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JOINT STANDING COMMITTEE ON TREATIES

Reference: Treaty making--The people's process

THURSDAY, 20 JULY 2000

QUEENSLAND

BY AUTHORITY OF THE PARLIAMENT

JOINT COMMITTEE ON TREATIES

Thursday, 20 July 2000Thursday, 20 July 2000

Members: Mr Andrew Thomson *(Chair)*, Senator Cooney *(Deputy Chair)*, Senators Bourne, Coonan, Ludwig, Mason, Schacht and Tchen and Mr Adams, Mr Baird, Mr Bartlett, Mrs Crosio, Mrs Elson, Mr Hardgrave, Mrs De-Anne Kelly and Mr Wilkie

Senators and members in attendance: Senators Bartlett, Ludwig, Mason and Tchen and Mrs Elson, Mr Hardgrave, Mrs De-Anne Kelly and Mr Andrew Thomson

Terms of reference for the inquiry:

Treaty making—The people's process.

Seminar commenced at 9.10 a.m.

PARTICIPANTS

ARKELL, Mr Colin Robert

BELL, Mr Graham, Delegate, Australia China Friendship Society (Queensland Branch)

BOND, Ms Monique, ANTaR Queensland Association Inc.

BRUNCKHORST, Mr Graham, Chairman, Voters Against Treaties

CLAREY, Mr Rodney Graham

DOWNER, the Hon. Alexander, Minister for Foreign Affairs

EVANS, Mr Rod

FENLON, Mr Gary, Member of the Legislative Assembly

GATES, Mr John

GOODREID, Mr Chris, Intergovernmental Secretariat

HORSBURGH, Mr Maurice Edwin

HUCK, Mr Peter Kendal

HUGO, Mr John Richard

KEOGH, Mr Peter John

KNUTH, Mr Jeffrey Alan, Member for Burdekin, Legislative Assembly

LEE, Mr Anthony

LONERGAN, Mr Dennis, Vice Chairman, Freedombell Pipeline

LUCKEL, Mr Mervyn John

MASON, Mr David, Adviser, Department of Foreign Affairs and Trade

McDONALD, Mr Graham Malcolm

MORRISON, Mr Keith

PICKERS, Ms Georgina Ann, Adviser, Human Rights/International Relations and Peace, National Council of Women

RASCHELLA, Ms Letizia

RYAN, Mr Bill, Chairman, Freedombell Pipeline

SHEARS, Ms Joan, Treasurer, WTO Watch; Committee Member, Australian Coalition for Economic Justice

SMITH, Mr Matthew

SPILSBURY, Mr Gregory Thomas, Field Officer, Brisbane Region Environment Council

THEO, Mr Sol, Member, Anti-Nuclear

WATTS, Mr Corey, National Coordinator, the EcoDemocrats Network, Australian Democrats

WHEELEY, Mr Darryl, Editor, Freedombell Pipeline

WILSON, Ms Pamela Therese

Mr HARDGRAVE—It is my job this morning, as the local federal representative for this area, to welcome you to this treaties seminar. To acknowledge the presence of so many of my distinguished colleagues is a real joy from my point of view. A number of them were on the video this morning, which I hope you enjoyed. I hope you managed to glean from it a few things about what the Joint Standing Committee on Treaties does.

I would like to acknowledge that Senator Tsebin Tchen from Victoria is here, Senator Andrew Bartlett from Queensland, a new member of the committee, is here, and De-Anne Kelly, the member for Dawson, has flown in from Mackay to be with us today. The Hon. Andrew Thompson MP, Chairman of the committee, from whom you will hear a bit later on, is here from Wentworth in Sydney. Kay Ellison is my colleague from Forde here in Queensland, based in Beenleigh, and Senator Brett Mason, another Queensland senator, is here also.

From a Queenslander's point of view, the concept of inquiring into and ensuring that Australians have a say in those arrangements which in the past were made in secret, essentially, not disclosed through the parliament or through any of the other forms of accountability that we perhaps come to take for granted, are now made available to you for discussion, input and comment. That is our role as members of the Joint Standing Committee on Treaties. As Senator Ludwig said in his comments on the video, it really is up to each and every one of us as Australians who care about our country to become involved in that process. I guess that is what the challenge today is all about.

Part of my job this morning is to welcome a very distinguished colleague, our foreign minister, the Hon. Alexander Downer, MP. As you also saw on the video, Minister Downer was the person who moved that you be involved in the treaty making process by the reforms to that process which were introduced in the parliament in 1996. It was promised before the 1996 election that this would occur, it was delivered upon within a couple of months of the election and the processes have continued from there.

Mr Downer has been the member for Mayo in the Australian parliament since 1984. I am certain you would agree that he has brought a true sense of Australian values and style to his role as foreign minister. There are many things that are taking place in our world today and some not too far from the shores of Queensland that are so very much top of mind for our foreign minister. It is very impressive indeed that he has kept his commitment to us. He is here today to address you and also to take some questions from you. Would you please make him very welcome.

Mr DOWNER—Thank you, Gary, for your introduction, and to my parliamentary colleagues, in particular, and of course Andrew Thompson, the Chairman of the Joint Standing Committee on Treaties, members and senators, ladies and gentlemen. It is very good to have the opportunity to address a public meeting of this kind about the question of treaties. This issue has generated a fair bit of public debate in Australia over many years. Indeed, I have been a member of the federal parliament now for 15½ years and, in all of that time in my electorate of Mayo—which is in the Adelaide Hills area of South Australia—people have written me letters and made representations to me about the question of treaties and the relationship between Australia and international institutions, as well as other countries. Over the years, I have very much got the impression that there is, at least in some sections of the community, concern about how this interrelationship between Australia and the rest of the world actually works: whether there is some conspiracy involved here by Australian governments and politicians, and Australian parliaments, state and federal, why we are not more transparent about it and why the parliament and the public are not more involved in this process.

Some of you will disagree with this, but it is my view that, because of changes in technology—especially transport, communications and information technologies—over the last 40 or 50 years, inevitably the people of the world are going to get a little closer together and interact more with each other. Indeed, electorates on average, but not of course everybody, have demanded that there be more interaction between the different countries and the peoples of the world. There are many dimensions to that. There are very practical dimensions like trade. There is a view among most people, but not all people, that one of the ways to enhance your national prosperity, to encourage the creation of jobs and to build higher living standards, is to get out into the international community and trade. If you are going to get out into the international community and trade, you want to do it with a rules based system. If you do not have any rules, then the law of the jungle will prevail.

That is particularly important to a country like Australia because we are what is sometimes described as a medium sized power. That means that we can easily be crushed in the international marketplace by countries like the United States and Japan, and the European Union where it acts collectively. If there were no rules based system, then it would not be possible for us as a country to compete in any way at all with businesses from those countries. For us as Australians, in the area of trade we see a very obvious advantage in having some kind of rules based system. Whether those rules are right or whether they are wrong, whether they could be better, whatever, that is another issue. The fact is that for us, as a matter of principle, we are better off with a rules based system than without any such system at all. In areas of international human rights, there is increasing concern now—and I think this is brought to people very much through the process of the development of information technology—

Interjector—What about the East Timorese?

Mr DOWNER—As far as the East Timorese are concerned, I think they are very satisfied with what we have done. Through information technology, people know more these days about what is happening in other parts of the world and the world demands that the international community do something to try to address civil and human rights abuses of one kind or another. That has to be done on some sort of international basis. There again, there is a demand to have some sort of framework of rules in order for different countries to make those types of contributions. For example, in the case of East Timor, there was a resolution passed by the United Nations Security Council which authorised intervention by the Australian troops and the coalition we put together called INTERFET to bring peace and security back to East Timor. There was, in other words, some sort of international authorisation for that, as distinct from it being just an act of invasion and therefore causing a major war. There are thousands of other examples of how changes in technology and changes in the way the world works mean that there is a need for international rules, unless you want to oppose those changes altogether. If we are not to trade, if we are not to care about human rights abuses, if we do not care about international environmental transboundary problems, if we choose to close ourselves off from those things, we do not need treaties. If we do want to do something about those issues and participate in the world, then we need some sort of framework in which to do it.

Our point is that we regard that as inevitable. I think that applies to all the political parties represented here—obviously, the Liberal-National Party coalition, the Labor Party and the Australian Democrats. I am not saying all people in Australia do, but pretty much all of the people active in the Australian parliament think that it is inevitable that Australia has to interact somehow with the rest of the world. Whether they agree on how it should be done is another question. I guess mainly they do, but not always. They do agree that there needs to be that interaction.

During our period in opposition, we had one particular concern about this, which I think many of you would share; that is, the process of us engaging with the rest of the world, particularly through treaties, international conventions, agreements and the like, was insufficiently transparent. In fact, in some cases it was not transparent at all. According to the Australian Constitution, the government in this country can sign treaties and the Governor-General simply ratifies them by the signing of a pen. That stands in contrast to the systems that operate in a country like the United States where treaties are signed by the executive—that is by the President or the Secretary of State, whoever it may be. They have to be ratified by a two-thirds majority of the United States Senate—that is, 67 out of 100 senators have to vote in favour of the ratification of that treaty. In other words, the democratically elected representatives of the American people have some input into the discussion about and ratification of treaties.

In our case, we did none of that. We had a few like the British system where the King or the Queen made international agreements. That has been the case for a thousand years. We inherited that system, which means, in effect, that the executive, the ministers, sign the treaties; the Governor-General, who is the representative of the Queen, just signs off on them and that is the end of it. In most cases, the government's commitment to do these things was accompanied by a press release, but that was all. I have to tell you that not in every case was it accompanied by a press release. There was a notorious case in 1993 when the Australian government signed and ratified an International Labour Organisation agreement without even putting out a press release. So the public had no understanding of that. Remember—and this is a very important

point for all of us in politics—that the Commonwealth parliament does have responsibility under the Constitution for external relations. As you know from cases such as the Tasmanian dams case, through the signing of international conventions, agreements and treaties, the Commonwealth parliament, according to the High Court, is able to take to itself powers which otherwise were understood to be with the state parliaments. So you get a situation where the balance of power in the country has been able to change from the state level to the federal level without there being any public scrutiny or public debate. It has just happened. As I told you, in one particular case not even a press release went out. The signing of that International Labour Organisation convention had quite significant implications for the implementation of domestic law.

As the then opposition, we shared the public's general concern and disquiet about this. When we came to government, the first statement I made to the House of Representatives as Minister for Foreign Affairs outlined the government's new approach to the way treaties would be made and handled. There are basically five pillars to our treaty process. The first and in many respects the most important is that, after we sign treaties, we table them in the House of Representatives and in the Senate. All bilateral and multilateral treaties are tabled at least 15 sittings days before the government takes what is called binding action—that is, the Governor-General signs off and ratifies the treaties. We believe this is important because it means there is no such thing any longer as secret treaties. These treaties are there for all to see, tabled in the parliament. Fifteen sitting days does not mean 15 days; it can be a much longer period than that. For example, if we were to sign a treaty today—some of you will be pleased to know I will not be signing a treaty today—then 15 sitting days from today is goodness knows when, somewhere in September. As you can see, 15 sitting days can be a substantial period of time.

There are exceptions. There is a flexibility provision where we, as a country, might have to sign and ratify some treaty very urgently because of some ghastly international security crisis or whatever. Off the top of my head, on very few occasions have we invoked that. Therefore, the treaty is able to be discussed in the parliament, but the 15 sitting days requirement is not met. Frankly, that is very undesirable. I am sure Andrew and the committee members will tell you, as a matter of principle, that is very undesirable. All of us recognise, in a very practical country like Australia, that there may be circumstances when that might be necessary.

The second key element of our treaties policy is to require that a national interest analysis—an NIA, as it is called—accompany all tabled treaties. These national interest analyses assess the likely economic, social, cultural and environmental impact of proposed treaty action and set out the reasons why the government thinks Australia should enter into the treaty concerned. These national interest analyses provide all interested parties with the information they need to make informed judgments on the need for the treaty. There is no point in us just saying that we are going to sign—say, the most recent treaty I think we have signed, an extradition treaty with Latvia—and then not tell anybody about what that means. What is an extradition treaty with Latvia? So we produce a national interest analysis, which explains to people why the executive, the government, thinks it is worth entering into such a treaty. People can take that or leave it, but that is the government's explanation for why the government believes it is necessary to sign the treaty. The Joint Standing Committee on Treaties has played an important role in improving the quality of these national interest analyses. They have looked at how the government has framed these analyses and they have made a number of recommendations that the government has adopted for how to improve them.

The third pillar of our treaties policy has been to establish this very committee, the parliamentary Joint Standing Committee on Treaties, which is hosting today's seminar—joint because it has members from the Senate and from the House of Representatives. This committee was set up in June 1996. In the four years since then, I am advised that it has issued 33 reports and considered over 180 treaty actions. I am not sure I should be boasting about that because a lot of you who might be really opposed to treaties are being reminded by me that in four years we have apparently signed 180 treaties. All of those treaties have been considered by the joint committee. This committee does not issue a report on every single treaty, but it issues a report on a collection of treaties that it has considered. It is the second largest and one of the most active parliamentary committees and is the key forum, as you can obviously see from today, through which the general community can have an active contribution in treaty making. It has hearings all across Australia. It seeks submissions from a wide range of different community groups. It puts advertisements in newspapers so that anybody who happens to read the advertisement is able to make submissions to the committee. As I said, they have hearings. People go before the committee and express their enthusiasm for a treaty or opposition to a treaty, whatever it might be.

Frankly, I think this committee has been an enormous success. Speaking as a foreign minister, that may be damning it with executive praise. It is not a patsy for the government. It does not always agree with the government. I do not think though that there has been a time when the government has openly defied the committee. On one occasion—I think it was over an economic agreement we had signed with Kazakhstan—the committee argued that we should not go ahead with the ratification of a treaty. We were about to, but the committee recommended not to because of some problems we were having with Kazakhstan over a major Australian company which had invested there and lost a lot of money when commitments had not been honoured to that Australian company. The government accepted the advice of the committee and did not go ahead and ratify the treaty. So the treaty never came into force. That is an example I am giving you off the top of my head of where the committee can play an absolutely pivotal role in terms of advice from democratically elected members of the federal parliament to the executive, which is not to say that the executive is not democratically elected but the parliament is a fundamental part of our parliamentary system obviously. If the parliament does not want something, then the executive ought to take fairly serious note of that and, if it does not, it does so at its peril.

The fourth thing we did was establish the Treaties Council to enhance federal-state consultation in the treaty making process. Two key initiatives to improve the involvement of state and territory governments in the process were the formation of this Treaties Council, which consists of the Prime Minister, the premiers and the chief ministers in the case of the ACT and the Northern Territory. That was established in 1996. There was an enhanced role for the Commonwealth Joint Standing Committee on Treaties, which comprises senior representatives from the premiers' or chief ministers' departments in every state and territory as well as the federal level of government.

I made the point earlier that signing a treaty, because of the Commonwealth's external relations powers, can change the whole balance of power between the states and the Commonwealth. Just to change that whole balance between different levels of government—which I think the framers of the Constitution would have thought should be changed through a referendum, in other words, through a decision of the Australian people—through the executive sign-

ing a treaty can be a rather dangerous thing and can be very divisive, provocative and non-consultative, to say the least. So, having the Treaties Council, where at least relevant treaties to the states and the territories can be considered, debated and objected to is, we believe, a very important institution.

We could ratify a treaty, despite the objections of the states—of course that could be done and that is not to say it never will be done. As a general practice, we would obviously try to get a consensus amongst the states and the territories before ratifying a treaty which is of relevance to them. An extradition with Latvia—the last treaty we signed—is not going to have a great deal of bearing on the Queensland government or the Queensland parliament. For example, entering into an international convention on desertification, dealing with deserts, has a very big impact on states. The states are very interested in that, given their environmental responsibilities. We have been very much in support of this convention, but we have not been going ahead with this initiative without proper consultation and the agreement of our states.

The fifth pillar of our treaties initiative is to establish a treaties information database on the Internet. It is there so that people can at last find out what treaties Australia has entered into and it is part of what we call the process of transparency. We are absolutely against any secret treaties. We absolutely do not want to do anything in secret. We are happy for all of our international treaty making processes to be transparent. You can argue about how transparent they should be, I suppose, but we will never sign a treaty in secret that you will not know anything about. That will be put onto the database and you can now look it up. Off the top of my head, over the years, we have signed 982 treaties. David Mason tells me that the figure fluctuates because a lot of the early treaties were inherited from the British. There are roughly 1,000 treaties on this database. That means you can look them up, explore them, think about them and talk to your local member of parliament about them if you regard them as an outrage or are unhappy with them. Enormous numbers of these treaties that the government signs and that the committee considers are very much run of the mill affairs. They are things like extradition treaties, double taxation agreements, those types of very technical things.

It is not often that the government gets into areas which are highly controversial, but it is of course sometimes the case. I would say that in the years ahead one of the more controversial areas of treaty making that will be debated very much in the Australian community will be in the area of international environment law. There is the Kyoto Protocol on greenhouse emissions, which was signed at Kyoto a couple of years ago, setting international targets, including our own targets, for greenhouse emissions. There will be additional protocols flowing from that on how this particular scheme is implemented. My guess is that there will be a very substantial community debate about all of that—I am not absolutely getting into it today. There are things like bans on whaling. You probably know that recently we have been trying to establish a South Pacific whale sanctuary which, unfortunately, we did not get the requisite majority for in the International Whaling Commission. We got a majority but not the two-thirds majority we needed. We will keep working at that. That is not likely to be very contentious here in Australia, but it is an example of international action in the environmental area. I mention that only because that is a field where I think there will be increasing government activism, global activism, and a lot of this will be very debatable here within Australia.

I hope that I have been able to give you some comfort—for some of you none, I suppose; for some of you a great deal—that we are absolutely transparent in these processes. We have im-

proved the transparency dramatically. The existence of this seminar itself simply proves that point. Many controversial issues in international treaties, conventions, agreements lie ahead of us as Australians. Even if we wish to withdraw from treaties or conventions, there will be many which need to be considered by the committee and by the parliament and which need to be debated in the community. Withdrawing from treaties, conventions and agreements of one kind or another is not something that will be done in secret either. Some of you like some of the treaties we sign; some of you hate them, but the message I want to leave with you is—and I am sure you would all agree with this—that the process needs to be transparent and, in the last four years, we have very successfully made it transparent. Thank you very much.

Mr HARDGRAVE—Thank you, Mr Downer. We will now undertake something quite familiar to the foreign minister, that is, questions without notice. Are there any questions for the minister?

Mr HORSBURGH—I am concerned about the iniquitous manipulation of treaties by so-called impartial persons who, in fact, have a hidden agenda. A typical example is that of Justice Michael Kirby who attempted to manipulate the Human Rights and Equal Opportunity Commission to overrule the law on homosexuality which was enacted by the democratically elected government of Tasmania. This is not about the rights or wrongs of homosexuality; it is about the fact that Justice Kirby at that time did not declare that he was a homosexual. I think it is abhorrent and outrageous that an unelected body answerable only to its UN masters in Geneva or New York can go against the wishes of the Australian electorate. Thank you.

Mr DOWNER—I am just checking up on the name of the man who took this particular case to Geneva to the United Nations committee. I think his name was Toonan. This is quite an interesting case—and you will have different views on this. It makes the point that I was making earlier about transparency and accountability. There was a man in Tasmania called Toonan who used a protocol that Australia had signed and ratified to a United Nations convention in order to make an individual appeal to the United Nations against the Tasmanian laws. This is possible under four protocols that Australia has signed—it might be three protocols. He made this appeal and the United Nations committee upheld his appeal. Just because the United Nations committee upheld the appeal did not have any implications in Australian law.

The Australian parliament, the Tasmanian parliament and the Australian executive at the time—it was under the previous Labor government in 1993-94; I remember exactly when it was—could have said, 'We don't really care what this United Nations committee thinks.' What happened was that the federal government at the time—the Keating government—said that they did care what the United Nations committee said. As a result, they decided to introduce legislation in the federal parliament to overturn the Tasmanian law. They were able to do that—I think I am right in saying, off the top of my head—using the external affairs powers of the Commonwealth, because the Commonwealth had signed the UN convention and, indeed, the additional protocol. So the Commonwealth did pass this legislation. In the end, the legislation was something of a compromise but, to a significant degree, it legalised homosexuality in Tasmania where previously it had been a criminal offence.

Today this is no longer an issue because the Tasmanian government and the Tasmanian opposition—I think I am right in saying—do not support the continuation of these laws which make

homosexuality a criminal offence. Nevertheless, at the time it was a very controversial issue. I do not think there was anything secret about it or that it was a conspiracy. For the purposes of this seminar, it really drives home the point that it is fair enough for Australia to sign these conventions and additional protocols and so on, but it should be done in the full blaze of publicity. We should all know about it and we should be able to have a debate about it. You should be able to complain about or support the signing to your local member of parliament. If enough people do not like it, then the federal members of parliament will agitate and try to stop it. In this particular case, many years ago we did sign—and I am not really saying we should not have—these conventions without public consultation, back in the late 1970s or early1980s, probably during the term of the Fraser government.

Mr HORSBURGH—The way I look at it, members of parliament have to get democratically elected on their merits. But the human rights commission is not accountable to anybody. Chris Sidoti does not have to be elected; he was never elected. He can actually override our representatives.

Mr DOWNER—No, he cannot override—Chris Sidoti has about three days left as the Human Rights and Equal Opportunity Commissioner.

Mr HORSBURGH—The Human Rights and Equal Opportunity Commission can.

Mr DOWNER—It cannot override them. Remember, all of these institutions were established under Australian law by the Australian parliament. The Human Rights and Equal Opportunity Commission, as it is now called, was established by an act of parliament. That is, your elected representative—I do not know whether it was your then particular elected representative—would have voted for it. It is not as though these people are running rampant without there being any democratic input. The problem is a slightly different one. The executive of the Constitution—that is the government which is elected—often goes off and signs these conventions without telling anybody or without any public consultation. My point here today is that that does not happen any more. It did happen when we signed those treaties, which I think was in the late 70s and early 80s—somebody will correct me here. We did those things without adequate public consultation. That is not to say we would not do them today; we probably would, but it would be better if we had a public debate about them. Then people would not think that there is some sort of conspiracy or something wrong with it.

Mr HORSBURGH—Thank you.

Mr SMITH—A recent treaty called the African Nuclear Weapon Free Zone Treaty, which Canada, America, Japan and Africa have signed on to, disallows nuclear facilities of any type to be built on sedimentary based soils, that is, they do not have a proper solid bedrock—they have sandstone or just a sedimentary layer. That is because a concrete facility could sink, break up or fracture or, if it is in an earthquake zone, it can split. Australia is not part of that treaty. I wonder whether Australia proposes to be part of that treaty or is considering it? If we have not considered it, why have we not considered it? America, Japan and Canada are proactive nuclear states and they have obviously identified a problem here. Here in Caboolture shire just north of Brisbane there is a proposal to build a Steritech cobalt 60 sterilisation plant that involves a very highly radioactive source—gamma radiation is one of the highest emitters of radiation you can

get from ionising sources—and that is on a sedimentary based soil; it has sandstone. That was revealed in court. I wonder what your response to that would be.

Mr DOWNER—I am not familiar with the Caboolture situation, so I will not comment on that. In relation to the African treaty, this sounds to me like a treaty on making Africa a nuclear free zone which would be focusing predominantly on nuclear weapons free. This particular aspect of the treaty that you talk about—that is, a commitment not to build nuclear facilities on inappropriate soil—sounds to me to make perfectly good sense. We have not entered into such agreements because they are not really relevant to us. We are not planning to build nuclear facilities in Africa on any soil, tough or soft. That is really all I can say about it. If you can persuade us that there is some extraordinarily urgent reason why we should sign up to such a treaty, we would obviously have a look at it.

Mr SMITH—I am not sure whether the context was just to do with Africa because America, Japan and Canada have signed into a treaty.

Mr DOWNER—There might be a good reason. I am not sure of the answer.

Mr LONERGAN—I am the sort of person who normally would not mind hearing no being said at United Nations subcommittees, but there is one that is happening at the moment that I would like your response on: the Tobin tax rejection by the Australian delegation. The Tobin tax apparently is a currency transaction tax being proposed in order to fund development for poorer countries. According to an article in the *Australian Financial Review*, Australia led the charge to put it off the agenda. I find that very curious. Could you give me your response?

Mr DOWNER—The Tobin tax, as you rightly point out, is a proposal originally by a man called Tobin to impose a levy on all currency transactions so that the money can be used to fund the United Nations. We do not like that. We think it is much better that the United Nations be funded on the basis of contributions, as is currently the case, for a number of reasons. One of them is that we want the member states to have real ownership of the United Nations, not the United Nations to be an institution which becomes disconnected from its member states. If you had just an international currency transaction tax, then the United Nations would, if you like, be able to freewheel. It would operate with significantly lesser intervention by the member states. I do not think that is appropriate. I like to feel, as we are a supportive and very active member of the United Nations, that the United Nations is a creature of the 188 or so member countries that belong to it, that it is not separate from them.

The second thing is that we have had a big debate here in Australia about tax. We were thinking maybe it would not be such a great idea if we had systems, if you like, of global taxes over which, once they were introduced, we had no control whatsoever, or almost no control. We think that might be taking globalisation a step too far. The third thing is—and this is a not an unimportant point; this is one of the reasons why our Treasury so passionately opposes it, as does the United States—we do not think it will work. You would have to get every single jurisdiction in the world to agree to this currency transaction tax. Otherwise, do you know what would happen? Currency transactions would all take place in those jurisdictions where there had been no agreement to the Tobin tax. It is fanciful to think that every single jurisdiction in the whole world would readily agree to signing up to such a proposition, and I do not think it is

very likely to come into force. So we think it is impractical and inappropriate, and we quite happily opposed it at a recent United Nations meeting.

Mr LONERGAN—Can I make a reply to that?

Mr DOWNER—We have a lot of questions. I think we had just better keep moving on.

Mr LONERGAN—So there will be no resolve.

Mr DOWNER—This is not a debate; it is questions. There are many people here.

Mr LUCKEL—Is there any chance that the government will bring the Australian voting public up to date with the treaties that have already been signed? Will you also give the Australian public the chance to debate the treaties that are on the table before they are signed?

Mr DOWNER—Are you asking whether we can debate the treaties that have already been signed in years gone by?

Mr LUCKEL—No. Will you be giving the Australian voters the chance to know what treaties have been signed?

Mr DOWNER—That is absolutely the case. They have been put on this web site. I was making this point earlier when trying to work out exactly how many treaties Australia has signed or is committed to. Some we have inherited from the British, but there are around 1,000. Obviously, we have not signed 1,000 treaties since the new system came into place—perhaps not obviously, you might think. I made the point that we have signed 180 treaties, conventions and agreements since this new system came into force. All of the others are on this web site. I have had a look at it myself. It is quite a good web site. If you think it should be improved, we are happy to improve it. We absolutely want all of the treaties and conventions that Australia has signed to be completely available to the public. Although the committee has an awful lot of work to do in dealing with the treaties, conventions and agreements and so on that we are either entering into or pulling out of—I do not know that we are pulling out of too many, but that we are entering into—the committee can look at other treaties that we have entered into over the years back in the 1950s or the 1930s, or whenever it was. It is a completely transparent process, and it has to be.

Interjector—Not everybody has a computer. Can it be published in the daily news?

Mr DOWNER—That is right, not everyone has a computer. As for publishing in the daily news, I am not sure we could do that; we would fill up the newspapers with them.

Mr MASON—Perhaps I could say on this point that we have placed on the PDBS library Internet system all the treaties Australia has signed or been involved with, going right back to Federation in 1901—not only the treaties but also the terminations and amendments. Altogether it comes to over 26,000 pages of treaty text. Various people write to us asking whether we can provide them with a list of all treaties. We always have to respond by saying that that is not possible because we cannot practically send out 26,000 pages of text to people, but we can tell you exactly where it is all available. If you wish to nominate, say, 30 treaties that you are

concerned about, we can download them from the computer and send them out to you in hard copy. We very much appreciate the fact that only a small number of Australians have computers and access to the Internet. For that reason, we make it clear that you only have to telephone us, let us know what you want with some degree of precision—telling us the names of the treaties you want—and we will happily send them out to you. Alternatively, we will send them out to a library or university near you which does have the Internet and you can go in and look at them there. On the question of looking at treaties at any time, as the minister said, the Joint Standing Committee on Treaties, under the resolution establishing it, has the right—indeed, it is encouraged—to look at any treaty that is in existence that has been assigned, not only the new ones that are coming up.

Mr SPILSBURY—Mr Downer, we are signatories to the CAMBA, JAMBA and Ramsar conventions. Just this Sunday or Monday, the new biodiversity bill came into being. In that bill there are exclusions for the development of airports adjoining Ramsar wetlands—and Ramsar wetlands are known habitat areas for the birds protected by the CAMBA and JAMBA agreements. In the Federal Airports Corporation guidelines for the control of birds, the exact wording is 'the dismantling of the nest with a shotgun, regardless of the state of occupancy'. That does not seem to make sense to me, Mr Downer. Could you explain the logic?

Mr DOWNER—You are really asking me about the specifics of a domestic policy, which is not in my portfolio area at all. I cannot pretend to be an expert on that, not for a second. I can tell you about the treaties—

Mr SPILSBURY—Senator Hill might be able to address this.

Mr DOWNER—That is right. He is absolutely the person to talk to about it. You have come up with a very good solution. Really, I can only say to you that my responsibility as a foreign minister is for the various treaties, conventions and agreements we enter into. Naturally, we do that in consultation with other portfolios. In fact, often they are driven by other portfolios such as Environment Australia. In the context of this discussion about treaties—rather than the details of the shotgun, the bird and the nest, which sounds like a fairly bad combination—if those treaties will have an effect on domestic law then they have to be implemented by acts of parliament. Otherwise, they will not have any effect in domestic law.

Mr SPILSBURY—It has the effect of making us look fairly ineffectual.

Mr DOWNER—That would be a point of view.

Mr BRUNCKHORST—You said in your speech that you want full accountability for the people of Australia. Why can't these treaties be put to the people before being ratified, like at election time or something, so that people could have a say in whether or not they want them ratified?

Mr DOWNER—Unless you want elections week by week, the problem here is that the need for treaties to be signed, negotiated and agreed to often comes up in a fairly short period of time. I will give you an example. I will stick with the example I used earlier today because it is a good example—the extradition treaty with Latvia. I am not sure that I have this right, but I would not have thought that an extradition treaty with Latvia would be a big election issue. We

have people here from the Democrats and the Labor Party. Looking at them, they do not look to me as though they are opposed to an extradition treaty with Latvia. That is not to say that there might not be some strong community objection to that. But, if we were to wait until there was an election, we would have to wait now for a year and a half until we could include that in a package of proposals that the government would take to the electorate. It is a question of practicality. Among other things, elections might be fought around a treaty issue. There is no question that that could be the case. It is up to the community to raise issues of concern to them with political parties and candidates—they might be Independent candidates—through election campaigns, and a treaty or a convention might be of concern.

So because the process is transparent and you know the treaties that the government is getting involved in or has been involved in—of course, with opposition parties you have to ask them whether they would or would not because, in the nature of opposition, they have not been doing it—you can always raise issues with candidates at election time. That seems to me entirely appropriate. Transparency means they can become election issues, but practicality means that it is not in the real world to say that just once every three years we would sign or ratify treaties, that we would wait until there was an election. I do not know that the public would think that made an awful lot of sense. There would be an awful lot of public resistance to procrastination.

Let us say that we needed a security treaty of some kind because of a great military threat to us. It is very hypothetical, but should something like happen, we may not have the luxury of waiting three years. We would have to do something straight away, and it would hardly be a time to call an election, I would have thought, over whether we should have the treaty. As you think it through, it is not very practical. Perhaps there is another angle. You might ask why not have referenda and every time we have a treaty? That is rather like asking why not have a referendum or a plebiscite every time the parliament decides to enact a law.

Mr BRUNCKHORST—Why not?

Mr DOWNER—How good would that be? How well would the country work, with elections costing $60 or $70 million a pop, having one every week? It is just never going to happen. What we do in this country and what every other democracy does—they are not all democracies—is have periodic elections. If you do not like what the Liberal-National Party government has been doing or is doing, then next election is your big opportunity. You can vote them out. You can vote for someone else—and some of you would say 'hear, hear' to that. I would be disappointed if I heard that, but I am sure that I will. I had better not lead with my chin here. That is just the way it works.

Mr BRUNCKHORST—We do not have a choice.

Mr DOWNER—Yes, you do. You can vote for Independents.

Ms BOND—Mr Downer, I support what you have been doing with the United Nations in East Timor and in Fiji, and I have heard you say that that is the right way to go. So I am very confused when the United Nations Committee for the Elimination of Racial Discrimination—which, as I understand, is a standing committee a little bit like this one—is sort of dismissed by the Australian government when it makes a report which says that Australia is in breach of its treaty obligations, particularly in regard to the Native Title Amendment Bill and reconciliation.

I get a little worried when you are castigating Fiji and I am thinking, 'Hey, what about what we are doing in Australia? What about the human rights issues here?' Why don't they matter?

Mr DOWNER—The answer to that is they do matter. I must say it seems to me a slightly staggering proposition that, if some United Nations committee criticises Australia, we should be silent about this criticism. As a democratically elected government—and our elections are free and fair in this country; no-one has seriously challenged that—we are entitled to disagree with the United Nations committee. Maybe you are not saying we should not. That is the first point.

The second thing we are saying about United Nations committees is that these are not committees that work like a court or, for that matter, like a parliamentary committee in this country, like this committee here. The Joint Standing Committee on Treaties is led by democratically elected people and is supported by a very strong secretariat staff. The trouble with United Nations committees is that they have members from around the world with enormous numbers of reports to consider. I think you will find that the CERD committee is something like two years behind in its consideration of reports. It has thousands of reports to consider and a very tiny secretariat. You have a human rights lawyer from Cuba or from China or Romania and today is Thursday, so we are going to look at something on Australia. I do not know anything about common law. I do not know anything about the complexities of the Australian issues, for example native title. A few NGOs come along and that sounds all right, we will issue a report. That particular report by the CERD committee did not even adhere to the remit of CERD. It wandered into areas which are not anything to do with that committee.

I do not object to the existence of the United Nations committees, and Australia signed up to these things many years ago, but I do think, if this human rights mechanism is to work, that it has to be credible. You may agree with the committee and therefore think, 'Hoorah, I agree with them, so they are good.' My point is a somewhat different one: whether I agree with the committee or whether I do not—sometimes I will not; as you know, I have not recently, but sometimes I do agree with these committees—to be effective these committees have to be credible. Their work and their arguments have to be credible. It is all very well for them to listen to NGOs, and why would you care about that? Of course, they can listen to submissions from them. But a democratically elected government, as distinct from a government which is not democratically elected—an authoritarian government—should be able to have a say. Its voice should be heard. Although we sent a cabinet minister along, just about everything he put forward was simply dismissed. That is not the real world. That is not likely to win much applause here. Finally, at the end of the day we are going to make up our own mind in this democracy how we run our country. I am not going to have human rights activists from countries like China, Cuba and Romania deciding on our laws here in Australia. I am not going to have that.

Mr HARDGRAVE—Would you please put your hands together and thank Alexander Downer, our foreign minister, for being here today.

Mrs DE-ANNE KELLY—Ladies and gentlemen, it is my pleasure now to introduce the Chairman of the Joint Standing Committee on Treaties, Mr Andrew Thomson. Andrew was elected to the House of Representatives in April 1995 and joined the treaties committee in December 1998 at the beginning of this parliament. In the short time since Andrew took over the chairmanship of the committee, we have tabled 16 reports, reviewing a wide range of treaty

actions. Andrew, in fact, is an excellent chairman. He is effective in seeing that the treaties committee fulfils its commitment that the government made that the process be open and transparent. He also ensures and encourages wider participation by the Australian people in decision making matters regarding treaties. It is a privilege to serve under a chairman who brings intellectual rigour and also a commitment to the committee process to his duties.

Andrew visited Rockhampton last year to meet with the local community during the committee's consideration of the agreement with Singapore in relation to the use of the Army training facilities at Shoalwater Bay. He has returned today to Queensland in the role of chairman of the treaties committee. He is very well placed to speak this morning on how you can have your say in the treaty actions being considered by your government..

Mr ANDREW THOMSON—This is the second such seminar held by this committee in this parliamentary term. We held one in Adelaide and, as the last 40 minutes have demonstrated, we found, during questions and answers, the opportunity to hear some of the concerns that people have is the most valuable result of these seminars. Rather than deliver a long set speech about how the committee works, I would like to talk firstly about some very basic legal issues with these treaties and secondly about some of the larger problems that are happening in treaty making.

First of all, as Alexander said, here in Australia the executive—that is, cabinet—would authorise a minister to participate in negotiations with a view to concluding a treaty which is, they suppose, in Australia's interests. To do that, the minister—not always the foreign minister; it might be environment, health or whatever—will get together with cabinet to decide a negotiating brief, that is, the cabinet will sign off on what they are allowed to do in the negotiations—how far they are allowed to go. Negotiations are concluded and the text of a treaty is agreed by consensus among all the representatives of all the governments there. The meeting might be taking place in some city that you have never heard of in a distant country. The text is agreed and then that minister or the official sent by the minister will come back to Australia and say, 'Right, everyone has basically agreed to the text; we should sign this.' Then the minister will go back, ask cabinet's permission, show them the draft treaty and, if they say yes, it is signed.

It is a bit of a myth to say, 'You can sign something, but until you ratify it, it does not bind us, so you don't have to worry about it.' That is not entirely true. Once a government signs a treaty, even before ratification, you are under a legal duty in international law not to act in a way that is contrary to its aims or objectives. So, in that sense, it is a fairly substantial step to sign a treaty. In the middle of the process between signing and ratification sits this committee and parliament and all of you have a chance to make submissions, to give evidence at our public hearings, or simply to organise a lot of people to make an objection known in a more concentrated way. Once that process is done and it is ratified, then, yes, as a party Australia is bound by the treaty in international law.

In some cases that requires an act of parliament in Australia to implement it. So you have a second process. It has to go through the House of Representatives and the Senate. In that process again, pressure and concerns can be brought to bear on it. Some of the difficulty comes where a treaty does not really require an act of the Australian parliament to bind us and, therefore, it might have some effect on our rights and obligations as citizens, on our laws and, in

particular, on the laws of our states which have had really very little say in how it was all done. That is the case with a lot of existing treaties which have been on the books for a long time, especially some of the multilateral ones.

There is another set of terms you ought to be familiar with: bilateral and multilateral. Bilateral treaties are between one government and another, like the extradition treaty between Australia and Latvia which Alexander talked about. That is obviously done to effect a particular purpose in the interests of just those two countries. So bilateral agreements can have profound effects domestically here in Australia, but it is the second type, multilateral treaties, that are usually far more contentious and problematic. There are two types of those. One type regulates existing activities—for example, tuna fishing agreements. The stocks of tuna are a very valuable resource for a lot of little countries in the Pacific. They could be wiped out by unregulated tuna fishing, using poor techniques of fishing or just overfishing. In order to try to regulate the number of tuna boats fishing these parts of the Pacific or the Southern Ocean, governments get together and agree, then they will regulate their own tuna fleets and hopefully the purpose will be achieved.

The second type of multilateral treaty, which causes most of the difficulty, is what I would call aspirational treaties, done mostly in the 1950s, 1960s and 1970s. Governments would agree that we all aspire to certain rights of people and human rights being protected, generally speaking, in all the countries of the world, or as many as you can get to sign them. So, okay, you agree that it is a good thing that people have the right not to be put in prison without trial and things like that. Once you have agreed and signed the treaty, what is the next step? Logically you have to enforce it somehow or at least monitor it. In the text of the treaties—and please read them carefully; get them off the database and have a good look at the way they are described. These committees are set up to monitor compliance with the treaties.

The question then arises: who is the tail and who is the dog? This is half the problem. As Alexander says, those committees are very weak, even though they seem to have great authority in the media when they hand down judgments. In fact, there are only a few people from a strange collection of countries who are elected somewhere within the UN system—not by you and me—to sit on these committees. They fly in and fly out of Geneva every few months—there are not many people in Geneva in their secretariat trying to organise things—and they hand down some kind of judgment simply because someone has turned up and told them to. There is no process of cross-examination and the clarity of the evidence they are given is very questionable sometimes. In those cases, you can say that their credibility is very poor, yet they seem to have great sway in the media. They are reported all over the world and people may have a poor opinion unfairly of Australia or some other country that has been misjudged. So we have a real issue ahead of us: how we as Australians, through our government, go about reforming this process.

I was very curious about the hoo-ha in the media about these committees, so I went to visit Geneva two weeks ago—just myself—to see the UN Human Rights Commission. It sits there in a bizarre sort of building on the shores of Lake Geneva. I met the secretaries of six committees. I did not mean to give them a misleading impression, but I made out that I was one of their friends. I said, 'The work you do is reported far and wide; tell me how you go about it. For example, in Australia, in New South Wales and in Queensland, the dairy industry is undergoing a process of deregulation. This is having a severe impact on some small dairy farmers. It is a de-

cision of state governments, with some federal government input but indirectly. Do people on those dairy farms have a right to complain, to bring some action about this here in Geneva?' They said, 'Oh, we've never thought of that before, but maybe they would. Please come; encourage them.'

In a sense, although there is nothing in these treaties about deregulation of agriculture or any such thing, these committees are about expanding their jurisdiction through what they call 'general comments'. They really do feel that they have some kind of greater authority or role than people in a parliament, a state or even local council in one of their member countries. So I said to them, 'What happens when your committee members come to some judgment about how someone has been treated under, say, the criminal law of Australia or the civil law?' They said, 'Well, evidence is given and so forth, and our committee will issue a statement or a judgment and, well, your country is a member of the convention, Mr Thomson. So obviously, if our committee hands down a judgment, you have a problem.' I said, 'What about our own processes? What about our own criminal or civil law? We have a history a lot longer than you have.' And they said, 'Ah, but you're parties to this covenant.' So we have a problem. They have a view that our jurisdictions and our tradition of common law and so forth are to be subordinated to their processes. What they are doing is using a process which they call 'general comments'. They take one of the little articles, one of the rights, and issue these great long commentaries about their interpretation of it. Gradually it seems to be expanding.

One thing that ought to be cleared up is the effect of the external affairs power in the Commonwealth Constitution. It went to the High Court in the Tasmanian dams case—that is the authoritative judgment. It may not be quite as clear as a lot of people think. I am not a practising barrister, but I have read that judgment very carefully since serving as chair of this committee. In the end, if there is a breach of a treaty and it is judged to be a breach by some tribunal beyond Australia's shore, then it would in theory give a Commonwealth government the power to override a state or a local government here in Australia. But reading the judgment carefully, it seems if there is a breach of it, that has to impose a definite obligation on Australia. So if you are in breach of that obligation—not a right or some vaguely worded aim or object in the treaty, but a definite concrete obligation to either protect part of the environment or do some such other thing—then, yes, a Commonwealth government will have the power to override a state. But if it is not expressed very clearly in the treaty as an obligation then, in my view, it is doubtful whether a Commonwealth attempt to override a state would actually stand up if it were challenged in the High Court. Unless we have another attempt by a Commonwealth government to do that in the next few years, it will be very hard to test it under our own Australian law. I cannot speak on every issue for this government, but it is very unlikely that certainly members of the coalition backbench would agree—unless it were a very serious matter—to the Commonwealth seeking to intervene.

They are some of the particular difficulties. A gentleman earlier raised the question: what happens with people who refuse to live by the rules? What is it going to be if Australia always abides by our obligations under all these treaties and under international organs and other countries do not? Will we always lose? That question has been around for as long as international law has been on foot. The answer to it generally is: well, you have to do your best with other countries to try to force 'scoff law' nations, as they are known, to abide by their obligations. The difficulty comes when some of these institutions, these committees, seem to be abusing the process or their role under these treaties and trying to put upon Australia an obligation which we

really do not bear under this treaty, and then say, 'Well, you're not obeying your obligations under international law, so you do not have the right to tell anyone else that they should.' What do we do about that? This is not a simple question, but at least we ought to start debating it. It will come up time and time again in future under human rights agreements and environmental treaties, and it will be a very confusing process.

At least as part of our Commonwealth parliament we have the Joint Standing Committee on Treaties with which you can raise issues. I would urge you to do it more often. Quite frankly, the number of treaty actions we have to review is very great: 180 since the committee has been on foot. They are not new treaties, I should emphasise. They are most often amendments to existing ones. They can be very small amendments that mean almost nothing or they can be very large changes. Alexander raised the Kyoto protocol on emissions. This has not come before the committee for hearing. Why not? It seems a very big deal. It has been signed, but the government has made no decision whether to ratify it. If they do not decide to go ahead with it, obviously they will not table it in the parliament and it will not come before us for your scrutiny and our scrutiny. In that case, we decided of our own accord that we would have a hearing or an inquiry into it, and we are going to do that in the next few months. There is concern about the WTO. Some people feel that it is not strong enough; some people feel it is too strong. Likewise, the WTO will be inquired into by the committee off our own decision. There are a few problems. I would welcome some questions from the floor.

Mr ARKELL—It seems to me that there are many more than 1,000 treaties. Quite some time ago, I was informed that there were well over 2,000 treaties. Anyway, that is not really my point. What surprises me is that we have this process which you have outlined, yet we get treaties like the fifth protocol which has the potential to have a monstrous impact on our sovereignty. Other countries are telling us what we can do, and I see no right for them to do that. But there is another one where, hidden away in a treaty that is supposed to be about violence against women, there is a clause which says that the signers of that treaty agree to total and complete disarmament, including nuclear disarmament. This means that Australia has to disarm, and they have done a fairly good job of it. Firstly, they set up a deal after Port Arthur and the next thing all the guns are taken away.

Mr ANDREW THOMSON—Let me deal with that. As an enthusiastic clay target participant, I understand the concern about how these international treaties may impact on people's rights to enjoy their sport within Australia. The answer to your question generally is that, if it is something that affects an existing law within Australia, there has to be a new act of parliament to implement what is written in a treaty. Therefore, it has to go through the Australian parliament. If it does not go through the Australian parliament, no matter what it says in the treaty, it cannot affect your right and my right to do what we do under the law existing here. The problem comes where some of these treaties are expressed very vaguely and appear to put obligations upon Australia, when, in fact, they do not. There is imprecision of language in a lot of these treaties. When you say there are 1,000 or 2,000, in a sense, the exact number does not matter so much. As you were pointing out in the second half of the question, it is the impact on existing law in Australia that really does matter. The only way around the existing parliamentary system—whereas, if you do not like what a government is doing, you can exercise a vote against it—is this external affairs power. Likewise, in the end, if a federal government sought to override something that a state government had on its statute books, then judgment is brought to

bear against that federal government at the next election, and that is really all we have to resort to.

One question that has not yet been answered is: what happens if a local government of Australia tries to do something? This example in Caboolture might be a very good one. Likewise, there are certain treaties that appear to forbid prostitution, yet there are local governments in Australia with ordinances on their books that regulate the establishment of brothels in order to take them away from schools and churches and so on. You might argue that that is in breach of those treaties. This is not tested.

Mr KNUTH—My question to the committee is: when a treaty is signed that proves in time to be absolutely detrimental to the Australian people or to a sector of our primary industries, business or manufacturing, what procedures are in place to renege or nullify that treaty in order to restore balance and commonsense?

Mr ANDREW THOMSON—Better still, if you like, if there is a treaty that is already on the books now and has been there for quite a while, Australia has ratified it and therefore is bound by it in international law, what do we do if we decide that the time has come when it does not suit our national interests and, in fact, it damages us? As they say, we can—the technical term is—'denounce' a treaty, which means to withdraw from it. To denounce a treaty personally, we need only the Governor-General, on the advice of a minister—that is, the cabinet, in effect—to sign an instrument which declares that Australia has withdrawn from it. So all we need is a cabinet decision to do it. Where there is an act of parliament that implements the treaty, then you have to repeal the act of parliament, and you have to have a majority in both houses to do that. In a sense, the process of getting into these things these days is harder than getting out of them, and that is not a bad thing. If there is something you particularly object to in a treaty which you think affects Australia, then in a normal political fashion you just campaign against it, get a majority in the parliament and knock it off. It is as simple as that.

Mr KNUTH—The farmers in my electorate have been crying out for GATT to be annulled for a long time. It has proven to be very detrimental to many of the primary producers in this state. How long can they cry foul, and when will they be listened to?

Mr ANDREW THOMSON—GATT is now the WTO. The point you make is that some people object to freedom of movement of agricultural produce. WTO is a system of rules that allows generally protectionist governments to be brought to book so that exports of Australian produce should not be unfairly excluded from other markets. The reverse of that is simply that we have to abide by the same rules when people want to sell things to us. It goes back to free trade against protectionism. It is not the treaty that matters particularly; it is the rules and how they are enforced. If you want to knock off GATT or WTO or get Australia to withdraw from it, I would have to say that it would destroy the incomes of a lot of other farmers. But if in a particular case you think it would suit one industry, then you have to get up in parliament and do it like that, like any other treaty.

Mr MORRISON—What about the MAI treaty; what is being done about that? Has it been set in place? I have spoken to Mr Jull about this. That is the first part of the question, so perhaps you could answer that. This is the most damaging treaty Australia could ever have. It lets any

overseas company in. They do not have to abide by any of our regulations and they can bring their own workers in.

Mr ANDREW THOMSON—The MAI is as dead as Chairman Mao. It is dead, dead, dead. The way it came about—and it was only a draft treaty—was the most interesting part of it, in a sense. It is not quite what it said. Gary Hardgrave did most of the work on this when we had hearings into it. What happened was that a group of officials from the treasuries—not the departments of foreign affairs, but the treasuries—of most of the OECD countries got together over a few sessions in Paris and wrote it. Then, before governments could really get involved, the officials at that level had written this whole text and, as you say, it was written in what you might call an ambit claim way. They wrote it as wide as they could, thinking that when it was going to be finally dealt with by governments—that is, by ministers—it would be shrunk back. What happened, of course, was that it was exposed at the draft stage. A lot of people got to look at it and thought, 'This is ridiculous. This would destroy the sovereignty of any state that signed up to it.' Hence, it was killed off pretty quickly.

Mr MORRISON—If what you say is correct, why then in 1997 did the government sign a treaty, the multilateral guarantee agreement on investment? Why would you sign that guarantee before you got the other part going?

Mr ANDREW THOMSON—Is this the one about banking and so forth?

Mr MORRISON—No, it is the guarantee of foreign investments.

Mr ANDREW THOMSON—I am not familiar with that. You are welcome to bring it before the committee for scrutiny. If it is the one about banking that ensured freedom for foreign banks to do business within Australia, we had a look at that one. We found that the law of Australia had already changed in the 80s to make it possible for foreign banks to have branches and do business and so forth here. That fifth protocol—it is a stupid name for it frankly, because it gives rise to this idea that something is rather fishy about it—was only guaranteeing what was already on the statute books of Australia. So there was nothing new about it. It seemed like a catch-up treaty to something we had already done. We could not figure out the need for it in the beginning—we already had the law changed that way.

Mr MORRISON—So you are really saying that you have not read it.

Mr ANDREW THOMSON—The fifth protocol, the one you are talking about—

Mr MORRISON—No, I am talking about the multilateral agreement on investment guarantees. It is a specific paper. It was given to me by your department in Canberra when I rang them about it.

Mr ANDREW THOMSON—Give it to me again and we will have a look.

Mr MORRISON—All right. I will give you a business card before I go and I will contact you. Thank you.

Ms RASCHELLA—Is there any proposal on the table for the Joint Standing Committee on Treaties to get involved in civics education to assist the public in learning about treaties, specifically in relation to the GATT? That is my area of expertise. Being a farmer's daughter, I ask: why have the tradesmen, the farmers and the manufacturers of Australia not been given the opportunity to learn about the GATT and use it to their advantage? So many of the treaties in the area of trade we can use to our advantage, but our people are not doing that. We do not know about it. Would you please comment?

Mr ANDREW THOMSON—I agree with that. The other side of this issue of trade and protection and so forth, particularly in agriculture, is: what rights do Australian farmers have that could be exercised and how do you go about doing it? The Department of Foreign Affairs and Trade is slowly going around Australia with seminars in the capital cities, I think, explaining how people can bring actions there. The trouble is that you have to get a fund together to pay for the whole thing to take place in front of a panel in Geneva, but it can be done.

Ms RASCHELLA—No, it does not have to be done that way. You do not have to go to Geneva. There are so many people in this room who could be benefiting from our treaties, yet we do not have the system of education for people to learn about them. This is something that I think our current governments, state and federal, have failed in.

Mr ANDREW THOMSON—I take your point that there is more we could do to try to spread the word, if you like. With successive occasions like this, we will do more.

Mr RYAN—I am from Gary Hardgrave's electorate. On 25 June, Senator Harradine asked a question in the Senate to do with why Australia, together with some other member countries—Japan, Canada, US, Australia and New Zealand—blocked the ratification of a resolution that would call for all United Nations treaty agreements to be supportive of the family. Senator Harradine asked why we did that. In her response, Senator Jocelyn Newman said that we were implementing an agreement called women's action rights taken at the Beijing conference. Similar to this gentleman here, I wonder why our Australian law is made at some conference in Beijing. Our law should be made here by our parliament.

Mr ANDREW THOMSON—I could not agree with you more. There was a big conference in Beijing in 1995 I think. I suppose it was a women's issues conference and a number of those international covenants about elimination of discrimination against women were probably discussed there. I assume the conference passed resolutions about this and that. Those resolutions themselves do not bind us. But what you say is that, if a government in Australia then takes some action in another kind of conference, whether under the UN or some other thing, and either votes against or in favour of some other motion at some other conference, you say in a sense, 'Well, that affects me as a citizen of Australia because my government did something at a conference to express its opinion. People will take that to be an Australian opinion and, therefore, it does not represent me, so there is something wrong in the system.' That is a question not about the treaty itself affecting your rights and my rights but about how governments react to them, what governments do as a consequence. I know what you mean.

If a government you do not like does something that you object to at one of these conferences, it is not the treaty itself. There might be something in the treaty that you disagree

with, but it is the action of that minister or the cabinet. This committee tries to scrutinise the terms of these treaties—existing ones or prospective ones. When it comes to criticising what governments do from time to time at these conferences, it is really just a normal political matter. You have to get stuck into them as you would with anything else. But, if there is something you object to in the treaty, that is the time to organise and get something done through our committee.

Proceedings suspended from 10.45 a.m. to 11.13 a.m.

Senator LUDWIG—I hope everyone has enjoyed their morning tea. We have had two very interesting speakers to date. We are now going to have a slight change of focus. I would like to introduce Mr Gary Fenlon, the member for Greenslopes in the Queensland parliament. Gary was first elected in December 1989 and again in June 1998. He is currently Chair of the Legal, Constitutional and Administrative Review Committee. Also, he has worked on estimates committees, the parliamentary accounts committee and many other important committees of the state parliament. The Legal, Constitutional and Administrative Review Committee, which deals principally with law reform in Queensland, has recently conducted an inquiry into the role of the Queensland parliament in treaty making. I welcome him today on that particular topic. I am sure what he has to say will be informative and instructive. The Queensland parliament played a crucial role in informing the Joint Standing Committee on Treaties in its very early days. Some time back in April 1995, as I recall, a position paper on reform of the treaties process was presented by the state parliament to COAG. From there, we then had a later inquiry called 'Trick or treaty' from the Senate committee. Following those recommendations, we have a treaties committee. So the state parliament has played a very informative and instructive role in the wider community in its own work on treaties but also in informing the Commonwealth parliament about treaties. Without any further ado, I welcome Gary.

Mr FENLON—Thank you, Senator Ludwig. Good morning, ladies and gentlemen. I would like to recognise my fellow colleagues from the federal parliament and the state parliament here today and other distinguished guests. It is a pleasure to speak to you this morning on behalf of the Legal, Constitutional and Administrative Review Committee of Queensland state parliament. I have been asked to discuss the state parliament's role in treaty making. I will start by outlining the Commonwealth's power to make laws implementing treaties and what this means for the states, discussing a number of case studies by way of illustration. I do not propose to discuss the states' involvement in processes relating to the implementation of treaties. I understand that Mr Goodreid will address this subject in the next session of this morning's seminar. Finally, I will discuss a number of relevant proposals resulting from a seminar held in June 1999. The objective of the proposals was to provide opportunities for state parliaments to become more aware of and involved in treaty making. The Legal, Constitutional and Administrative Review Committee, of which I am chair, considered these proposals from the Queensland parliament's perspective and reported to the Queensland parliament with respect to those proposals.

First of all, I will go to the external affairs power. The reason that the states' role in relation to treaties is significant relates to the balance of power between the Commonwealth and the states. The powers of the Commonwealth derive from and are limited by the Commonwealth Constitution. Conversely, the states have far more general powers. For example, Queensland has power to make laws for the peace, welfare and good government of Queensland. If the Commonwealth makes laws within its power, as granted by the Constitution, then these laws

will override the laws of the state to the extent of any inconsistency. As I will now discuss in more detail, the effect of the Commonwealth government entering into a treaty can be to extend the matters about which the Commonwealth can make laws. The power to enter into treaties in Australia is an executive function of the Commonwealth government. However, if a treaty is to become binding law in Australia, generally it must be implemented by Australian legislation. The power of the Commonwealth to make such legislation derives from section 51 of the Constitution, which provides:

The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to—

... ...

(xxix.) External Affairs ...

Since 1920, the High Court has consistently interpreted the Commonwealth's external affairs power as a power to legislate in the area of international matters affecting Australia. This means that once the Commonwealth government has entered into a treaty, the external affairs power enables the Commonwealth parliament to make the obligations created by that treaty part of Australian law. If any such Commonwealth legislation conflicts with any state law, section 109 of the Constitution provides that the Commonwealth law prevails. Accordingly, implementation of treaties can override state legislation.

The power of the Commonwealth to pass legislation implementing treaties which effectively override state law is the source of potential conflict with states rights. The case studies I propose to discuss will illustrate this point. If anyone is interested in further reading about the relevance of the external affairs power to the implementation of treaties, a very good discussion can be found in a report of the Victorian Federal-State Relations Committee entitled *International treaty making and the role of the states*. The case studies to which I now turn are drawn from this particular report.

The first I refer to is the Koowarta case decided in 1982. This case concerned the validity of certain sections of the Commonwealth Racial Discrimination Act 1975, which implemented the International Convention for the Elimination of All Forms of Racial Discrimination. The Queensland government was alleged to have breached the act by refusing to grant a lease to the Aboriginal Land Fund Commission. The then Premier of Queensland challenged the act's constitutional validity in the High Court. The court held that the legislation was valid as an exercise by the Commonwealth of the external affairs power. All members of the court agreed that the law must possess a connection to matters external to Australia in order to constitute a law with respect to external affairs. However, the judges expressed differing views as to what that connection must be. Four of the judges expressed concern that an interpretation of the external affairs power which placed no constraints on the capacity of the Commonwealth to implement treaties could undermine Australia's federal arrangements.

The next case concerned the Tasmanian dam case, which was decided in 1983. This was the first case to make it clear that the external affairs power permitted the Commonwealth parliament to override state legislation by implementing treaty obligations. In this case the Commonwealth government placed the Franklin-Lower Gordon Wild Rivers National Park on the World Heritage List. The Tasmanian government subsequently proposed to build a dam on

the Gordon River. Legislation introduced by the Commonwealth government to stop the dam was then challenged by the Tasmanian government as a breach of power of the states over their own land and resources. The court held that the Commonwealth legislation was valid on the basis of the external affairs power. As in the Koowarta case, the judges' views differed as to how far the external affairs power extends. The minority judges again expressed concerns about the implications for Australian federalism of a broad interpretation of the external affairs power.

The next case with which we are concerned is the Toonan case. In this instance, Australia became a party to the first optional protocol to the International Covenant on Civil and Political Rights in 1991. The protocol allows Australian individuals who have exhausted all domestic remedies to submit complaints alleging breach of the covenant to the United Nations Human Rights Committee. This provided a new avenue of redress for people in Tasmania who were seeking the repeal of certain sections of the Tasmanian criminal code which made sexual activity between men a criminal offence. The Tasmanian Gay and Lesbian Rights Group submitted to the United Nations Human Rights Committee that the Tasmanian laws contravened article 17 of the covenant, which states that no-one shall be subjected to arbitrary and unlawful interference with his or her privacy.

The committee found that the Tasmanian laws were in violation of article 17. The committee's view was communicated to the Commonwealth government on 8 April 1994 and, under the external affairs power, the Commonwealth introduced legislation which was inconsistent with the relevant Tasmanian provisions. The Tasmanian Gay and Lesbian Rights Group sought to challenge in court the validity of the Tasmanian laws. This challenge was cut short when the Tasmanian parliament then repealed the offending provisions of its criminal code on 1 May 1997. Had the case proceeded, it is likely that the Tasmanian laws would have been found unconstitutional because they were in conflict with the Commonwealth legislation.

The next area I turn to is that of mandatory sentencing. The very topical issue of mandatory sentencing laws in the Northern Territory and Western Australia is another example of this debate, with some community sectors calling for the Commonwealth to legislate to override state and territory legislation. Any power of the Commonwealth to override the Western Australian legislation would derive from the external affairs power. Other considerations are relevant in relation to the Northern Territory, as it is a territory rather than a state.

I now turn to concerns about the states' role in the treaty making process. It is clear from these cases that the potential impact on the states of the Commonwealth decision to enter into a treaty is indeed significant. Concern has been expressed that the current situation relating to treaty making in Australia undermines the distribution of powers between the Commonwealth and the states which is provided for by the Commonwealth Constitution. Australia is currently party to a large number of treaties which cover an extremely broad range of policy areas including, for example, international trade, extradition of criminals, the protection of human rights and the protection of the environment. The broad range of context areas covered by treaties creates the potential for the Commonwealth to legislate in relation to a number of areas traditionally considered the domain of the states.

I turn to the 1996 protocol. In 1996, the Council of Australian Governments, COAG, endorsed a document which detailed the principles and procedures for Commonwealth-state consultation on treaties. The document deals with the ways in which information on treaty

negotiations is to be provided to the states and territories by the Commonwealth government. Mr Goodreid will discuss the protocol which I understand is relevant to the government's as opposed to the parliament's role in the process in more detail. In the time remaining, I intend to talk about the role of the state parliaments and what they can or might do in the treaty making process.

So where do state parliaments fit in? Few state parliaments have an active role in the treaty making process. Until recently, the Victorian parliament led the way in this regard. In May 1996, the Victorian government established a federal-state relations committee. The functions of that committee were to inquire into, consider and report to the parliament on any proposal, matter or thing connected with relations between the Commonwealth government and the state and territory governments. In October 1997, this committee tabled a report entitled *International treaty making and the role of the states*, which made a number of recommendations aimed at increasing state involvement in the treaty making process. That committee was not re-established following the 1999 Victorian state election. However, variations to a number of the committee's recommendations were considered at a seminar held in June 1999 convened by the Joint Standing Committee on Treaties in association with the Australasian Study of Parliament Group on the role of parliaments in treaty making. One purpose of that seminar was to explore the opportunities that exist for Australian parliaments to become more active, to become more aware of and involved in the process of treaty making. In his forward to the report on the seminar, committee Chairman, Andrew Thomson MP, noted:

> There is a sense of unease in parts of the Australian community about the impact of international law on Australian law and policy. Some people believe that treaty obligations represent a loss of national sovereignty and some doubt the capacity of parliaments to control the process. The only way for these concerns to be resolved is for more information to be made publicly available to our elected representatives to ensure that any international obligations entered into truly reflect our national interests.

During the seminar, participants developed three proposals to improve parliamentary awareness of and involvement in treaty making and to make the treaty making process more publicly open. The three proposals were that each state and territory parliament consider: first, arranging for information about proposed treaty actions to be presented to state parliaments as a matter of routine; second, establishing a dedicated parliamentary committee to review proposed treaty actions and to liaise with JSCOT or add this responsibility to the charter of an existing committee; and third, contributing to the establishment of an interparliamentary working party on treaties to help improve general awareness of treaty actions and to encourage wider parliamentary scrutiny of treaty making.

I now turn to the Legal, Constitutional and Administrative Review Committee's report on this matter. On 28 October 1999, the committee resolved to inquire into those three seminar proposals. In November 1999, the committee released a position paper outlining its preliminary position on the three proposals and called for public comment on that particular position. The committee considered the 21 submissions it received in conjunction with other relevant material and reported back to the Queensland parliament on 19 April 2000. In its report, the committee noted that there are important reasons, largely stemming from our federal system of government, why the Commonwealth Constitution gives the Commonwealth responsibility in relation to international affairs. At the same time, given that treaties can affect the states and territories, there must be mechanisms by which the states and territories are, to some degree, involved in and informed about treaty making processes. The committee believed that the

procedures implemented as part of and subsequent to the 1996 reforms, which will be discussed again in more detail by Mr Goodreid, have assisted in this regard.

The committee then turned to the specific proposals arising from the treaty seminar. First of all, there was the presentation of proposed treaty information in the Queensland parliament. The first proposal was that the state and territory parliaments negotiate with their respective executives to ensure that information about proposed treaty actions be made available to them as a matter of routine. In its position paper, the committee noted that it is important in a representative democracy that information regarding government action, including treaty making, is readily available to all citizens at a time when meaningful public consultation can occur—namely, prior to binding action being taken.

In this regard, the committee noted that the Department of Foreign Affairs and Trade already provides a schedule of treaty negotiations to the states twice a year. In Queensland, this schedule is provided to the Intergovernmental Relations Directorate of the Department of the Premier and Cabinet. In its position paper, the committee suggested that this schedule, together with other treaty information, could be tabled in the Queensland parliament to further inform the parliament about proposed treaty making, engender public debate on issues of relevance to Queensland and facilitate the making of submissions to the Joint Standing Committee on Treaties, where appropriate. Hence, the committee proposed that the Premier be required to periodically table in the Queensland parliament: (a) a schedule of treaties having been negotiated by the Commonwealth government; and (b) other treaty information such as national interest analyses.

There was strong support for the committee's proposal in submissions, although some submitters suggested slight variations. The Commonwealth Attorney-General's Department, while agreeing with the committee's proposals, stated that the schedule of treaties is provided to the states on the condition that bilateral treaties should not be made public while under negotiation and, therefore, these particular treaties should not be tabled in the Queensland parliament. The Queensland Premier also supported the committee's proposal in principle. However, he suggested that clarification was required with regard to the frequency of tabling information and the level of detail required.

After considering relevant material, the committee refined its position in relation to the first seminar proposal. The committee recommended that the Premier be required to table in the Queensland parliament, as and when they are received, advices from the Joint Standing Committee on Treaties concerning proposed treaty actions under negotiation and tabled in both houses of the Commonwealth parliament, together with the national interest analyses which relate to each of the proposed treaty actions under review. The committee did not recommend that the Premier be required to table full text treaties, as they are readily available on the Internet via the Australian Treaties Library and from the Commonwealth Department of Foreign Affairs and Trade.

I go now to the issue of a Queensland treaties committee. The second proposal that resulted from the treaties seminar was that state and territory parliaments could enhance their awareness of and involvement in treaty making by appointing a committee or conferring on an existing committee specific responsibility for reviewing all proposed treaty actions and advising on the

local impact of international law making. It was envisaged that such committees would complement the review activities of the Joint Standing Committee on Treaties.

In its position paper, the committee expressed a number of reservations about establishing a separate treaties committee of the Queensland parliament or including specific treaty responsibilities in the areas of responsibility of an existing committee on the following grounds. Not all treaties affect Queensland, and the majority of treaties do not contain controversial subject matter. Therefore, the extent to which the scrutiny of treaties is an effective use of the Queensland parliament's time could be queried. Parliament is not the only means by which treaties can be brought to the community's attention. For example, the Internet has been credited as being largely responsible for the demise of the Multilateral Agreement on Investment. Requiring the Commonwealth government to delay taking binding action on any treaty until after the Joint Standing Committee on Treaties has received representations on the matter from state and territory parliaments would significantly delay the treaty process. Further, the establishment of a new committee or the expansion of the jurisdiction of an existing committee would require additional resources which could not, on balance, be justified.

The committee also considered the following factors as relevant. First, concerning the significantly enhanced avenues through which the states and territories can participate in the treaty making process as a result of the 1996 reforms, one function of the Queensland's Intergovernmental Relations Directorate is to promote and maintain Queensland's interest in international treaty submissions. The directorate also coordinates Queensland's submissions to the Joint Standing Committee on Treaties and attendance by Queensland representatives at international negotiations. Finally, it is always open to the Queensland parliament to refer a particular proposed treaty action to a Queensland parliamentary committee for inquiry and report, if it considers that such a separate state inquiry is desirable.

On this basis, the committee stated that it did not propose that the Queensland parliament appoint a parliamentary committee or confer an existing committee with those specific treaty responsibilities. Submissions were fairly evenly divided regarding the committee's position. The majority of submitters who supported the committee's position did so on the basis that the benefits to be gained from the treaties committee in the light of existing mechanisms and the adoption of the committee's first proposal would not outweigh the costs associated with resourcing such a committee.

Professor Cheryl Saunders, Director of the Centre for Comparative Constitutional Studies at the University of Melbourne, agreed that there is no need for a separate parliamentary committee on treaties. However, she submitted that perhaps the Intergovernmental Relations Directorate could be invited or required to report annually to the Legal, Constitutional and Administrative Review Committee on substantive issues for Queensland arising out of particular treaties, and comment on the adequacy of the treaty making and the consultation process itself.

Submitters who disagreed with the committee's position did so for reasons including: first, the need for increased public disclosure of treaty contents means that the expenditure associated with the treaties committee is justified; second, the committee has overrated the effectiveness of the current system regarding treaty making and consultation; third, a parliamentary committee would have an important role in ensuring protection of Queensland's rights and sovereignty and

bringing together parliament's view on tabled treaties; fourth, that use of and access to the Internet is still limited; and fifth, since not all treaties affect all states and territories and since the majority of treaties are non-controversial, additional resources would not be great because the few treaties that do require review could be reviewed by existing committees.

After considering these submissions, the committee maintained the view that establishment of a separate treaties committee or conferring of those responsibilities would involve more costs than benefits. However, the committee did see merit in an adaptation of the suggestion by Professor Saunders that the Intergovernmental Relations Directorate be invited or required to report annually to the Legal, Constitutional and Administrative Review Committee on substantive issues for Queensland arising out of particular treaties and comment on the adequacy of the treaty making and consultation process itself.

Some reporting to parliament on treaty issues already occurs in the annual report of the Department of the Premier and Cabinet. However, the committee believes that this information could be expanded upon to specifically address: first, any substantive issues for Queensland arising out of particular treaties during the reporting period; and, second, the adequacy of the treaty making and consultation process from Queensland's perspective. Given the role currently performed by the department's Intergovernmental Relations Directorate, the committee envisaged that this additional reporting could be undertaken at little further cost to the department. Thus the committee recommended that the Premier be required at any time, but at least annually, to report to the Queensland parliament on: first, any substantive issues for Queensland arising out of particular treaties during the reporting period; and, second, the adequacy of the treaty making and consultation process from Queensland's perspective.

I now turn to the issue of the interparliamentry working group on treaties. The final proposal put at the treaties seminar was that all parliaments contribute to the establishment of an inter-parliamentary working group on treaties. It was proposed that this group should: first, comprise members from relevant state parliamentary committees; second, act as a forum for promoting public awareness of proposed treaty actions and encouraging wider parliamentary scrutiny of treaty making; third, meet every six months to review upcoming treaty actions in much the same way as Commonwealth and state officials meet as part of the Standing Committee on Treaties process; and, fourth, be supported by the secretariats of the respective committees on a rotational basis.

The committee was not convinced that the establishment of the interparliamentary working group would significantly add value to the measures introduced in 1996. Further, the committee considered that the measures introduced in 1996, combined with the committee's first proposal that the Premier table advices from the Joint Standing Committee on Treaties concerning proposed treaty actions, would provide adequate avenues for parliamentary and public information and consultation regarding the development of treaties. Those who agreed with the committee's position generally felt that such a group would not add value to the existing treaty review mechanisms.

After considering the various submissions, the committee believed that the majority of the benefits of an international parliamentary working group either currently exist or can be achieved through implementation of the committee's other recommendations. For example, the Joint Standing Committee on Treaties provides an avenue for achieving a coordinated national

approach to treaties. This forum also enables the states and territories to negotiate with the Commonwealth. The committee did not recommend that the Queensland parliament support the establishment of an interparliamentary working committee.

In conclusion, the committee is of the view that its recommendations represent a balanced and sensible approach to ensuring that Queensland parliament is sufficiently and appropriately informed about and involved in the treaty process. The regular tabling of information regarding proposed treaty actions by the Commonwealth and the Queensland parliament will not only bring matters to the attention of state parliament but also will provide other avenues through which community awareness and involvement in treaties is enhanced. Annual reporting by the Premier on substantive issues for Queensland arising out of treaties and the adequacy of the treaty making and consultation process from Queensland's perspective will also enable the Queensland parliament to maintain a continual watch over the entire process. The committee is currently awaiting a response from the Premier as to whether he accepts the committee's recommendations. Thank you very much.

Senator LUDWIG—We will take questions now. Mr Fenlon has some rather pressing state matters—parliament is sitting today—so we will keep moving along.

Mr HUGO—Mr Fenlon, you may remember some correspondence I sent to your committee. Early in your address, you made a point of telling us that in 1920 the High Court of Australia ruled that we should be able to make international treaties. My question is: would this be because at that time Australia was a member of the League of Nations and recognised internationally as a sovereign and independent country?

Mr FENLON—The reasoning for that at the time, as I understand our history, was that Australia was recognising itself as part of the international community. If you look at the history of our Commonwealth laws, we see an increasing trend through our Constitution and through our statutes to recognise various international standards and our international obligations in relation to basic rights. The events that you described were simply one more step along that very clear continuum since Australia's federation.

Mr HUGO—No, at Federation, we were still a colony. A lot of nonsense has been going on about Federation.

Senator LUDWIG—Thank you. We might move on. Please confine yours questions to Mr Fenlon's address.

Mr THEO—The gentleman spoke to us about intergovernment liaison, as well as the concern for environmental protection of our country. I wish to draw everybody's attention to the problem that exists through the GATT treaty. In a roundabout way, I will explain how recently we had a court case which we did not have to have. That court case was as a result of problems that we have in Australia, that is, there is no coordination of the three levels of our legislative procedures. In 1988, there was an extensive parliamentary inquiry which came up with recommendations as to how to go about irradiating products in Australia, yet state and local governments have not adopted that parliamentary inquiry's recommendations. For everybody's information, there are shonky operators who take advantage of our parliamentary liberties and

try to implement their greedy profit making ventures to the detriment of our society. Coming back to the treaty—

Senator LUDWIG—Please come to the question. There are other people who would like to ask questions.

Mr THEO—The question is: how do we implement decisions on the environment that have been resolved by the federal government and are not part of the state government legislation, in particular, the Radiation Safety Act, which has no teeth? As everybody knows, nobody is ensured against problems emanating from radiation.

Senator LUDWIG—I think we understand the point you are making. Are there questions directed at Mr Fenlon particularly about his speech and state matters?

Mr THEO—I am asking whether the Radiation Safety Act can be taken in the Queensland parliament and made to conform with the federal resolutions? Furthermore, the local governments should not have freedom to promulgate decisions without referring to all levels of government.

Mr FENLON—Thank you. I appreciate any questions directly relating to my address because I have to get back to the Queensland parliament. Getting leave is quite an achievement, so it is a miracle that I am here today. Trying to respond to your point, I am not here to advocate, defend or argue against any particular law, regardless of what our views might or might not be about the Radiation Safety Act. The way you have to see it—I tried to address it to some degree in my speech—is that our constitutional structure in Australia almost creates two different countries because the jurisdiction in principle is so distinct in the sense that, if the Commonwealth has no jurisdiction over the states, then states make those laws. If those laws stand freely from the Commonwealth and there is no treaty arrangement to override the provisions, then those laws will stand until something comes along to stop that happening. State laws with regard to radiation protection in each state will continue to stand very distinctly from the Commonwealth.

Mr THEO—It is a shameful situation because, as you said, we end up with a country which is not a country.

Senator LUDWIG—We will take one last question in this area. There will be plenty of opportunity in the forum to address questions to the Joint Standing Committee on Treaties more broadly.

Mr CLAREY—Early in your speech, you mentioned the Northern Territory's and Western Australia's mandatory sentencing. You forgot to mention that it was minimum mandatory sentencing. My question to you is: why don't we butt out, leave that state and the Territory to run their laws as they see fit, instead of going out and signing treaties with 95 per cent of the countries in the UN who will grab you off the street and throw you in a jail, so that you may disappear off the face of the earth? One of those countries is our closest neighbour to the north.

Mr FENLON—I am not here to argue the merits or otherwise of whether intervention is a good or a bad thing in those cases. As a broad principle, there are things that might arise in

relation to this state jurisdiction in Queensland where we are making laws about a particular area, where something could come along tomorrow, by way of an international treaty obligation or a federal imperative of some form, that could make us pretty cranky as a state government. There is a broad principle, but that is the environment within which we operate. What I hope I have left you with in the presentation I gave today is that, as states governments have to be vigilant and be aware of issues as they come along to ensure, if there is opportunity to work within those relevant Australian authorities or international authorities, that we do so, to maximise our position and make sure our state position is well known, well established and best promoted. That is the best we can do in the international environment in which we are now fixed—that is the reality of Australia's laws. This is a very constructive seminar in the sense that we are able to discuss openly and constructively how we can optimise our position as a state and make sure that the wishes of all of us, as voting citizens and legislators, optimise our state position and get the true wishes of our local and state communities put forward in Australian and international forums.

Senator LUDWIG—We will conclude this area now. By all means, ask any unresolved questions in the forum towards the end. Thank you, Mr Fenlon.

Senator MASON—Good morning, ladies and gentlemen. I have the pleasure of introducing Mr Chris Goodreid, who is the Executive Director of the Intergovernmental Relations Directorate in the Queensland Department of the Premier and Cabinet. He provides policy advice to the Premier of Queensland and to the director-general on all intergovernmental issues. He represents the Queensland government on a number of intergovernmental fora, including the Standing Committee on Treaties and the mutual recognition harmonisation working group, which Mr Fenlon mentioned before. Chris has represented all states and territories at a number of international treaty negotiations in respect of mutual recognition with the European Union, Japan and New Zealand. He represents Queensland on the advisory council on the Torres Strait treaty with Papua New Guinea. Among many other achievements, Chris maintains a role as lieutenant colonel in the Army Reserve in Canberra. Today Chris will talk about the Queensland government processes and how they interact with federal government processes in the making of treaties. Ladies and gentlemen, please make Mr Goodreid welcome.

Mr GOODREID—Mr Thomson, Chair of the Joint Standing Committee on Treaties, distinguished guests, ladies and gentlemen, I feel a bit like Daniel in the lions' den this morning, so please bear with me. I am a bureaucrat; I am not a politician. I was reminded the other day of the fact that Greg Norman has an ailing golf situation at the moment and is trying to overcome injuries. He was out on the practice fairway at Florida. He set up to drive a ball and hooked it immensely over to one side, hitting a fellow who fell into a car. The car went out and broke a light pole, which went into a swimming pool and caused a fire. It was terrible. He stood back and said, 'I've really got to do something about that; I must go and do something about that.' Tiger Woods walked up to him and said, 'Yes, just turn the wrist a little to the left.' I would liken that advice to what has happened in the treaties process over the last three or four years. A lot of good work was going on, but it was not necessarily transparent and it was not able to be seen by people who should have been seeing it and should have been doing something to change that process. For many years, it was a process managed by the Commonwealth government, through the Department of Foreign Affairs and Trade, in conjunction with the particular line agency of the Commonwealth. Negotiation teams were arranged by the Commonwealth—in some cases, with technical experts from both the public and private

sectors—and these formed the basis of the delegations that would negotiate with other countries. In a sense, in a federal system, states and local government were left out of the loop.

This process worked well for a number of years but, as Alexander Downer mentioned this morning, globally, we are becoming more technologically smart and more complex in our legal system, with more emphasis on human rights, environmental protection and expanded trade opportunities, and the implication of treaties on the federal system of government in Australia has become much more significant. I should also add that, in fact, we are one of the few countries in the world that is starting to address it in this way. We are not coming from behind, as we often do in international areas; we are coming from the forefront of the change process.

I am unsure as to where credit should be given for initiating the processes which resulted in a significant change in the development of treaties in Australia. I understand the impetus for this came from a number of discussions and research that was carried out at the national level on reforms that were going on. A lot of this has been linked to economic rationalist reform. I would argue that it does not, in fact, come out of that process. There are some linkages, and there are linkages in relation to some of the trade based treaties. Essentially, it came from the COAG meeting of 1996, which has already been mentioned. At that meeting, all leaders endorsed a document entitled *Treaties: Principles and procedures*. It is a very small, simple document which is available outside as part of the treaties information kit, on the DFAT Treaties Library web site and we have a government web site where you can access it. It was given by politicians to bureaucrats to make the treaty process work. Bureaucrats commonly refer to this document as the 'treaties protocol', although it is not a treaty of itself. I hasten to add that the bureaucrats have not signed off to anything that they have to put in legislation.

Today, I would like to cover the main parts of this protocol, to tell you a little about how it works, without going over the ground that has already been covered, then perhaps just give you a few examples—I am quite happy to take questions about the internal processes. When the treaties protocol was first developed, there was an overriding caveat in it in adopting the principles and procedures—that they would be subject to the operation not being allowed to result in unreasonable delays in negotiating, joining or implementing treaties by Australia. Quite clearly, that cuts both ways. If it is about treaties that will have an impact on Australia by way of legislation that we are unsure about, you could argue, 'Well, it needs to be strung out a bit,' or 'We need to be debating that strongly.' For those who are concerned about the environment, I am sure you would not want to be seeing that going on for years and years to a point where we ratify something. It is a very important issue because it can either help or hinder the achievement of outcomes for the treaties we seek to ratify. We are now four years on from the development of the treaties protocol and I am very pleased to say that the work we do as bureaucrats links in very much with what the Joint Standing Committee on Treaties does, and this seminar is part of a series. I believe the treaties protocol is working. It is changing the culture of government and the way we consult with the community and with business, and I think it can only improve.

Something that has not been addressed this morning is that there are many titles used in relation to treaties. The most common are 'agreement', 'convention' and 'protocol'. Draft declarations or resolutions by international conferences of themselves are not considered to be treaties. They may become treaties by some convoluted process and formal ratification. But, noticing a couple of the questions here this morning, you have to be very careful between that which is proposed under a draft declaration or a resolution of any international body and that

which is a proposal for two states—that is, sovereign nations—to sign up to a particular treaty. As has already been mentioned, treaties can take a number of forms. They can be bilateral—between two nations—multilateral, or they can be 'limited party'.

I would now like to address the basis of the treaties protocol as an overarching document. Quite simply, it provides a number of elements. First and foremost of these is the principles and procedures. The principles enshrine the responsibility of the states and territories to develop their own whole of government positions with respect to any aspect of consultation and, as necessary, for the development of a consolidated states and territory position in relation to treaties. This is very important when we come to consider how things work. While the Commonwealth is anticipated to keep the states and territories informed of the determined policy—and as has been mentioned, we do get regular provision of the schedule and negotiations that are going on—it is also incumbent upon the states and territories to establish and advise the Commonwealth on the appropriate channels of communication and responsible officials, so that the Commonwealth can discharge its international responsibilities in a timely manner. In summary, the principles seek to achieve a basis of mutual cooperation and consultation—and I emphasise that. It does not work without that. It is not about confrontation; it is mutual cooperation and consultation.

Procedures to be used under the treaties protocol are simple but effective. Fundamentally, they deal with the ways in which information on treaty negotiations is to be provided to the states and territories by the Commonwealth government. In the first instance, information about treaty discussions is forwarded to premiers' and chief ministers' departments on a regular basis through the Department of Prime Minister and Cabinet and the treaties secretariat at the Department of Foreign Affairs and Trade. As has already been mentioned, it has been done through a treaties schedule, but it is also done in an ad hoc way on treaties of importance as they come up, like the extradition treaty with Latvia. This schedule is provided on the worldwide web; it is available as a public document. For those people who do not have access to the Internet, most libraries will assist you in accessing that document. If you cannot get assistance or find it difficult to go through the various government agencies, please contact the Department of the Premier and Cabinet in this state for those people who live here and we will provide you with the document.

The second part of the procedures is for the Commonwealth to provide the states and territories every six months with a list of current and forthcoming negotiations of matters under consideration for ratification, accession and further development. These are normally provided at three-monthly intervals. The information provides a unique opportunity for the states to understand what department is dealing with it, who the contact officers are and how we can get involved—I will cover negotiations in more detail in a moment.

The third element of the procedures is the national interest analyses mentioned by Minister Downer. I will not say any more about that, except to say that I am aware that the Joint Standing Committee on Treaties takes a great interest in the NIAs and usually puts Commonwealth departments on their mettle when examining the NIA before agreeing to ratifying a treaty. One of my learned colleagues rang me in desperation one night in relation to the mutual recognition negotiations, because he had a series of 14 questions to answer before it would even be considered further. They were very intelligent and very relevant questions to the process, and he

needed to put pen to paper and answer them before the parliament could sit down and look carefully at ratifying that treaty.

The final element of the procedures required under the treaties protocol is that the Commonwealth, whenever practicable, will provide states and territories with a report on the outcome of international negotiating sessions which are of importance to states and territories. This element is particularly important, as it completes the loop from the initial process through development and negotiations. Let me digress for a moment and talk about one such treaty process which has been mentioned a few times this morning. The Multilateral Agreement on Investment, as quite correctly posed this morning, was a treaty arrangement through the series of treasury officials who meet at the OECD on a regular basis. What they were proposing was not only basically offensive to the Australian community but to many other communities—it was economic rationalism in its extreme. As a consequence of that, the federal Treasury people in Australia had to go around and start consulting with states and territories.

What I can happily say about how the process works is that the Premier received more mail on that one issue in the 12-month period than he did on any other domestic or international issue—and these were not roneoed letters. They were educated letters asking why we were negotiating on this. They were very educated emails saying, 'I'm unhappy with this; I don't want to see my investments go down the drain because we've opened up the opportunity for economic rationalism to the rest of the world.' Quite simply put, community and public pressure was brought to bear on that because we have an openness in the process that said to the federal Treasury, 'You have to go back to the drawing board.' I can also confidently say that, if it raises its head again, all state and territory governments unanimously will oppose it, as they did at the time.

There are a couple of other elements that come out of the treaties protocol for us. In terms of consultation, we have the Treaties Council, which met on one occasion in 1997. That could be considered, certainly by some jurisdictions, as disappointing. It is intended that it meet annually to consider treaties of significance and ones which are close to ratification. We have not had too many of those in recent times. We have a lot of negotiations going on, but we do not have a situation where the Kyoto Protocol, for example, is ready to be ratified either by us or by many other nations.

The Standing Committee on Treaties is a particularly important element. From a bureaucratic perspective, I see it as the lynchpin of the process. SCOT, as it is colloquially known, consists of state and territory officers who meet at least twice annually, or more often if required, to consider treaties and other international instruments of sensitivity and importance. At the state level, we receive detailed briefs from the Commonwealth and we debate quite rigorously with Commonwealth officers how the process is being managed and what sort of progress and outcomes we are looking for. We also have the opportunity from the state perspective to put before Commonwealth bureaucrats what we consider to be issues that need to be addressed in the process.

SCOT has managed to maintain its required meeting frequency, its particular role and functions. It also regularly considers whether it is delivering its role. In other words, it looks inwardly to consider whether or not we are just meeting for the sake of meeting. It has been instrumental in significantly influencing the development of a number of treaties. As I

mentioned, the Multilateral Agreement on Investment came before it and it was only 10 days after a meeting that we had where we recommended to Commonwealth officials that we should go back to the drawing board that that was taken to the parliamentarians. SCOT is a very functional committee. It follows required procedures and provides adequate input into the COAG senior officials meeting and the Treaties Council.

There is another element of consultation that has not been mentioned today, that is, the role of ministerial councils. There are a number of ministerial councils operating in Australia to make our federal system work in terms of policy. Ministerial councils have the opportunity for inputting that policy into the COAG process and, through that, through the Standing Committee on Treaties and/or the Treaties Council. It is not something that has been necessary at this stage because we have not come to a point of confrontation between states, territories and the Commonwealth over any particular issues since this protocol has been in operation.

The last element of consultation is participation in international delegations. In appropriate cases, a representative or representatives of states and territories may be included in delegations to international meetings which deal with treaty development. Essentially, this process works by the states and territories consulting jointly to nominate appropriate officials with both corporate knowledge of the treaty subject and an adequate understanding of the requirements of international negotiating procedures. I will address that in a moment too, to give you some idea of how that process works—it is quite interesting. I believe this is a very successful element of the treaties protocol where states and territories can take advantage of the opportunity to include representatives in negotiations with other countries. I should point out that states and territories meet the costs of their representatives to these international delegations.

The negotiations are driven by the significance and sensitivity of the issue and, potentially, the calibre of those negotiations. I have heard, mainly this morning, the sensitive issues about treaties that affect the environment and human rights. Perhaps I could put a bit of a positive slant on the development of treaties. Mr Fenlon mentioned the mutual recognition treaties that we have been negotiating with a number of agencies. I was fortunate enough in 1997 to go with the Commonwealth delegation to the European Union, to negotiate a treaty called Mutual Recognition of Conformance and Standards Assessment—a very convoluted term, but basically it comes down to this. The European Commission has a system of standardisation which puts a mark on their products which says 'CE'—Commission of Europe. If a product has that stamp, it has gone through testing procedures and is seen as being acceptable in terms of public health, safety and the environment. You can sell that product anywhere within the EU. If an Australian producer of a similar product went through testing procedures in Australia either at the same or a more stringent level and wanted to sell his products into Europe, depending on the type of product, it would cost tens or even hundreds of thousands of dollars to get approvals.

The treaty we negotiated across eight product sectors was designed so that Europe would recognise standards testing in Australia and New Zealand—we went forward with this jointly, so that if somebody makes a medical device in Australia, which is very stringently tested, they do not have to spend thousands of dollars before putting it on the market in Europe. The particular sectors that we developed were very carefully negotiated. They were balanced so that Australia had a real opportunity in the trade negotiations, as did Europe. It was not all one-way traffic; it was not about Europe getting products into Australia.

That process of negotiation was an eye-opener for me. I was reminded this morning, when talking to the chair of JSCOT, how sometimes Australia is perceived in international negotiations and what we should do about it. We were dealing in particular with an electrical products sector—washing machines, fridges, toasters, hair dryers, you name it. European countries were negotiating very hard with us on this. One of the French at some stage, in the eloquent French way, came up with the fact, 'But your standards in the Antipodes are so far behind those of the rest of the world; you are such a small country, how could you possibly know?' Not being an electrician but at least having some background in communications, I asked the assembled delegation: 'How many domestic plugs are required to operate products in Europe; was it 15, 16 or perhaps more?' I said to them, 'There is one in Australia; it has been with us for 75 years and it is an international standard.' You have to understand that the process of developing treaties is not a simple thing. To get into negotiations, we need to have knowledge and information, and be able to negotiate effectively in those processes. We successfully concluded that treaty. It has now been ratified by the Australian parliament. As a consequence, Singapore also wants to negotiate a similar treaty with us. Japan is doing the same and we hope we will be able to do the same with Canada and the US in the foreseeable future. It is a very positive treaty for Australia and one which Australia can be very proud of.

The final thing I would like to mention today is that, prior to ratification of a treaty, the Commonwealth and the states and territories will consult in an effort to secure agreement on the manner in which the obligations are incurred and should be implemented. That has been mentioned a number of times today. It may mean in some instances that we have to change legislation in states and territories, or the regulation that goes with it. That does not mean again changing it negatively. It might be in a quite positive sense. We might be upping the ante with environmental regulation. There is another process that immediately kicks into play at that point. It is not as simple as the parliament taking on the idea that we are going to endorse a treaty at the federal level, the state parliament getting told and automatically putting legislation into place. I would remind you that in this state, as we do in other states of the Commonwealth, we have what is called a regulatory impact assessment process for the introduction of new or significantly amending legislation and regulations. There is an opportunity for community consultation. Departments are required to go out and certainly prove, when they put the submissions through cabinet before putting legislation up, that they have undertaken that consultation. Therefore, the flow-on effect, in my view, is fairly well covered.

I would like to cover briefly what I consider to be the unwritten processes, those things outside the actual protocol, and a little bit about the informal and formal networks that exist. There are a number of important elements in the process. Here I would like to acknowledge the work of one of my colleagues, Denzil Scrivens. He has described the systems as a series of three networks: the central agency network, which I am involved in; a departmental network—if it is a treaty to do with health, then it will be the health agencies, the Commonwealth and the states doing most of the work; and last, the parliamentary network—JSCOT, members of federal parliament and the state parliaments in conjunction with their colleagues. Those are three networks which you could consider to be essentially vertical networks going from the parliamentary through to the central agency and the line agency network. They are vertical processes, but linked into them are horizontal processes. At the Department of the Premier and Cabinet, we are concerned with getting a whole of government position on any treaty. It is not about a biased view. It is about balancing the environmental issues with the industry issues, the commerce issues, the community issues and the human rights issues. Ultimately, the cabinet

and/or the parliament will sign off on that, but we want to get those views on the table. So there are horizontal processes which link into those vertical processes in terms of networks and coordination. These are achieved through community consultation with non-government organisations, by the advertising of treaties, by the calling for seminars, such as this, and for actually going out and talking to people. We demand that departments demonstrate to us that they have gone out to talk to the relevant agencies, be they non-government agencies or communities with a particular interest. I do not think there is any single government issue that has had a broader opportunity for input in a policy process.

Concerning formal and informal elements, we have the Standing Committee on Treaties, but the states and territories also caucus before they sit with the Commonwealth, generally to talk about any consolidated position they may take and particularly to consider the issues that have been raised. The second formal element that comes out of the process is parliamentary committees, and Gary Fenlon has more than adequately covered that. On the informal side, we have an increasing involvement with non-government organisations and individual constituents with a particular interest to add to the formal processes of treaty making. I do believe that the Internet has provided a unique opportunity for people to tell government very quickly what they know. It is not the be all and end all; it is one part of the process. It can be used very effectively, but it is not limited to the Internet. We do advertise the basis of treaties that are being scrutinised by the Joint Standing Committee on Treaties. It appears as public notices in the paper. If anybody is concerned at any time to know what point we are at in a negotiation, they can contact either the agency that deals with it in government, if they know which that is, or come to central government and we will help you through the process. I have already mentioned that consultation on the Multilateral Agreement on Investment was most successful.

I would like to mention briefly where we are at with a couple of the other treaties which you may or may not know about. The Kyoto Protocol has been mentioned a few times today. The Kyoto Protocol is one round of the framework convention on climate change. It is not yet a treaty. It has not been ratified certainly by the United States, and some pundits would suggest to you that it probably will not be. It will have an ongoing requirement to deliberate on issues that affect the environment. Out of that process, we develop policies. The greenhouse policies that have been developed in Australia, so there are successes to be gained. We have the WTO millennium round which was not successful in Seattle recently but is ongoing. We have the Convention on the Rights of the Child for which there are ongoing developments. Some countries which seek to add cultural rights and community values which Australia would not tolerate. The draft protocol on the rights of indigenous people is another similar treaty process in progress. The Convention on the Elimination of All Forms of Discrimination Against Women has already been mentioned today. Also, we have a number of mutual recognition arrangements.

In closing, I would like to address one very small issue that has been mentioned today—at least as part of my CV. We have a treaty that is unique to Queensland and Australia, which I administer out of my office. It is little known or little thought about because it involves the top of Cape York. It is the Torres Strait Treaty, ratified in 1985 to give effect to the management of that small space between Australia and PNG. Does anyone know how far it is to PNG? It is six kilometres from Saibai Island. You can see the PNG coastline better than you can see Moreton Island. We developed a treaty in an effort to maintain the rights of the traditional inhabitants of Torres Strait, to use that in the context of quarantine, for agriculture, customs, fisheries, environmental protection, shipping, exploration and mineral extraction, health issues, security

and coastal surveillance. The treaty is managed by a joint ministerial council of Australian and Papua New Guinean ministers that meets annually. It is underpinned by a joint advisory council which is representative of the Commonwealth, Queensland, Torres Strait and Papua New Guinea traditional inhabitants. They have rights on that joint advisory council and they present a report every year to the ministerial council for ratification and for action in respect of the treaty.

Underpinning that is an interdepartmental committee, which is probably the largest one I ever attend. It is dynamic and very successful and involves all the agencies that deal with those issues I have raised. That treaty has a moratorium on mining and exploration in the Torres Strait which went for five years initially and has now twice been rolled over. That is according to the wishes of the traditional inhabitants. It will continue to be negotiated that way and it is a most successful basis for administering a treaty. I use that example because I would like to put a positive slant as I finish my talk. In summary, I believe that the treaties protocol is an important step in federalism in Australia. It does work. It produces better outcomes and it provides for mutual obligations between the states, the territories and the Commonwealth. It will work even better if you have your say considered in the process. Thank you very much.

Senator LUDWIG—Ladies and gentlemen, before we go to an open forum, Mr Goodreid would like to take a couple of questions.

Mr McDONALD—You have just stated that you sent the MAI back to be reworked.

Mr GOODREID—No. I said that the MAI is dead.

Mr McDONALD—You used the words 'back to the drawing board'.

Mr GOODREID— If they want to develop anything out of it, they will have to start from scratch.

Mr McDONALD—Why don't they just bin it and forget it altogether? We do not want it.

Mr GOODREID—That is a political decision, not one for a bureaucrat. We have said that it will not work in its current form. So we have sent it back. We are not here to provide ultimate decisions on those sorts of issues.

Mr McDONALD—But those words 'back to the drawing board' worry me.

Mr GOODREID—I am sorry, but I would not like to be quoted on that.

Ms SHEARS—Can we have a transcript of these proceedings?

Mr GOODREID—It is my understanding that these proceedings are being reported by Hansard. This is a public meeting.

Ms SHEARS—There is a deal of information here that will make your office and other offices like yours readily accessible to us.

Mr GOODREID—I can assure you that we have had a web site for four years and we get within the top 10 per cent of government hit rates. We are not a large office, but we will help where we can.

Mr HUCK—In effect, you stated that the MAI is finished. As I understand it, MAI type subjects were on the agenda for the World Trade Organisation meeting in Seattle. Nothing was discussed at Seattle. Could you comment on the possibility of the MAI type attitudes cropping up through the World Trade Organisation?

Mr GOODREID—I think it would be fair to say that you could anticipate somebody raising it again because you always have people out there who would take an economic rationalist view and say that there should be no barriers to trade or the basis upon which you control your investment, your funding, your monetary policy. You will always have that. I would not like to make any prediction about the possibility of it happening or where it will go. If it comes back on the agenda, from the perspective of the Standing Committee of Treaties, it will go through a very rigorous process and one which will refer back to the initial discussions that we had resulting from the OECD.

Mr HUCK—I would like to add that there are quite a few people in Queensland who are very concerned about the possibility or even the probability of the MAI popping up again. Thank you.

Ms WILSON—Is Australia signatory to a treaty which will protect the intellectual property of a product manufactured in China by Australian business interests?

Mr GOODREID—I could not answer that question directly, but I am quite happy to let you know the answer.

Mr EVANS—I thank the whole committee for coming here today. As Gary Fenlon and Mr Goodreid have said, it is wonderful that we have had this forum and that people can be informed. How I found out about the United Nations relations committee and the joint subcommittee was that I was phoned in November last year and told, 'There's an ad in the *Australian* on page 17.' If I had not noticed that, 10 other groups would not have known about it. When I told them, they all said, 'We didn't see that.' My question is: why are we always kept in the dark about treaties, about discussion and about our ability to participate?

Mr GOODREID—My answer to that would be that you can do only the maximum with the resources you have to get notification out there. I reiterate my point: I believe that we are doing a lot more than we have ever done in a policy area to get this out and about. This is not a criticism of other agencies but, if you tried to find portfolio arrangements for a range of departments, both state and Commonwealth, through any number of media, you would find that it is increasingly difficult, and that is being addressed in another area. At least with this we have a range of opportunities for getting it out to the public. We will never capture all the public; I accept that. I actually find out about parliamentary inquiries by reading the paper rather than by people sending something to the state government—not from JSCOT, I might add.

Senator LUDWIG—Ladies and gentlemen, would you please join me in thanking Mr Goodreid? With that, we will go to our open forum. I pass on to Senator Bartlett.

Senator BARTLETT—This is the final part of proceedings for today, which is on the agenda as open forum. We will try to have questions from as many people as possible, particularly those who have not yet asked questions. Please be as brief as possible.

Mr LEE—My question is to Andrew Thompson and I ask whether his denigration of the UN Human Rights Committee was based on his understanding of the processes or is it because he wanted to placate some of the common prejudices that we have in our own country?

Mr ANDREW THOMSON—No. What I was worried about with these committees was as a result of what they told me when I visited them a couple of weeks ago in the sense that they claim custody of scrutinising the conduct of countries who are parties to the human rights treaties. When someone comes to make a complaint to them and gives evidence and they give a judgment, inevitably that has a legal consequence for Australia. However, the process that they use struck me as very inadequate compared with the processes we use in our domestic courts. For example, if someone gives evidence in Geneva and says that such-and-such is the case in Australia and is in breach of the treaty, then there was no opportunity for the country that had been accused—in some cases Australia—to cross-examining the witness in order to test the veracity of the evidence. I simply said to them, 'If you people are going to make what is a quasi legal decision, that is, a judgment that Australia or any other country is in breach of legal obligations they have under treaties, then the least you could do is provide a proper process.' Their reply was, 'Look, we have to make some judgment, but we are not a court.' I said, 'Well, from our point of view, you are judging us and you are like a court. Unless we can resolve the problem that you do not seem to act like a court yet you put a judgment on us, then why should we take you seriously? Your credibility is less than it otherwise should be.' If they are getting stuck into abuses of human rights, then I say, 'Where were you in Rwanda; where were you in other cases?' The problem is that, if these treaties and committees are to be used in really nasty cases, they have to stand up to scrutiny in every case. That was my point.

Mr BELL—This question has nothing to do with China and I ask it of Andrew Thompson. It is about quality assurance. How can you ensure that the quality of understanding of treaties goes right through the entire parliament? I will give you a specific example. The former Attorney-General, Michael Lavarch, gave an excuse for not including Vietnam veterans amongst the groups of disadvantaged people subject to discrimination; in other words, covered by anti-discrimination legislation. His excuse was that this was not covered by international agreement. I presume by that he meant International Labor Organisation Convention III. Perhaps his eyesight is better than mine, but I could find nothing in there that would prevent a government introducing any legislation to cover a specific group that is suffering disadvantage. What can you do about improving the quality of politicians' answers?

Mr ANDREW THOMSON—If you mean that not enough members of parliament when they are making their decisions about this or that spend enough time reading carefully the terms of all the treaties, I do not think there is a particular solution to that. But I would say that, if there is a particular treaty that groups of Australians are concerned about or think should be more strongly enforced—and there are people who think that—if they get together and make enough noise and concentrate on putting that to particular members, specifically their local House of Representatives members or state senators, then you get a better result. It really comes down to how clearly you campaign on a particular issue. Frankly, it is fruitless to think that

every member of the federal or state parliaments would be perfectly informed about every particular treaty. It is really up to you.

Mr HARDGRAVE—It is very important for everybody who leaves this seminar today to understand that this is a two-way street. Australian citizens have rights and the less codified those rights are the more rights you have; the more you quantify rights, the more you actually restrict them. There are responsibilities to each and every one of you as citizens of Australia. The parliament is your house. Parliament is the process by which the people of Australia are represented in the decision making that directly affects them. The right to vote seems to be the only right that most people tend to take up once every three years—they also see that as the only responsibility they have. I challenge you to be actively involved in the process. The best way to do that is to involve yourselves in these matters. You each have a representative in the House of Representatives. You each have 12 Queensland senators in the Senate. Arguably, you have 13 people who represent you, as Queenslanders, in federal parliament. You have the right as well as the responsibility to ask those members for copies of the treaties that Australia is a signatory to or, for that matter, that are before the parliament so that you can actively participate through the Joint Standing Committee on Treaties, which is a subcommittee of the parliament for your use, so that we can do fine detailed work which the entire parliament itself, quite frankly, does not have the time to do. That is why we have committees of the parliament. I suggest that, from this day forth, each and every one of you will know which treaties are coming before the parliament because you will have your name on the mailing list of either your local member of parliament or your senator, or the Joint Standing Committee on Treaties, which you are able to do.

Interjector—Which party do you belong to; which electorate do you represent?

Mr HARDGRAVE—I am proudly a member of the Australian Liberal Party; Moreton is my electorate. I would prefer to deal with my own constituents one at a time for these sorts of requests. You each have your own elected member. It is important that you take up the opportunity to use him or her in that way.

Mr GATES— I ask my question of Andrew Thomson. We have been through the fifth protocol and you have said what a dreadful term that was. Are steps in place so that, when something like that comes up again, what you read is what you will get? Why not put such advertisements in the daily papers and regional papers? With the last joint United Nations army and International Criminal Court, I was very concerned that some of the respondents were from Australian government departments. I thought that was a new turn of things where government departments give their impressions on what really is an elected government decision. I noticed too that there were foreign embassies putting in submissions to an Australian joint standing committee. I would like to know what you feel about that. I do not believe that they should have anything to do with writing to a committee such as yours giving their impressions of what they think is right or wrong.

Mr ANDREW THOMSON—Firstly, on the issue of foreign embassies, sometimes we get correspondence from them, but it is pretty much only when we ask them. We get our committee secretariat to write to certain embassies asking them what the situation is in their country with this kind of subject matter. I cannot remember one where, off their own bat, they have come and said, 'Look, you guys ought to do this or this.' Some of them often refuse. We asked the United

States ambassador to give evidence about the Pine Gap tracking facility, but she declined saying that it was a bit too touchy and that sort of thing. What was the first part of the question?

Mr GATES—Government departments.

Mr ANDREW THOMSON—With respect to a lot of our officials, we on the committee are very suspicious of a lot of what they do—I think we should be, frankly. Some members are more suspicious than others. Mrs Kelly, for example, is very suspicious about an issue regarding dugongs and the department of the environment. When they front up, we do not generally put them on oath when they answer questions, but we can if we want to. It is a serious matter. If they give misleading evidence, it is a contempt of parliament. Often making them come and scrutinising them is far more effective than us writing off to the minister, whether or not we are in the same party. Tax package put it bluntly, being able to embarrass them in front of the public and Hansard often sends ferocious waves of concern back through the bureaucracy and they do not dare do that sort of thing again. We have not caught any of them deliberately misleading us. More often, it is a case of them scratching their head and not knowing the answer. They say, 'I'll get back to you on that one.' And not much happens, unless you press them. Really, it is for you, as Gary says, through us, to make them front up and answer truthfully.

Mr WHEELEY—I have a broad question on the issue of free trade and level playing fields. I have seen the issue of free trade and level playing fields as being extremely evil from two points of view: firstly, it destroys local jobs; and, secondly, in many countries it perpetuates serious labour and human rights abuses.

Senator BARTLETT—We could all give long answers to that. The committee has an inquiry into the operation of the WTO at the moment. That inquiry presents an ideal opportunity for people to put their views about the operation of that particular treaty. I do not know whether or not any committee members want to comment about the policy aspect.

Mr ANDREW THOMSON—As Andrew says, it goes back to the corn laws of Britain in the 1840s and so forth, so we could not address it specifically. We decided to have a public inquiry about the pros and cons of the WTO. So front up and we will give you time to present to the inquiry. The subcommittee of the committee will have a hearing here in Brisbane as well as in other state capitals. That is the best way to do it.

Mr WATTS—My interest is in the relationship between trade development, commercial development and environmental conservation issues. This general question is primarily aimed at Chris Goodreid. You mentioned early the term 'national interest'. I would like to know how national interest is defined, whether there are specific criteria for meeting the national interest? Would you describe what efforts are made beyond the committee itself to assess relevant treaty developments and trade?

Mr GOODREID—As far as I am aware, there is no definition of national interest. Perhaps you would like to put that in the context of the most commonsense approach to it. If we are talking about the environment, I hasten to add that the states and territories are still seeking what is of national significance under the Environment Protection Biodiversity Conservation Act, which has not yet been determined by Environment Australia or Senator Hill. So in answering that, I can say reasonably confidently that there is not a definition.

In terms of trade based agreements and environmental impact, they follow the normal process of the national interest analysis which takes account of all stakeholder interests. It does not have, in my understanding, a specific environmental component to it or a requirement for an EIS, nor necessarily should it. If the matter is raised significantly enough and is of major concern, then I am sure that JSCOT, in its deliberations before ratification, would seek to have representation from either the minister or his department in relation to that process.

Mr HARDGRAVE—From the committee's perspective—Mr Goodreid is a Queensland state bureaucrat; no offence, Chris—the committee has been very deliberately evolving the concept of what is in it for Australia. Whether a treaty is a simple updating of social security arrangements between Australia and Great Britain, as we have handled recently, or a double taxation agreement, so that companies operating in two countries are not taxed in both nations and therefore their investment prospects are watered down—and that works extremely well for Australian companies—the simple theme is: what is in it for Australia? As a result of talking to a lot of Commonwealth bureaucrats who have been negotiating these treaties in a club like atmosphere in far influencing places around the world, we have found that they cannot answer that question. They come under pressure from their peers, from other bureaucrats from countries in far flung exotic locations, and have a discussion, perhaps over chablis, in a serious meeting environment, but there is this club like pressure that of course you are going to conform. That is why, in this treaty making process and the reforms that have been around the last few years, the parliamentarians involved representing you are asking very straightforward questions. We are not getting caught up on the technical 'What ifs?' as much as we are getting caught up on the outcomes, to make sure that there is something positive in it for Australia.

Mr EVANS—My question is in regard to the charter for global democracy. Is the joint standing committee aware of such a treaty? Is it under review or have we already signed it? It appears to be almost a rewriting of the UN agenda. Do you know something more about it?

Senator BARTLETT—That might be something for you to provide more information on to the committee secretariat.

Mr SMITH—My question is to Mr Goodreid. I managed to be involved in the regulatory impact assessment process, that is, a public consultation time with acts, et cetera. I did it against the Radiation Safety Act 1999, before it was established in Queensland. I did not ever get a reply to my public submission, in which I wrote my own letter. Sometimes these processes seem to be rather lacking. I would like to know what I can do or what can happen from that because basically it was not adhered to in principle—to reply to my objection of how they were restructuring their act, before it came into place, in that time of public consultation. The other thing is: does this standing committee recognise that the Africa, Japan and Canada treaty talking about sedimentary based soil was joined together because they realised the implications in their own countries? It is significant in Australia because these things kill people. Cobalt 60 was used in the second test at Maralinga and most of the ex-veterans are dead, except for one in Royal Brisbane Hospital—it kills biological materials but leaves structures standing. We need to know whether you guys are going to look into those sorts of treaties. Could you answer the first question first?

Mr GOODREID—In the regulatory impact assessment process for any legislation regulations there are opportunities for public consultation and submissions. Again my

knowledge of it suggests that in each case you will not necessarily get a response on particular arguments, and I did not purport that to be the case. I am quite sure that this committee receives a lot of submissions which they acknowledge. They usually list those submissions in any analysis that is made with it. Whether or not the particular people analysing the information and developing that policy choose to take on board the particular issues raised in submissions is another matter entirely. Arguments may be raised on the basis of it. My only suggestion is that, if you are not pleased with whoever you have submitted that to—and I am not aware of the body—you certainly could write to the responsible minister. I am sure you would get an answer.

Senator BARTLETT—I do not think there is much awareness of that one. You might want to send a copy of that to the committee as well.

Mr ARKELL—The process that has been spelt out to us is fine. It seems to me the thing that will kill it is the party system that we have in Australia. Sooner or later, irrespective of what a committee might put up, somewhere a decision will be made as to whether or not that is acceptable. The various members of a particular party are then going to vote not according to what they feel is right but according to what is laid down by their party. To me, everything ought to be a conscience vote. I would love to see 75 per cent of parliament agree before an international treaty is ratified.

Mr HARDGRAVE—The Joint Standing Committee on Treaties has 16 members, a majority of them being from government parties, and that occurs because one of the things that happens when a majority vote for candidates from a particular political party is that those candidates form a majority and the government executive is formed, as prescribed in the Constitution. The thing you need to understand is that we do not readily discuss politics or have a political flavour to our deliberations as a committee. There have been a couple of dissenting reports tabled. It is interesting to reflect upon the fact that one of them was to do with the use of blinding laser weapons and anti-personnel landmines—I think it was our fourth or fifth report back in July of 1997. The committee decided, rightly—Australia led the charge and Minister Downer took our document to the United Nations and caused a worldwide ban; it is not enforced in some countries but the pressure is on the handful of countries to fall in line—to ban the use of these dreadful weapons. We even received a letter from the late Princess Diana thanking our committee for the role we played. Why did we do that? Because we spoke to Australians and they put that view. All that is background to the point about the dissenting report.

The dissenting report was signed by Senator Chris Ellison, who is now a minister in the government, and Senator Eric Abetz, who is now a parliamentary secretary, a junior minister in the government. There was a division based purely on those two particular senators' views, not on the fact that they were supporting a particular party line. So two senior Liberal senators opted for a different view on one aspect of it. It is not that they were saying we should have land mines; they had a different slant on what the committee's report was. We do not introduce politics into inquiries and do not want to either. I cannot speak for senators and members of other political parties, but the concept of conscience votes based on personal views and personal determinations is, to my mind, a principle that is upheld by every private member in the Australian parliament.

Senator TCHEN—I am a senator for Victoria. I would like to respond to two points which this gentleman just raised. The first one is on political parties. I have been a senator for only one

year, so it still distresses me when I am pointed out as a politician who is seen to be feeding out of the public trough. What I would like to say is that the two major Australian political parties are both free associations of people with similar ideas. We are not drafted into it and we do not enforce our ideas. We go into a particular party, either Liberal or Labor, because we agree on certain principles, issues or values. The party, whether Liberal or Labor, comes up with a policy because most people in that party agree that those values or policies are the best policies for Australia. Either party is in government because the majority of Australians agree with us, not because we take at a gun to people and make them vote for us. You get a vote. So you cannot say that Australian politics is dominated by two parties and leave it at that. That is the first point I would like to make. The second point is that there seems to be a lot of feeling in this group here that the rest of the world are all evil. Australia is perhaps one of the most dependent countries in the world, depending on good international relationships, because we are a trading nation. We are one of the most trade oriented nations in the world. We sell most of our goods and produce overseas and depend on our good relationship with other countries. So international treaties are important to Australia.

Mrs DE-ANNE KELLY—I think the gentleman's question is quite a valid one, but the reality is that it is very rare that any of the political parties have a particular policy on a particular treaty. More than that though, the emphasis on the national interest focuses each member of the treaties committee on what is in it for Australia or perhaps a particular region if it relates to some area of Australia or a particular sector. It is very hard for any member of the committee—I have never heard one say it—to say, 'I don't care about all the arguments, I'm going to implement my party's policy.' What they say is, 'Let's ask some more questions about what is in it for us here or what is the cost.' Decisions are taken on the overall benefit for Australia or a particular region or sector, depending on the nature of the treaty. I think I can speak for all members of the committee when I say that generally they leave their political alliances behind when they consider treaties.

Mr KEOGH—Mr Goodreid made the statement that the people did manage to get the MAI defeated and now we have such a wonderful process in place that that could not happen again. Really what has happened is that we now have in place a mechanism that can get such things through without the public really getting to find out about it. In other words, the treaties committee, I believe, is instrumental, probably, in treaties being introduced that should never have been introduced. For instance, the fifth protocol had only 19 objectors and contains most of the things that were in the MAI that are deleterious to Australia. That is a clear-cut example that the Joint Standing Committee on Treaties is a complete failure in that regard. I would like to ask: does the Joint Standing Committee on Treaties agree with the treaty on the rights of women? In other words, do they agree with the total and complete disarmament of Australia? If so, who will defend us because the disarmament process is well on its way to happening? Are they also in favour of the United Nations treaties usurping the Constitution to a point where the states have lost their rights, as was mentioned in the Franklin dam issue and the issue regarding homosexuals in Tasmania? Please comment, anyone who cares to. I might mention that I did contact De-Anne Kelly during the fifth protocol discussion and she told me it was too late to do anything, that it had already been tabled in the parliament, before they even got the report.

Mr ANDREW THOMSON—When the fifth protocol came before us, we had hearings and asked questions about it and could not find any reason to disagree with it. We had a few submissions saying that it was wrong for these reasons. Everybody read them. We asked

questions, we got answers and we were satisfied that it was not against the national interest that it go ahead. Hence, in our report we did not recommend that binding action not be taken. If you want to have a re-examination of the fifth protocol, then there is nothing to stop anyone campaigning and sending us lots of submissions asking for another look at it—that can be done. Regarding the Constitution, the High Court ruling and the external affairs power, if that is to be changed and in a sense we go back to the position that we had before that High Court case, I think we would require a referendum to do it. It is not something where a parliament could pass an act of parliament and do, because the High Court said it is a constitutional thing. So we need a referendum.

Concerning disarmament, there is nothing in the Convention on the Elimination of All Forms of Discrimination Against Women which can change the domestic law in Australia regarding people's rights to possess firearms, unless there is a change to the state laws—not federal laws. Disarming the Army, the Navy and the Air Force is not going to happen; don't worry.

Ms PICKERS—I represent the National Council of Women in Queensland. I make the general comment to the committee today that, as an international affiliation, as some of you might know, our organisation monitors a number of diverse issues to cover locally the community, families and, of course, women and children. While I applaud the initiatives here today to improve the opportunities for organisations such as the NCW to make a contribution, I have had a concern that unless you read advertisements in the Australian or have access to the Internet, it is not easy. Also, sometimes there are time constraints on the opportunity to input into the debate or whatever on a particular subject. Today has shown that there is quite a lot of sentiment out there about a diverse number of issues. I would like the committee to keep that in mind and, therefore, if they can, to maximise the opportunities for organisations and individuals to make a contribution where possible.

Senator BARTLETT—Given the time, we need to wind up. That is probably a good sentiment to close—continuing to explore ways to increase awareness, input and participation. There is a lot of material outside, including contact details for the secretariat, if you did not get a chance to put forward your comments today. Thank you for your coming and for your input.

Seminar adjourned at 1.10 p.m.