by the United States of America and the Democratic People's Republic of Korea (DPRK) in October 1994. The Agreed Framework addresses international concerns about the nuclear activities of the DPRK and, when ultimately implemented, will lead to the dismantling of the DPRK's nuclear program, including reprocessing related facilities, that have undermined the viability of the international nuclear non-proliferation regime and the stability of the Asia- Pacific region.

2.14 KEDO's primary obligations are to provide for the financing and supply of a light water reactor project and to provide heavy fuel oil to the DPRK as provided in the framework agreement. KEDO is currently composed of seven members: Australia, Canada, Finland, Japan, New Zealand, the Republic of Korea and the United States of America.

2.15 Most of KEDO's costs are covered by Japan, the Republic of Korea and the United States. Australia's contribution to date is A\$8.8 million.

2.16 The Committee discussed with Departmental officials the implications of attempts by Congress to halve America's proposed contribution of \$US50 million this year. Should this occur, funds will need to be obtained from other sources. Although it is possible that President Clinton will exercise his veto powers should this eventuate, the Committee supports Australian efforts to ensure that commitments to KEDO's budget are maintained.

2.17 The Committee notes that this Agreement provides for full and fair consideration to be given to qualified Australian companies competing for contracts and to the hiring of qualified Australian staff. The Committee urges the Department of Foreign Affairs and Trade to keep this matter under review and to advise the Committee of details of contracts tendered for and awarded to Australian companies and of the number of qualified Australians occupying staff positions when the next contribution is to be paid to KEDO.

2.18 The Joint Standing Committee on Treaties recommends that:

The Department of Foreign Affairs and Trade provide the Committee with details of contracts tendered for and awarded to Australian companies, the number of qualified Australians occupying staff positions with the Korean Peninsula Energy Development Organization, together with the schedule of payments of Australian contributions.

GENERAL AGREEMENT ON TRADE IN SERVICES

2.19 Further information was sought on how the visa periods listed in the Third Protocol to the General Agreement compared with previous Australian immigration practice.

2.20 Advice was received that liberalisation of the existing Australian migration regime was not offered in the negotiations for this Protocol. Acceptance would not entail any changes to, or liberalisation of, Australian migration regulations. Australia is able to meet the commitments which acceptance of the Protocol would entail under the existing provisions of the *Migration Act 1958*.¹⁴

AGREEMENT WITH INDONESIA ON MAINTAINING SECURITY

2.21 The Agreement with Indonesia on Maintaining Security was signed by both countries on 18 December 1995, ratified by Australia on that date, and ratified by Presidential decree by Indonesia on 24 June 1996.

2.22 At its meeting on 15 July 1996, the Committee was briefed by officers from the Departments of Foreign Affairs and Trade and Defence.

2.23 During detailed consideration of this Agreement, some concerns were expressed about the secret negotiations which led to the finalisation of the document. Most attention was focused on Article 2, in which the two countries undertook 'to consult each other in the case of adverse challenges to either party or to their common security interests'. Members were advised that this Agreement had not come into existence to deal with any internal security problems in Indonesia, and that it could not be invoked to involve Australia if these arose.

2.24 The Committee therefore decided that a further review would be more appropriate when this important Agreement had been in operation for at least a year.

¹⁴ p S1

CHAPTER 3

TREATIES TABLED ON 18 JUNE 1996

3.1 The following five treaties were tabled in both Houses on 18 June 1996. (The "15 sitting day" period elapses on 16 September 1996). Texts, together with National Interest Analyses:

Bilateral

Exchange of Notes, done at Canberra on 14 June 1996 constituting an Agreement to amend the Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Use of Shoalwater Bay Training Area and the Associated Use of Storage Facilities in Australia, done at Singapore on 17 February 1995.

Multilateral

Amendments, done at Suva in October 1993, to the Agreement establishing the South Pacific Applied Geoscience Commission, done at Tarawa on 10 October 1990.

3.2 National Interest Analyses for treaties previously tabled:

Bilateral

Agreement to the Surrender of Accused and Convicted Persons between the Government of Australia and the Government of Hong Kong, done at Hong Kong on 15 November 1993. The text of this Agreement was tabled in the House of Representatives on 29 June 1994 and the Senate on 23 August 1994.

Multilateral

Convention to Ban the Importation into Forum Island countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and management of hazardous Waste within the south Pacific Region, done at Waigani on 16 September 1995. The text of this Convention was tabled in both Houses of Parliament on 18 October 1995.

3.3 In addition, the following treaty, for which action had been designated urgent and completed, was tabled for information:

Bilateral

Subsidiary Agreement Between the Government of Australia and the Government of Japan Concerning Japanese Tuna Long-Line Fishing. 15 June 1996.

AGREEMENT WITH THE GOVERNMENT OF SINGAPORE CONCERNING THE USE OF THE SHOALWATER BAY TRAINING AREA

3.4 At the briefing of the Committee held on 15 July 1996, the Department of Defence was asked about the cost of rectification of environmental damage, in connection with the agreement with Singapore about the use of the Shoalwater Bay training area and associated storage facilities in Australia. The Department was also asked whether environmental impact studies are undertaken at the Shoalwater Bay Training Area before exercises take place.

3.5 The Department advised that other nations are responsible for the cost of rectifying any environmental damage they cause. Before each environmentally significant training activity, an Environmental Certificate of Compliance is issued. At the conclusion of the activity, compliance with the Certificate in the training area is monitored.¹⁵

IMPORTATION AND MANAGEMENT OF HAZARDOUS AND RADIOACTIVE WASTE WITHIN THE SOUTH PACIFIC REGION (WAIGANI CONVENTION)

3.6 The Committee was briefed on the operation of this Convention and noted that it appeared to be a South Pacific solution for a South Pacific problem. The nations involved in this Convention do not have the resources, legal or bureaucratic, nor the infrastructure to fulfil the obligations imposed by international treaties such as the Basel Convention.

3.7 It is the Committee's belief that the Waigani Convention is a suitable model for South Pacific nations, in that it permits them to commit themselves to important international agreements, in keeping with their resources and bureaucratic and legal infrastructures.

URGENT TREATY: SUBSIDIARY AGREEMENT WITH JAPAN ON TUNA LONG-LINE FISHING

3.8 On 18 June 1996, the first treaty designated "urgent" under the new procedures, and for which treaty action was taken, was tabled in both Houses. The Subsidiary Agreement with Japan on Long-Line Tuna Fishing was tabled with a National Interest Analysis and a Statement of Explanation by the Minister for Resources and Energy, Senator the Hon Warwick Parer, as to the need for the implementation of the agreement.

3.9 Japanese fishing access to the Australian Fishing Zone has been negotiated as an annual commercial arrangement. This arrangement is set out in the annual Agreement which is subsidiary to the overall 1979 Agreement on Fisheries between the two countries.

3.10 The Subsidiary Agreement would normally have been completed by late 1995 but, in this instance, was not approved finally by the Australian Government until 29 May 1996, following the first tabling of treaties on 21 May 1996. It expires on 31 October 1996. The six month delay was due to the protracted process in settling the related agreement on global southern bluefin tuna catch limits by the international Commission for the Conservation of

¹⁵ p S5

Southern Bluefin tuna. This delay arose because Australia and New Zealand were resisting an increased quota being sought by Japan.

3.11 Fishing for southern bluefin tuna off Tasmania normally starts in May and continues through June and July, necessitating a new agreement to be in place for this period. Had this Subsidiary Agreement been tabled on 18 June 1996 for the required 15 sitting days until 16 September, the overall Agreement could have collapsed completely.

3.12 The Committee notes the reasons provided by the Minister for Resources and Energy in the Explanatory Note, and by the Minister for Foreign Affairs in correspondence received on 19 June 1996, for declaring this an urgent treaty. It understands why this course was adopted on this occasion. However, it notes the assurances of both Ministers that similar agreements in future years will be able to meet the new tabling procedures because the lead times will be known to negotiators on both sides.

3.13 The Committee views with concern any attempt to manipulate timetables or any tardiness in finalising agreements that cause Ministers to have no option but to declare a treaty to be urgent, circumventing the new procedures for Parliamentary scrutiny. There is no suggestion that this has occurred in this instance.

3.14 The Joint Standing Committee on Treaties resolved to undertake a broader inquiry into this Subsidiary Agreement and intends to table its report in both Houses by the end of October 1996.

FUTURE CHALLENGES

3.15 The Committee notes the concerns expressed in the Senate Committee's report **Trick or Treaty? Power to Make and Implement Treaties**. It also acknowledges the important role that the JSCT is expected to carry out in the wider public interest. Some legal uncertainties persist in treaty making and its implications for Australia's statutory framework, highlighted most recently by the High Court's Teoh judgement.

3.16 The JSCT is now the second largest joint standing committee in the Parliament, with Parliamentary and public interest responsibilities commensurate with its composition and Resolution of Appointment.

3.17 The Committee thanks in particular the Foreign Affairs and Trade and the Attorney General's Departments and their Ministers for their assistance and advice in its deliberations and during the preparation of this report.

3.18 The JSCT welcomes the challenges of the future.

W L Taylor MP
Chairman

APPENDIX 1

LIST OF SUBMISSIONS

1. Department of Foreign Affairs and Trade
2. Attorney General's Department
3. Department of Defence
4. Department of Foreign Affairs and Trade

APPENDIX 2

NATIONAL INTEREST ANALYSIS PRO FORMA

Date of proposed binding treaty action

Date and explanation of binding treaty action eg. definitive signature, ratification, exchange of notes etc.

Date of treaty tabling

Date when the treaty will be tabled with this NIA.

Reasons for Australia to become a Party to the Treaty

This section should address the advantages and disadvantages to Australia of becoming, and of not becoming, a party to the treaty. It should include significant, quantifiable and foreseeable economic and/or environmental effects of the treaty. Where relevant, it should also include a description of any likely social and cultural effects of the treaty.

Obligations

A description of the major provisions of the treaty and the obligations they impose on Australia.

Costs

Any direct financial costs to Australia of compliance with the treaty, for example, contributions to international organisations provided for in the treaty, costs of establishing any new domestic agency as a direct result of entering into the treaty.

Future Protocols etc

Whether the treaty provides for the negotiation of future related legally binding instruments such as protocols and/or annexes. If possible, what areas these future instruments are likely to address.

Implementation

A description of the measures Australia intends to take or has taken to implement the treaty, including any legislation. Whether Commonwealth and/or State and Territory action is required or desirable. Any changes to the existing roles of the Commonwealth and the States and Territories as a consequence of implementing the treaty in this way.

Consultation

A statement setting out the consultations which have occurred in relation to the treaty between the Commonwealth, the States and the Territories and with community and other interested parties. A summary of the views of those parties should also be included. The statement must include the date of first mention in *Insight* and of inclusion in the Standing Committee on Treaties' Treaties Schedules.

Withdrawal or Denunciation

Whether the treaty provides for withdrawal or denunciation and, if so, what procedures apply. In the absence of express provisions in the treaty, a general description of the Vienna Convention on the Law of Treaties provisions on termination and denunciation will be included.