COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: Multilateral Agreement on Investment

MELBOURNE

Thursday, 16 July 1998

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STANDING COMMITTEE ON TREATIES

Mr Taylor (Chairman)

Mr McClelland (Deputy Chairman)

Senator Abetz	Mr Adams
Senator Bourne	Mr Bartlett
Senator Coonan	Mr Laurie Ferguson
Senator Cooney	Mr Halverson
Senator Murphy	Mr Hardgrave
Senator O'Chee	Ms Jeanes
Senator Reynolds	Mr McGauran

Matter referred for inquiry into and report on:

The potential consequences for Australia arising from the matter known as the MAI.

Advantages and/or disadvantages for Australia arising from the MAI currently being negotiated in secret by the Australian Government at the Organisation for Economic Co-operation and Development, with particular reference to:

(a) the ability of countries to impose conditions on foreign investment;

(b) the ability of countries to establish limits on foreign investment;

(c) the implications arising from the 'roll back' and 'standstill' provisions;

(d) the ability of countries to pursue social, environmental, labour, cultural, human rights and indigenous protections and the impacts for each of these sectors resulting from foreign investment regimes under the MAI;

(e) any implications for Australia's national debt and current account deficit of the growth in foreign investment the MAI is expected to bring;

(f) the MAI's dispute handling procedures;

(g) the issue of the constitutionality of the MAI for Australia;

(h) the impact on agricultural and manufacturing sectors;

(i) the impact on State, Territory and local governments; and

(j) the impact on Australian investors seeking to invest overseas.

WITNESSES

JOINT STANDING COMMITTEE ON TREATIES

(Subcommittee)

Multilateral agreement on investment

MELBOURNE

Thursday, 16 July 1998

Present

Mr McGauran (Acting Chair)

Senator Cooney	Mr Bartlett
Senator Murphy	Mr Laurie Ferguson
	Mr Hardgrave

Committee met at 9.32 a.m.

Mr McGauran took the chair.

ACTING CHAIR—I declare open this second hearing into the matter known as the Multilateral Agreement on Investment, and I welcome everybody to the public hearing. It hardly needs to be said that today the subcommittee of the Commonwealth parliament's Joint Committee on Treaties will take evidence from a number of organisations and individuals, including the National Civic Council, the ACTU, the Victorian Trades Hall Council and the Business Council of Australia. The non-government organisations' community will be represented by Community Aid Abroad, and local government, here in Victoria, by the Victorian Local Governance Association.

As most, if not all of you, will already know, the subcommittee has tabled a short report in the federal parliament on the draft MAI. We recommended in that report that Australia not sign the final text unless and until a thorough assessment has been made of the national interest and a decision is made that it is in Australia's interest to do so.

It is important to point out, if you will allow me, that there is a great deal of uninformed comment. I again stress that the collection of evidence through the processes of the subcommittee is a very public, open and transparent process. You may be interested to know that we have received over 850 submissions from a wide range of community organisations and individuals. As you would expect, because of the quality and number of these submissions, it is not going to be possible to take detailed evidence from every person and every organisation which has made a submission. Yet, at the same time, we are keen to hear as many people as possible.

You will know from the agenda that time has been allowed from 3 o'clock onwards today for members of the public to make short statements about their views on the draft MAI. I must say it would help us in our planning of today's hearing if anybody present now who intends making such a statement from 3 o'clock onwards could make themselves known to the secretariat, Patrick Regan especially, during the day.

There will be other public hearings in other states—Brisbane on 24 July, Canberra on 14 August and Sydney on 24 August. We are certainly expecting to hold another day's hearing in Melbourne but a date has yet to be arranged. We will visit other capital cities besides those I have just mentioned during the hearing.

[9.35 a.m.]

BROWN, Mr Frederick John, National Secretary, National Civic Council, PO Box 66A, GPO, Melbourne, Victoria 3001

CHAIR—Welcome. You may wish to make an opening statement and then allow members of the committee to question you.

Mr Brown—If you want me to give a summary of the proposition, I shall, but I am quite happy just to take questions.

CHAIR—I might ask you to make a short summary before we launch into questions. Members of the public who have not had the advantage we have had in considering your written submission may be interested.

Mr Brown—We are opposed to the signing of this treaty. Our position has been reached having monitored the progress of this treaty since February 1997. We have probably been monitoring this as long as any group in Australia, outside Treasury. I say that because when we first raised this issue there was no other public comment and it appeared that there was a large level of ignorance about the existence of the negotiations. The basis of our opposition is that we are not satisfied, firstly, that Australia's necessity for foreign investment and our attractiveness as a source for investment is such that we need any further incentive such as signing this treaty. The second reason is that we are not satisfied that any advantage that may accrue to Australian companies in terms of investing overseas will derive for the average Australian a sufficient benefit to warrant signing the treaty.

The third basis of our objection really goes to the substance of the treaty. There are others who have focused on matters relating to the environment and labour regulation. Putting those to one side, we are concerned about the appeals mechanisms contained within the agreement and, while these mechanisms are standard in commercial treaties, the effect of the appeals mechanism is that disputes can be resolved by people who are not Australian, who are not lawyers and by tribunals which do not necessarily have to apply Australian law. From that point of view, we see little difference between that process and the process of UN human rights committees coming into Australia and adjudicating matters on criteria which are not necessarily consistent with Australian law.

The next matter of detail which concerns us is the definition of 'expropriation' and the definition of 'investment' which we think are enormously wide. We are then concerned about the impact at the level of state and local government which appears to have been, if not ignored, certainly given inadequate attention. Then, as far as federal policy is concerned, there are two propositions. First of all, we notice the list varies with respect to which Australia has said it will lodge exemptions. We do not have details of the exemptions, and therefore we cannot comment on them, but, given provisions for stand-

back, roll-back and all of the other measures that clearly would be put in place to wind back exemptions anyway, we are not satisfied that in the long run the exemptions will be effective.

CHAIR—Thank you. That is a very neat summary of the submission we have before us. Can the draft MAI ever be repaired to the point where you would endorse it?

Mr Brown—I find that a difficult question to answer. I have to say as at today, no, and my reasons are these. I doubt—and Treasury may put another view—that, for example, an appeals mechanism will be so changed that appeals will be determined in Australian courts. I doubt that the definition of investment will be narrowed so as to deal with foreign direct investment. If Australia is to have investment at all, I would have thought that would be the area in which we would want investment rather than having loans which, under the current treaty, qualify as investment. While I think that the pressure on the definition of expropriation may well lead to its being tightened, I doubt that it will be tightened sufficiently and be sufficiently narrow to enable Australians to be comfortable with the notion of people being paid compensation simply by virtue of some changing government regulation.

ACTING CHAIR—I cannot help wondering, though, whether or not the first-half opposition—if I can categorise it like that—to the draft MAI, as you have just outlined it, could be applied to most, if not all, foreign treaties or conventions.

Mr Brown—It could be applied to quite a number. You will know that only a couple of years ago the coalition when it was in opposition—although it has not focused on this since it has been in government—expressed great angst about the provisions for appeals in UN treaties to bodies which essentially did not apply Australian law and whose members were selected on criteria which might not necessarily lead to their selection if Australians were selecting tribunals and things of that sort.

ACTING CHAIR—Hence the Treaties Committee.

Mr Brown—Yes, hence the Treaties Committee. But the Treaties Committee does not overcome the fundamental question. It seems to me that the broader question—and it goes beyond this treaty and it goes beyond the UN—is this whole debate about the relevance of the nation state.

ACTING CHAIR—Agreed.

Mr Brown—I am somebody who subscribes to the view of support for the nation state. So I agree with you that this issue goes beyond merely this treaty and that it goes to the role of the nation state.

ACTING CHAIR—But isn't an international treaty or convention only as valuable

as the recognition the Australian government affords it? In other words, much of the fear and anxiety about foreign treaties has been because successive Australian governments have been prepared to enact into domestic legislation the terms of the particular treaty against the wishes of the vast majority of Australians. So do we not always have that final sanction?

Mr Brown—The High Court does not think so. Let us go to the Teoh case. It is perfectly true that at the moment the law is that the High Court has decided that the parliament can make statements as to the operation of treaties. But it is quite clear what the view of the court is. The view of the court in Teoh is that, once Australia has signed treaties—let alone the issue of ratification—because we are good, morally upright people, certain consequences follow. One can say that there is not a problem because the decision of the High Court is that the parliament can make statements. The difficulty I have with that concerns the long-term view.

I will take you to the dams case. The dams case was decided, as you know, by a majority of 4-3 in 1983 or whatever. If you go back to a decision in 1936, you will find that the majority decision in the dams case then was the minority decision of Justices McTiernan and Evatt. So what we have seen is a gradual evolution of the law in which what was a minority decision in 1936 or thereabouts was by 1983 a majority decision of 4-3.

You can say, 'That is an exception that does not prove the rule.' Yes, you can make that statement. Nevertheless, that gives you an idea about how the law evolves. So, even though as at today one can assert quite rightly that the parliament is supreme, I am not confident at all that situation will prevail in 10 or 15 years.

ACTING CHAIR—But the government, in regard to the Teoh case, has introduced the administrative instruments legislation, which has yet to pass through the Senate, which will curtail Teoh. So again is that not an example of sovereignty being asserted?

Mr Brown—Yes, but why? Because as at today the High Court says that the law is that the parliament can assert that prerogative. There is no guarantee at all that the High Court will take that view in 10 or 20 years. The dams case proves that. Just because the High Court decides something today and says, 'Yes, the parliament is sovereign,' I am not confident that in 10 years or whatever that a High Court would make a similar decision.

ACTING CHAIR—At this stage, my colleagues will want me to quit centre stage.

Senator COONEY—You have raised a couple of issues which I would like to take up with you. You say that one of the problems with foreign investment is that not much of it goes to greenfield development.

Mr Brown—Yes.

Senator COONEY—And it is the nature of the investment that you are concerned about.

Mr Brown—Yes, in part. The reason that we have taken that aspect up is that we have tried, as best we can, to do the balance sheet exercise and to look at whether the benefits that flow in terms of investment from a treaty such as this to the average Australian are such that it warrants, from our point of view, risking a further undermining of our sovereignty.

When you look at that issue of investment—we have made the points in that submission—if you look at the two reports of the Economist Intelligence Unit, you will see they are making it quite clear that the investment that is flowing into Australia is essentially the buying of Australian companies. If you take an article in the *Bulletin* last year, the fellow who runs that Australian owned small business lobby group said that only one per cent of investment is going to a greenfield site. It seems to me that, if people are going to argue that Australia is going to derive an enormous benefit from the investment that will flow from signing a treaty of this sort, the onus is on them to demonstrate it, and I do not think that can be demonstrated.

Senator COONEY—The other thing, which I think is a concomitant of that, is that you mentioned the Cobar mines and said that overseas investment does not necessarily mean benefits for all Australians.

Mr Brown—It is beyond that. You could say this is a matter of prejudice, if you like, but I doubt that an overseas investor in Australia would have the same emotional attachment to that investment that Australians do. That does not flow. This week, we have seen James Hardie going offshore and setting up headquarters in the USA. You could say, 'Look at James Hardie,' and, frankly, that is a fair point. Nevertheless, we would still hope that a BHP which invested in Australia would actually have a different view of that investment from, say, a Tiny Rowland.

Senator COONEY—This is the 'being a good corporate citizen' idea?

Mr Brown—Yes.

Senator COONEY—I can follow that. There is one other matter. You said in an earlier report—the EIU—that the majority of foreign multinational corporations are finding it increasingly difficult to identify a positive pro-investment answer as to why they should invest in Australia. Can you tell us about that?

Mr Brown—If you go to the first report, which they did two or three years ago, they interviewed 50 CEOs, or their equivalent, of multinationals operating in Australia. At

the back of that report, they gave indications of attitudes towards Australian government policy. As to whether we had an industry policy, I think 70-odd per cent said no; whether we had a policy that was comprehensible, over 70-odd per cent said no; whether there was a policy consistent between Commonwealth and state governments, 70-odd per cent said no. In terms of the interviews, there was one CEO quoted. The way the EIU do their reports is that they take quotes that reflect the general tenor of conversations. One fellow said, 'The industry department seems to have some sort of a clue, but as for Treasury we have grave doubts as to whether they want investment here anyway.'

If you then go to the beginning of that report, it says that, within the next five years, most multinational manufacturing operations will make decisions about the siting of their next major global plant. The decisions have already been made; it is only a question of whether it is north Asia or south Asia. There are three criteria they use: you either have an adequate domestic market, you have a potential market or you have the possibility of being a regional headquarters. With a population of 18 million, we do not have a market. With a prospective population of 23 or 24 million, we do not have a potential market. And so we are down to whether we are going to be a regional headquarters. I do not think the MAI relates to any of that at all. I do not see how the signing of the MAI will change any of that.

Senator COONEY—You say that the advantages to be obtained from being a member of the MAI do not outweigh the disadvantages?

Mr Brown—It might, but it seems to me that even now the argument being put by the proponents is changing. When we first started to look at this, it seemed to me that there was some suggestion that there would be a benefit in terms of investment in Australia. It seems to me that the argument has now been turned. The argument now being put is that there will be an advantage to Australian companies to invest overseas, to which we have two responses.

The first is, again, if there is going to be an advantage to Australian companies investing overseas, we would still want demonstrated that the advantage that flowed from that to the average Australian, as distinct from the Australian shareholder, actually outweighed the potential risks. Secondly, we want some sort of demonstration that in South-East Asia where Australia is competing with American, European and eventually Japanese conglomerates again we are in the ballpark anyway.

Mr BARTLETT—Your concerns about the MAI are very clear and about foreign investments that involves the takeover of Australian firms. Do you have those same concerns about greenfield investment or do you think that if that investment was increased as a percentage of foreign investment there would be significant benefit to Australia?

Mr Brown—It would depend on the sort of greenfield investment it is. If you are talking about greenfield investment in mining and energy, which is where most of the

greenfield development is going, in terms of balance of payments, clearly you can run the case for an advantage, and in terms of jobs I do not think you can run much of an argument on that.

Mr BARTLETT—In terms of GDP?

Mr Brown—That will depend upon the size of the operation. The balance of payments, yes. By and large, the answer to your question is yes, we support greenfield investment. The country needs investment. There is no risk about that, but if you asked me whether I think that MAI will suddenly mean that more companies will come in to set up uranium mines or processing plants I do not think that is related to the MAI at all. If you ask me if more people are going to come in and start drilling for gas, I do not think that is related to MAI at all.

Mr BARTLETT—You do not see any barriers in Australia that prevent greenfield investment anyway by overseas corporations and you do not see that they would be removed, even if they were there, by the MAI?

Mr Brown—I can only talk about the reports that I have read and the reports I have read suggest that the impediments go to bureaucracy, regulation and red tape, and I do not see that MAI impacts on that. I think there are things to do need to be done, but I do not see how the MAI relates to all of this.

Mr BARTLETT—Do you think it will be possible that some of the fears about the MAI could be resolved if the Foreign Investment Review Board was given greater teeth, for instance, and sufficient reservations were put in on Australia's part to provide adequate protection for Australia?

Mr Brown—At that point there are several difficulties that I have. It is interesting, for example, that there is a recent report which suggests that, once the US government started to look at the possible impact of this treaty on state and local government, they started to urge their negotiators to put in a reservation which was a complete prohibition of this treaty and its effect on any state or local government regulation.

I would think that that would be almost mandatory. That said that you then have the stated position of negotiators that essentially all exemptions are there to be removed. That is the next part of the problem. They are quite clear. They are rolling out the documents and talking about ongoing negotiations and the purpose of the ongoing negotiations will be to wind back reservations.

It is that approach as much as anything that causes somebody to be quite cautious about all of this. You then look at the impact. I do not know the answer to this question, but if I put together the definition of an investment with the definition of an expropriation I can lead to these sorts of questions.

Let us say that I go down the road this afternoon and I borrow money from the Hong Kong and Shanghai Bank to buy a property down St Kilda Road. Let us say at the minute that there is no limit on the height to which buildings can be built on St Kilda Road, and I pay the purchase price on the assumption that I am going to pull the building down and put up a 20-storey block of apartments. Let us say that in 12 months time the appropriate council introduces a regulation which limits the heights of buildings to five floors. From the point of view of the Hong Kong and Shanghai Bank, which has only made a loan, does that constitute expropriation? You can say it is bizarre, but the definition of an investment goes to loans, bonds and debentures. The definition of investment is not just FDI. If the Hong Kong and Shanghai Bank buys one share of BHP on the Stock Exchange, if the Stock Exchange then changes its rules and the Hong Kong and Shanghai Bank says that that adversely affects the price of that share, is that expropriation?

That is the difficulty I have with the chairman's question earlier about the circumstances under which one could support it. I do not see that there is any capacity to put in an exemption in which Australia can say, 'We do not accept the current definition of investment.' I do not see any capacity to put in an exemption in which the Australia government can say, 'We do not accept the current definition of expropriation.' It seems to me that the pressure around expropriation in the light of the Ethyl Corporation case may well mean that that definition of expropriation is tightened—whether it is tightened sufficiently, I do not know. I have seen no talk at all of defining investment.

This brings me back to Senator Cooney's question. Most people say that the level of foreign debt in Australia is too high. I certainly say that. Under this treaty, I could argue with you that, if I argue for a lower level of foreign debt, I am actually arguing for a lower level of investment, because under this treaty that debt constitutes an investment—they're loans. That is how wide the definition of investment is.

Mr HARDGRAVE—The thing I always wonder about with any of these—and I would like your observation on it, given that you laid a claim on your long-term interest in this particular matter—is whether these sorts of treaties, and this one in particular, are negotiated in complete isolation from the reality of our constitution? In other words, our constitution leaves open all the things you have just talked about to the High Court.

Mr Brown—You will not like the answer, but I think there are people who do negotiate treaties and who do not exercise interest in the constitution.

Mr HARDGRAVE—It is not a matter of whether I like the answer or not; it is the answer I wanted or expected you to give. That, in itself, would be in the broad of great concern to you.

Mr Brown—Of course it is. Let us talk about what happened to us. This is not really to do with your question, but it tells you of the difficulty you have. We did not

come by an awareness of this treaty from anything we saw in Australia. What happened was that we read in some magazine—I do not even know which one it was—a statement by a Malaysian. He was described as a publicist. He has since been described as a political analyst in other stuff I have seen. Because we are in the publishing business, we are very cautious of taking up a cause unless we can verify assertions that are made. And so, not knowing anything about this thing, the first thing we did was to ring Foreign Affairs and Trade. They put us through to the United Nations section, who told us that they had never heard of this thing at all. Then we rang the United Nations Association here, and they said that they really just sell books, and they could not help us either. So then we went back to Foreign Affairs and Trade. By this stage of the game—I did not do the phoning, so I do not know who we spoke to—we had some idea that the treaty was due to be signed in March 1997 or whenever. It might have been March 1998. Its response was, 'Oh, well, that's six or nine months away. There's plenty of time for that. We haven't started on that yet.' We now know of course that Treasury has been beavering away since 1995.

Mr HARDGRAVE—It is self-congratulation, but it is a good thing the Treaties Committee exists because at least this matter is now debated in public.

Mr Brown—I agree with you entirely.

Mr HARDGRAVE—You are right. It was Treasury, not DFAT, and I have said on the record before it was Treasury's place in the international diplomacy sun because there was a once every six weeks trip to Paris for those negotiating it. I remember in a briefing a Treasury official saying that they could not go to Paris every six weeks so they often sent somebody else. In an era where parliamentarians are being copped for whether or not they have put their dollars in the right box on a form, it is extraordinary that Treasury are doing that. But all of that said and done—

Mr Brown—Can I just stop you there.

Mr HARDGRAVE—No, I just want to pursue this constitutional matter with you.

ACTING CHAIR—We do not really need gratuitous insult heaped upon gratuitous insult.

Mr HARDGRAVE—Exactly. I just want to pursue this constitutional matter with you because I really would value—and I think the committee would value—a firm statement from you as a witness giving evidence to this committee about your concern over the fact that our constitution is ignored by public officials negotiating these treaties.

Mr Brown—I confirm it; it is self-evident. This is not gratuitous, coming through Treasury. One of the difficulties about this—and we said it in the submission, from the point of view of the people overseas—is that you will see in the submission that I referred

to the Asia crisis and I referred to a statement by Mickey Kantor that essentially Western investors ought to take advantage of the Asian crisis to reclaim the economic ground in east Asia. That is a statement I got out of the *International Herald Tribune* by a fellow who heads a thing called the Third World Network in Malaysia. The Third World Network is one of the organisations that has been very active in opposing the MAI. It is quite clear that countries like Malaysia see negotiations of MAI and IMF intervention in Indonesia, and the IMF's changing its rules so that it is now going to be a propagandist for free market economics, as all being related. That is actually more significant than the question of Treasury and their junkets.

Mr HARDGRAVE—Fair enough. Apart from the aspects of potential conflicts with other treaties, I wonder whether, as you mentioned before, there may well be a spin being put on it now that there is great advantage for Australian companies investing overseas from this particular treaty being signed if in fact that particular advantage is discounted heavily by the fact that our constitution leaves open the prospect of some of the things you have talked about this morning, that the advantage of Australian companies having a surer path is discounted heavily or weighted in the minority.

Mr Brown—First of all, there is the factor that you talk about, but I also think it is just sheer economic reality—the capital base of Australian companies as against US, Japanese and European. The advantage that Australian investors are going to derive is absolutely minimal. Lots of these so-called investments are going to be outbid anyway.

Mr HARDGRAVE—Let us be clear on that. The upside of Australian investors having an easy path in some obscure country or even one we know well is weighed down heavily by the downside of people challenging us through our constitution in the High Court?

Mr Brown—Yes.

Mr HARDGRAVE—Okay. Thank you.

Mr LAURIE FERGUSON—Obviously the whole tone is one of total opposition. In a worst case scenario where this thing gets back on the rails internationally, you query the extreme interpretation of expropriation, investments, et cetera. Are there narrower ambits that you would find worth while putting to the committee?

Mr Brown—If you go to the definition of expropriation, off the top of my head my recollection of the definition is 'direct or indirect or anything that has that effect'. The first thing you would have to do is remove the words 'anything that has that effect'. The second thing you would have to do is remove the word 'indirect'. You would probably have to remove the word 'direct' as well and just leave the word 'expropriation' in it. The next difficulty is that one then has to deal with the appeal mechanism, because in essence, if the investor so chooses, the arbiters will be people who come out of trade backgrounds

and, therefore, you do not know how they conceive the word expropriation. So the next thing you have to do is to deal with the actual appeal process. Then in terms of the appeal process you have to deal with this proposition that any participant can prevent hearings from being public. That is the next thing which you have to deal with.

So, yes, in terms of its appropriation, you can see a way in which you can define it and take out 'indirect' and take out 'having the same effect'. But then, as I said, in my view, you have to go to the appeal process. I do not see anybody talking about dealing with that at all, because the standard proposition is that this is just the same process that is in 199 other treaties.

Mr LAURIE FERGUSON—Are you saying that there are no restrictions enforced by Australian law on the whole appeal process?

Mr Brown—As I understand the provision, in the case of a dispute between an investor and a state, any party can choose—so therefore the investor can choose—that there will be a panel, that the panel will be appointed by essentially international arbitral bodies and that essentially they set their own rules. This then brings us back to international law and what you think the international law is. Then there is a provision that any party can request that their evidence remain confidential, and that is not a matter of challenge.

Mr LAURIE FERGUSON—Let us say, in the worst case scenario, that this does actually go forth. It is all right to say that these judges are not appointed under Australian requirements and they do not have to be lawyers, et cetera. But, in the worst case scenario, that is a fact of international life, isn't it? No country can dictate grounds of appointment to international bodies on the basis of its internal practices.

Mr Brown—Can I stop you there. Let us talk about the current situation. Unless Australia is currently a party to a bilateral treaty, the dispute at the minute about investment is decided in Australian courts by Australian judges under common law. That is the current position.

Mr LAURIE FERGUSON—The International Court of Justice does not appoint people on the basis of what Australia or Mongolia says with regard to its laws.

Mr Brown—That is exactly right.

Mr LAURIE FERGUSON—You can condemn it for that. But, realistically, we cannot dictate that in any of these bodies. If this goes ahead, are there any aspects of this that really should be judged outside Australia?

Mr Brown—No.

Mr LAURIE FERGUSON—Nothing at all?

Mr Brown—No.

Mr LAURIE FERGUSON—Finally, if it were to go forth, what is your organisation's attitude towards, for instance, the ACTU and the Victorian Trades Hall Council with regard to it being accompanied by minimum labour requirements?

Mr Brown—In principle, I think there is a case for that. I actually think that Australia is in a bind on this—not on the labour side but on the environmental side. As I said in the submission, the fact is that Australia has supported the imposition of environmental standards on Papua New Guinea, and that was attached to an Asian Bank/IMF negotiated package. I would have thought that Third World countries would just look at us if we suddenly said that, as a matter of principle, we do not support this proposition.

Senator MURPHY—Have you read any of the other submissions that we have already received?

Mr Brown—Not a lot; I have read some, but I have not read a lot.

Senator MURPHY—Have you had a look at the ACCI one?

Mr Brown—I have not seen their submission but I have seen some of the statements that ACCI has put out. I have read Mark Paterson's statements and things of that sort.

Senator MURPHY—You might have a look at their submission, including the *Hansard* when they appeared before us in Canberra. You might like to provide some analysis of that.

Mr Brown—I am happy to do that.

Senator MURPHY—Thank you.

ACTING CHAIR—It is the prerogative of the chairman to have the final question. I have to confess that I am a little disturbed at your answer to the question about whether Australian business should be denied the benefit of security investment in other countries when Mr Hardgrave suggested that, in the end, our constitution and our parliamentary democracy should prevail for any shortfalls in regard to sovereignty issues. Is it too glib to say that our companies are so small that they are not going to be big players anyway?

Mr Brown—I am not against Australian companies investing overseas. The issue to meet is the balance sheet. The question is whether or not the benefit that the average

Australian derives from that investment outweighs the downside. I do not see that it does.

In terms of Mr Hardgrave's question, as I said, I believe at the minute that there are negotiations in which the constitution is ignored and, therefore, I am not certain that, notwithstanding the legal position, the constitution affords the protections that everybody talks about. If we go down the constitutional route we can start a discussion about the external affairs power and what the signing of this treaty will do in terms of the capacity of a federal government to intrude further into matters of state and local government. I would think the potential for that is quite enormous.

ACTING CHAIR—But what if, later today, the BCA are able to quantify $10 billion overseas investment by Australian companies—sure, they are not big giants like BHP—cumulative investment in high risk areas of the west coast of Africa or Latin America?

Mr Brown—My question then would be: what is the benefit not to the shareholder but to the average Australian? I am sorry, but I actually separate an Australian shareholder from an average Australian. I know the statistics of 25 per cent share ownership and all the rest of it, but the bulk of that 25 per cent is in Telstra, the Commonwealth Bank—the government floats. It is not in resources companies.

ACTING CHAIR—But superannuation funds represent a great many average Australians, and they are the major shareholders.

Mr Brown—The average superannuation policy holder has grave doubts as to whether the fund managers represent anybody other than themselves. People would debate that. I understand that argument, but these are the difficulties that one encounters. I think the issue in these equations always has to be the average Australian. From the point of view of the average Australian, one of their fears is—and it might be quite unfounded—that it will not be Normandy or somebody over in South America or West Africa; rather, it will be some remaining textile company off to India or Pakistan and more jobs will be gone.

Mr HARDGRAVE—Mr Chairman, do you think we should reassure Mr Brown that the committee's basic operating parameter is: what is in it for Australia too?

ACTING CHAIR—Thank you, Mr Hardgrave. Would anyone have doubted otherwise? Thank you, Mr Brown. We appreciate the written submission on behalf of your organisation and your attendance this morning.

[10.14 a.m.]

HARCOURT, Mr Tim, Research Officer/Advocate, Australian Council of Trade Unions, 393 Swanston Street, Melbourne, Victoria 3000

HUBBARD, Mr Leigh Darren, Secretary, Victorian Trades Hall Council, 54 Victoria Street, Carlton South, Victoria 3053

MURPHY, Mr Edward Francis, Victorian Trades Hall Council, 54 Victoria Street, Carlton South, Victoria 3053

ACTING CHAIR—Welcome. In what capacity do you appear before the committee today?

Mr Harcourt—I am a research officer with the Australian Council of Trade Unions.

Mr Murphy—I am the Assistant National Secretary of the National Tertiary Education Union, but I am appearing with one of the people involved in preparing the ACTU submission.

ACTING CHAIR—How would you like to handle this? Perhaps Mr Harcourt could speak for both bodies or perhaps there could be two opening statements.

Mr Hubbard—I think the idea was that Tim would start off with a statement because we are virtually together. If there is any short supplementary statement I might make one.

ACTING CHAIR—Certainly, Mr Harcourt.

Mr Harcourt—I am usually an opening batsman, so I like to go first, if that is okay. Thank you for the opportunity to appear before the committee. I will make a short opening statement and then I will be supplemented by Mr Hubbard and Mr Murphy. I basically wish to speak to the ACTU submission which we have prepared. I assume all members of the committee have copies.

The ACTU's view is that the MAI treaty as currently drafted is not in Australia's national interest. We say the draft treaty represents a bill of rights for transnational companies with no such provision for sovereign national governments, trade unions or other members of the community. The draft treaty, we say, is deficient as it excludes proper provision for labour rights and environmental standards, inadequately safeguards national sovereignty and imposes burdens on democratic governments in their elected task to provide social infrastructure and social services.

We argue that, in an era of globalisation with increased trade and investment across national borders, national governments need to provide public infrastructure and social services to help the community adjust to change. We say the MAI limits national governments' capacity to do this, and potentially the MAI itself undermines trade liberalisation.

We argue that international economic institutions need to incorporate labour standards to ensure that the benefits of economic growth are shared equally and democratically to maintain social and political cohesion. In fact, in the words of US President Bill Clinton, in his address to the World Trade Organisation in Geneva in May this year:

> We must build a trading system for the 21st century that honors our values as it expands opportunity. We must do more to make sure that this new economy lifts living standards around the world and that spirited economic competition among nations never becomes a race to the bottom in environmental protections, consumer protections and labor standards. We should level up, not level down. Without such a strategy, we cannot build the necessary public support for the global economy. Working people will only assume the risks of a free international market if they have the confidence that this system will work for them.

International economic institutions, half a century after their creation at Bretton Woods, are in need of reform. Accordingly, we say that the MAI needs to be redrafted or replaced by an instrument that assists both economic and social development. Even the International Monetary Fund in its involvement in the recent Asia crisis sweeping the region has called for, and I quote from the managing director, Michel Camdessus:

> . . . a more effective dialogue with labour and the rest of civil society to increase political support for adjustment and reform and to ensure that all segments of society benefit from the resumption of growth while core labour rights are protected.

We say that international trade and international investment must be regulated in a way that supports labour rights and improves living standards to support our communities and nation states and not divide them. If I can quickly just take you through our submission—

ACTING CHAIR—You can largely take it as read, Mr Harcourt.

Mr Harcourt—Yes, I was going to do that.

ACTING CHAIR—But certainly highlight different aspects if you want.

Mr Harcourt—Yes. What I will do is just give you some edited highlights. Section 1 basically outlines the ACTU position on the MAI and in terms of the ACTU executive resolution, which is attached, and I assume committee members have read that.

Section 2 provides some background to the MAI, most of which will be familiar to

the members of the committee. Section 2.2, for instance, relates the MAI to the WTO, APEC and other trade issues. Sections 2.3 and 2.4 outline the growth of investment and the growth of multinational companies which, according to the data provided by UNCTAD in Geneva and the Trade Union Advisory Committee to the OECD, show that there has been an overall growth in investment and growth in MNCs which overshadows growth in trade. Sections 2.5 to 2.12 provide the detail of the MAI, which I assume is familiar to members of the committee.

Section 3 provides our position on labour standards. I must say at the outset that we are disappointed that Australia is one of the few hard-line governments that opposes labour standards in the MAI. We argue in the submission at 3.9 the core labour standards that must be supported, that is, freedom of association, recognition of the right to collective bargaining, an end to forced labour, abolition of child labour and opposition to discrimination in employment and equal pay. We argue that those rights should be supported.

At 3.10 we would like to state that we are disappointed that the Australian government in the OECD and in the WTO claims its opposition to labour standards on the grounds that the ILO is the appropriate expert. This is often said in the WTO and, indeed, in the OECD, but at the same time is undermining the ILO in every other fora.

In fact, we would argue that the need for labour standards as a key part of economic development has the support of the OECD itself. If I can just point out 3.17 where the OECD in its study of trade and labour standards stated the following:

> In conclusion, it can be said that in order to raise people's material living standards, countries should seek economic growth, using trade and labour market policies as appropriate means to that end. Labour standards and international trade can be complementary. Such complementaries should be sought by countries and by companies and fostered by the international community.

Indeed, the World Bank at 3.18 has indicated its support for labour standards, trade unions and collective bargaining as an important part of economic development. That is at 3.18.

At 3.19 we conclude that labour standards are an important element of the international economy and the international flow of investment will benefit if underpinned by enforceable labour standards through the OECD and, accordingly, the MAI should include provisions for labour standards.

Section 4 provides our position on safeguards and roll-backs and other institutional features of the MAI which will be familiar to members of the committee. We have our concerns about a number of areas named in that section: real estate, local content in television programming, media ownership, industry assistance, foreign investment, the entry of overseas workers, boards of directors, privatisation and public infrastructure and public services. There are various elements of detail in that submission and my colleagues may wish to supplement according to their areas of expertise.

Section 5 of the submission that we have put provides alternatives to the MAI. At 5.1 we note:

> The ACTU does not oppose international regulation of investment. It accepts that the stability of the international economy will be assisted by open, and transparent rules for trade and investment. However, the draft MAI is seriously unbalanced in favour of granting rights to foreign investors, it does not meet the needs of the international economy and is contrary to the sovereign interest of Australia and other free and democratic societies.

Accordingly, we have put the view at 5.2 that either the MAI be redrafted to include appropriate provision for labour standards, essential public infrastructure and public services and allows governments, workers and citizens to achieve the same rights afforded to multinational companies in dispute settlement or, as an alternative, it should be replaced by a form of voluntary principles or codes of conduct, that OECD governments agree to non-discrimination between domestic and foreign investors. We say that there is support for voluntary principles with respect to multinational enterprises already in the OECD. If there is concern about non-discrimination, then that could be taken with a set of voluntary principles. Section 6 provided the summary of our submission.

In conclusion, we would say that the Australian government should not sign the MAI as it is not in the public interest. We ask that there be proper provision of labour standards and that the government should be aware of some of the social supports that need to be included if international investment is going to be effective. That completes my opening statement. I will have my colleagues supplement anything I have said.

Mr Hubbard—I would like to comment very briefly and pick up a couple of points that Mr Harcourt made. We welcome this continued inquiry by the Treaties Committee of parliament. I think the interim report indicated the lack of public debate and discourse about this treaty and, indeed, the lack of consultation that had taken place over the far-reaching and binding nature of the treaty. So we welcome this continued exposure of what the meaning of the treaty is.

My opening remark would be, simply, that in the ACTU and Trades Hall submissions we echo a sentiment of the Canadian Labour Congress which was put to their House of Representatives committee that looked into this matter. Their submission was that there is a need for regulation of global capital, but not regulation of nation states in the interests of global capital. That is a fundamentally different thing.

Having said that, I do not think the union movement is against trade treaties and agreements, bilateral or otherwise. We are not amongst that group of people who are out there at the moment who want to take Australia back to some period of the 1950s or 1960s behind closed doors. We admit that globalisation has been a speed-up but, indeed, the interrelationship between nations is now more than ever connected. Indeed, 25 per cent of all world trade is intrafirm trade where companies are trading amongst each other between nations. So we recognise that that has to be taken into account.

Having said that, the concerns that we would have with a treaty such as this are many. I think Mr Harcourt and the ACTU submission go through some of those. One is obviously the nature of the treaty and its threat to democracy, in a sense. That sounds a little trite, but certainly in terms of people in Australia having no control over what happens once the treaty is signed there is the fact that companies can sue in an international court but that communities and workers cannot, and there is the binding nature of the treaty: it will go on for decades even after a government decides it wants to exit the treaty. Unlike other trade treaties, it is not voluntary in operation.

The standstill and roll-back provisions are obviously of concern to us, as is the nature of the exemptions that have already been indicated by the Australian government, it appears, without much consultation with other tiers of government or, indeed, the community. The other thing that would concern the union movement is the ability of this agreement to be used as a weapon, if you like, with developing nations. I suppose that is why it was attempted to be negotiated in the OECD and not in the WTO initially.

Obviously Mr Harcourt has gone through in more detail the nature of the non-binding, voluntary labour and environmental standards and the weakness of that in terms of the draft treaty. It provides no protection whatsoever. We are also concerned that it leaves little opportunity for nations like Australia. When smaller, you have to nurture industries and create new opportunities for yourself and not do a number of things we have done in the past—whether it is to do with large projects that have export quotas, local content quotas or some, if you like, qualifications on investment and the way that happens. There is a whole range of other things that follow from that which we believe would not be possible if this treaty were signed.

There are other concerns, obviously, which are outlined in the ACTU submission and in our own submission in respect to privatisations and restrictions you might put on those in terms of foreign investment or, indeed, subsidies to foreign investors on the same basis as public subsidies would be given to, say, hospitals or schools in Australia. If a private investor invested, they could argue they had been discriminated against if they were not getting the same kinds of subsidies.

The other major area, I think, which is of concern is cultural. I note that other governments like the French have had serious concerns with the problems that this treaty would create for cultural and other product. That, for us, is also a great concern.

I conclude, as did Mr Harcourt, by saying that this treaty should not be signed by the Australian government unless it is seriously reworked and, even then, I think in our submission we say that it is unlikely that such a treaty, given the premise on which it is based—regulating national governments in the interests of global capital—is not, if you like, laying ground rules for global capital, which I think is the crying need at the moment—not to regulate governments in terms of how capital flows around the world. I will end that first part there.

Mr Murphy—I want to elaborate on the question of standstill and roll-back, particularly with regard to what is the common defence of the treaty offered by its supporters, which is the capacity of Australia to table reservations—what has now been renamed country specific exceptions. The reason I want to highlight that is that every time the union movement or any other interest group raise a concern about the potential impact of this treaty on domestic policy or on any field of endeavour, whether it be industry policy or the provision of grants or subsidies, the response that is given, whether it be from Senator Kemp's statements to the newspapers, correspondence from Kim Beazley or even comments made by Treasury officials before Senate estimates committees, is, 'Don't worry about that, Australia is taking out a reservation or a country specific exception.'

The problem is that the responses give the impression that the reservations or country specific exceptions would allow Australia, in those fields which are nominated, to retain full policy making rights and discretion in all those areas. Unfortunately, if you read the treaty itself, that is not the case. The only provision in the treaty for reservations at the moment is annex A, and annex A confines the impact of country specific exceptions to preserving those measures, policies, procedures and regulations that exist at the time of making of the treaty. They are preserved only to the extent to which there is no increase in their level of nonconformity with the treaty's provisions.

Secondly, under annex A there is a ratchet effect operating. The standstill is a reference to not being able to add to the degree of nonconformity of your existing measures in any of those nominated policy fields, but there is a ratchet effect operating under annex A, which is that if any Australian government, of its own domestic political initiative, decides to liberalise in any of those fields of policy nominated as exceptions the degree of nonconformity that is required by the treaty pertains not to the degree of nonconformity that existed at the time that Australia nominated the reservation but the degree of nonconformity that existed after a subsequent Australian government liberalised in that field. If, in an area like foreign investment review, privatisation, media policy or industry policy, a future Australian government decided that it wanted to have a more liberal regime in the sense of more open to deregulation and less restrictive within the terms of the treaty, all subsequent Australian governments, as long as the treaty is in force, are bound by that decision and cannot return government policy or regulation back to the level of nonconformity that operated at the time that Australia entered the exception itself. I note that the Treasury submission to you acknowledges this point, that this is what the text requires. Clause 39 of that submission mentions the ratchet effect as well.

The point I am making is that, if you look at this from the standpoint of its implications for democratic political government, we are entering into a process where it is suggested that the so-called exceptions offer us the way of preserving our political autonomy. In fact, they only pertain to what we have currently done, so we cannot in those nominated policy areas enact new regulations or new policies which increase the degree of nonconformity with the treaty's disciplines, to use the language of the treaty itself. Secondly, if any government at any time liberalises to some degree, then that is the

benchmark at which the treaty continues to apply, and a subsequent government cannot reverse that policy as long as the treaty is in place. Even if that subsequent government decides to withdraw from the treaty, the investments that benefit from that additional liberalising measure are protected under the terms of the treaty for a further 15 years.

That is a policy proposal in the treaty which goes well beyond the domestic political cycle of governments in a democratic system. I think that is quite intentional. I would suggest that it would have a deterrent effect on governments—that, even if you want to leave the treaty, the impact of leaving the treaty is nil for the next 15 years in relation to all existing investments. The suggestion that the reservations give you the capacity to deregulate and exercise political sovereignty in all those nominated fields is based on an annex B which is not in the document.

There is a proposed annex B, but it has not been inserted in the treaty. If you look at both the text of the treaty that was tabled by Senator Kemp and the more recent 26 April draft of the treaty, which is on the OECD Web site and is the latest one available, you will find with respect to country specific reservations note 11, which states:

> It was agreed to withhold the drafting of the introduction of "Annex B" until the Negotiating Group had taken a political decision on the status and coverage of Part B of the Article. Moreover, a number of delegations felt that the wording of such introduction might need to be drafted in a limited way (i.e. to cover only cases of privatisation or demonopolisation).

So there are two points: annex B has not been agreed and annex B is politically controversial. There are many people arguing that if there is an annex B it will be limited to cases of privatisation and demonopolisation. I think it is illegitimate for supporters of the treaty to convey the impression that reservations or country specific exceptions allow Australian governments to exercise their full policy discretion in any of those nominated fields. It is not supported by the treaty itself. I think that is an issue for democratic systems of government.

I would also add that the country specific exceptions, even under annex A, do not allow you to preserve or exempt Australia from all of the key disciplines of the MAI. The reservations pertain only to most favoured nations treatment status and national treatment. You cannot use the exceptions or reservations power to qualify the expropriation provision of the MAI. As that is widely defined to go beyond nationalisation and can include certain taxation measures, as both our Treasury submission and the treaty text itself acknowledge, I think that is another important consideration when considering the adequacy of reservations.

In effect, what I am saying is that for those who are defending it, at all levels of government and across all political parties, you are giving people the impression about reservations which is not validly supported by the evidence of the document. That is the main point I want to make. I am of the view—and I think the union movement is of the view—that we actually want to retain a political system which is capable of exercising the

full initiative. If there are changes of government and changes of party political positions, or even changes of policy by a government of the same political persuasion, the degree to which that governmental initiative—we are also talking national, local and state government—is constrained by this treaty, I think is excessive.

ACTING CHAIR—Thank you, gentlemen. I thought I understood Mr Harcourt's opening words to be generally in support of the MAI, with all of the concerns you properly expressed. But I have to say, having listened to Mr Hubbard and Mr Murphy, you seem to be worried about government hands being tied in regard to global markets and other things and now, Mr Murphy, you seem to suggest—I will give you a chance to clarify it—that the exemptions and reservations procedures and applications are almost beyond correction. So, Mr Hubbard and Mr Murphy, you have damned the draft MAI with faint praise to the point where I wonder whether or not you believe it can work.

Mr Harcourt—Just to clarify what I said, I put the view that there is some need for international regulation of investment, but the draft MAI is the wrong instrument. That is what I said. I am sorry you got the wrong impression.

ACTING CHAIR—I thought you said it was the wrong instrument, unless it deals with labour standards and a number of other things that you attach to that.

Mr Harcourt—I guess there is always a first best and a second best in these matters. The impression I certainly wanted to give is that we are not against the open economy, we are not against trade or investment, but there are certain treaties and instruments that need to be used and a document like the MAI is the wrong instrument. In the division of labour put between the three of us, I was putting a general position about the importance of labour standards in international economic regulation.

I do not know if the committee has read the book by Dani Rodrik from the Harvard JFK School of Public Affairs called *Has Globalization Gone Too Far?*. He is quite a conventional, neoclassical economist, and he says that there are good reasons for trade liberalisation but, unfortunately, where they conflict with social and democratic norms in society, it is very dangerous and an undermining of the process. As a division of labour, what I put was the problems we have with the draft, and what we would like to see in an international investment instrument, and the positions on the detail in terms of democratic governance were supplemented by Mr Hubbard and certainly by Mr Murphy in detail.

ACTING CHAIR—All right. We will hear from Mr Hubbard and Mr Murphy now, just in case I have completely missed the boat. I must press you that we are down to crunch time now and you have to say, do you not, like Mr Brown earlier on, that under no circumstances can the MAI be redrafted to ever take into account his concerns and worries? Are you in a similar position?

Mr Hubbard—The ACTU submission calls for a treaty which is a voluntary code and has principles in it that are voluntary in nature, like other multilateral trade agreements. I would have thought that was a fundamental rewriting of the treaty, and the premise on which you would do that is totally different to the premise upon which the treaty is currently being negotiated. To that extent, I do not think there is a difference. All we were doing was going to different elements: the binding nature of it; the roll-back and standstill provisions, which we believe are excessive; the fact that it is out of the control of the political cycle for governments to change policy; the expropriation provisions; and the labour standards and environmental standards.

If you take them all together, I think your conclusion would have to be that the redrafting of this treaty to make it acceptable would be a very tall task, and I do not think there is any disagreement amongst us about that. That is not to say we do not believe there ought not be some form of treaty that is around investment and that it should not be negotiated at a multilateral level, either through the WTO or some other forum, but that this treaty is not the way we should proceed, that Australia should not sign it and that they have to go back to the drawing board. That would be the only general conclusion, I would think.

ACTING CHAIR—Thank you. That has certainly cleared it up for me, at least.

Mr LAURIE FERGUSON—The ACTU-Victorian Trades Hall submission is more philosophical in how it is going to affect agriculture, how it is going to affect privatisation, et cetera. In Mr Murphy's summary of the legal situation, I certainly have not picked up these kinds of difficulties up until now. I broadly do, but I am wondering if, through you, we could invite a further submission in the form of a summary of that.

Mr Murphy—You actually have one. You have a personal submission from me, which I am not speaking to today because I am here in—

Mr LAURIE FERGUSON—Is there anyone who is making these points—

Mr Murphy—My personal submission is devoted in large measure to a critique of the country specific exceptions or reservations defence. I have also, in writing, communicated what I have put to you verbally today. In my personal submission I have referred to a legal opinion by an international trade law firm called Appleton and Associates of Canada on reservations in the MAI context and in treaties generally, which includes information that—even with respect to WTO agreements where there have been reservations—the exercise of the reservations has been taken to a disputes panel under the World Trade Organisation. Part of the consideration by the WTO disputes panel was not just whether the reservation was valid under the terms of the reservation filed by the country but whether, in the WTO's opinion, the same policy objective could have been achieved with a lesser degree of nonconformity with the WTO treaty than the method chosen by the domestic government. So I have gone right through the reservations issue.

I think we should make it clear that roll-back is not in the treaty itself. There is an anticipation that the treaty may be followed by further liberalisation negotiations, but roll-back is not in the treaty itself. Just as I am not relying on things that are not in the treaty, nor should those who use the reservations defence rely upon annex B, which is not in the treaty. I have done this in writing in a personal submission to this committee.

ACTING CHAIR—We will certainly be pursuing those matters.

Mr BARTLETT—Mr Hubbard, I have a question on one aspect of your submission on the MAI versus wages and conditions. You have made the point that the intention of negotiating parties is to pressure Third World countries excluded from the negotiations into signing the treaty once everybody else has joined. What evidence is there for that?

Mr Hubbard—I am not sure what evidence there would be but, simply on the ability of Third World countries to attract investment and what we know of capital flows already, you only have to look at Australia over the last 10 years and the movement of companies offshore to get a fair idea that that is happening all the time. If you have an instrument which makes it much harder for national governments, if they choose to, to regulate that investment in some way—whether it be through labour or environmental standards or through other things—then to me that simply means that capital can find its way to countries where they need the investment, but there is obviously a great temptation to—

Mr BARTLETT—So there is no evidence yet that the MAI is specifically targeted at Third World countries?

Mr Hubbard—No. I suppose the only evidence that has been suggested in our submission—others will have suggested it as well, I am sure—is the experience of NAFTA and what has happened there with the movement of companies out of Canada and the US into Mexico and so on and what that has meant. I am no expert in that area, but I would have thought that is an example.

Mr BARTLETT—Pursuing that matter for a moment, you have said that the MAI is modelled on NAFTA and that we can roughly judge the resulting impact of Australia competing with Third World countries. Can you outline for us the impact, particularly the investment aspect rather than the trade aspect, that NAFTA has had on wages and conditions in Canada?

Mr Hubbard—As I understand it—and this is anecdotal; I do not have any hard evidence here, just what I pick up from unions and others in those countries and some of the comments which are obviously quoted in our submission—simply the ability to move easily is used as a bargaining chip when people want to improve or maintain wages and conditions. The ability of companies to move to Mexico, or wherever, under NAFTA has

been made much easier. We would certainly argue that that is a factor which has to be taken into account, and it is a logical factor. Economic principle would say that that would be a factor that would have to be taken into account.

Mr BARTLETT—I am wondering whether the impact on Canada—the economy out of the three of those which is most similar to Australia—has been demonstrably negative or in fact has been positive.

Mr Hubbard—We have certainly said it in the submission—we have some anecdotal stuff—but can I undertake to get back to the committee, to put a letter into the committee.

Mr BARTLETT—Thank you. That would be useful.

Mr Hubbard—I could chase that up with people in Canada to get more evidence. Certainly, the Canadian Labour Congress has been very vocal in its opposition to the MAI. Indeed, they probably led the way in the labour movement around the world in their opposition because a number of their equivalents to state governments in Canada have passed resolutions through their parliaments against the MAI largely because of their experience, as I understand it, with NAFTA. I can get more hard evidence, if you like, to put to the committee.

Mr BARTLETT—Thank you.

Mr Harcourt—To supplement the answer to Mr Bartlett's first question, we referred to the Commonwealth of Australia's report of labour standards in the Asia-Pacific region. In that report, there was some anecdotal evidence of certain developing countries advertising trade development zones where it was advertised for international companies to come and set up in this zone and 'we will make sure that there are no safety standards, unions or minimum wages and so on'. There is some evidence of that in Bangladesh and in some Central American countries. That is not to say that everyone will take that up and it is not to say that an international company is necessarily worse than a domestic company.

Mr BARTLETT—It is certainly true that that sort of thing happens, but it is another step to go from there to saying that that is an intention of the MAI to facilitate that process to the benefit of the developed economy.

Mr Harcourt—That is why we have suggested certain safeguards. Certainly we are not saying that an international company will be worse than a domestic employer. In some instances, it could be the reverse; it is just providing appropriate safeguards.

Mr BARTLETT—But I am saying that the fact that these practices exist is not evidence that that is an intention of the MAI.

Mr Harcourt—The MAI might increase the scope for that to occur.

Mr HARDGRAVE—Firstly, congratulations go to the three witnesses here. As well as their submission, certainly their presentation today has been first rate. It has been a slow and steading innings, but you are somewhere near the ton, Mr Harcourt.

Mr Harcourt—Some of us are likely to prefer Test matches to one-day cricket.

Mr HARDGRAVE—Fair enough. I am getting the feeling from Mr Murphy's submission—and I will have a closer look at your personal submission as well—that it will be a great day for the High Court if this thing ever happens.

Mr Murphy—Except that under the terms of the treaty dispute adjudication can be exercised by a domestic court or, at the initiative of an aggrieved investor, it can be referred to an international tribunal, the findings of which are binding on sovereign states. It is a great day for lawyers, but whether the lawyers will be arguing it before domestic or international adjudicative bodies is another matter.

I think it is relevant to note that it is unlike other treaties where, if there is an allegation that one nation has breached the terms of a treaty, it is another nation—and only another nation—that has the capacity to initiate dispute resolution. Under the MAI, an aggrieved investor can take a country before the domestic court or the international body which is proposed. So it is a good day for lawyers—yes.

Mr HARDGRAVE—I have a general maxim that suggests that, if it is a good day for lawyers, it is a bad day for the country. If that be the case, with things such as media content laws—which are talked about in your submission—I would imagine that Mr Murdoch would be one of the first cases. He would be in challenging our foreign investment in media guidelines with regard to investment in television for a start, wouldn't he?

Mr Murphy—To be fair, if we took the media policy example and we took an exception under the only provision at the moment, which is annex A, then to the extent to which our cross media ownership laws remain unchanged there may be some disputes initiated by Mr Murdoch or some other aggrieved proprietor as to whether there are other ways of achieving the same policy objective with a lowered degree of nonconformity with the treaty. But, beyond that, I do not believe Mr Murdoch would be able to take us to an international dispute resolution body.

If, however, a subsequent government decided to tighten the cross-media ownership laws or change them in a fashion which appeared to be less in conformity with the treaty, then Mr Murdoch would take you to court. If a subsequent Australian government decided to liberalise the cross-media ownership laws and then the next government decided to go back to the laws that were in place at the time we entered into the treaty, you would

definitely end up in court.

Mr HARDGRAVE—I think the current government is probably the first one for a little while that has not changed the cross-media ownership laws, although we got close. I suspect, though, that on the broad foreign investment matters those FIRB roles and rules would, of course, be subject to all sorts of finetuning on almost a monthly basis; therefore, one little chink in the armour and the whole thing comes apart.

Mr Murphy—That would be valid because some of the FIRB powers are activated if the investment is over a nominated monetary threshold. If you wanted to reduce the nominated monetary threshold to activate the FIRB powers, that would be increasing the degree of nonconformity with the treaty and you would be in court.

Mr HARDGRAVE—So looking at section 6 of your submission—the summary and part III and the (a) to (n) of exemptions that you are offering as examples—it gets to the point of saying, 'Why bother signing?' Is that basically your assessment?

Mr Murphy—I indicate that, of the exceptions, only some of them have been taken out against both most favoured nation treatment and national treatment. Others have been only taken out in respect of national treatment. I am looking at the list of exemptions tabled by Senator Kemp in parliament. That is relevant because that means we would still be bound by most favoured nation treatment in respect of those policy areas.

This means that, if we entered into a bilateral agreement to grant national treatment to foreign investors from a single country or we entered into an agreement to grant national treatment from investors, say, from APEC, automatically we would be extending that national treatment to all foreign investors throughout the OECD because the government's exemptions do not extend, for at least half of those areas, to most favoured nation treatment; they are confined to national treatment. There is another flaw in the exemptions list that has been tabled.

Mr HARDGRAVE—Just to draw it out, there is foreign ownership of real estate through R&D, media policy, industry assistance, immigration policy, temporary entry, corporate governance, privatisation, public infrastructure, health, education, social security, indigenous, regional development, environment—and we even go on to things such as anti-apartheid. It is all there and it gets to the point where you say, if we are going to have that many exemptions to what they are putting forward, why would you bother signing a document that needs that many if, buts and maybes attached to it?

Mr Harcourt—That is one of the reasons why the Americans are not happy with the current draft, because they actually think there are too many exemptions to it, which is probably a Realpolitik answer as to the capacity to fundamentally rewrite it. I do not think that capacity exists. What I am saying is that I would run the opposite view. Despite the long list of exceptions, they do not have the effect that people think they have under the

terms of the treaty itself.

Mr HARDGRAVE—Thank you.

Senator COONEY—It has occurred to me, as I have been listening to you, and it is a point that you keep making in the submission, that this at least is an opportunity for Australia and other nations to have a look at the flow of global capital. You have been asked whether or not you think there are redeemable features of the present situation. We had evidence from the previous witness that when he tried to find out where the treaty came from it turned out in the end to be run by Treasury. Have you had any thoughts about the possibility of expanding the sorts of people who might be in control of the negotiations, including the ACTU? I ask that from the point of view that at least this is one occasion where we are looking at the flow of international capital. If you let this go, you might not get another chance to move into an area that you say ought to be looked at.

Mr Harcourt—We were not particularly running conspiracy theories about the treaty. We did think that there could have been more public information and that perhaps was a learning process from Treasury.

Senator COONEY—This is a serious question. I am not putting the conspiracy theory to you at all. I think it was put by Mr Brown that he would normally have expected this to come through Foreign Affairs and Trade and it didn't—it was coming through Treasury. I do not think he was saying there was a conspiracy, but he was saying that this was an unusual department and one that did not have an experience in this area.

Mr Harcourt—Perhaps my response was too glib. I understand your point. We have argued that there has been a need for broader involvement and we have said that in our submission. It is interesting that the International Monetary Fund, which I have quoted in my comments today, is talking about a dialogue with labour and civil society. The same thing is occurring with the World Bank. I think there is a change, certainly in attitude, amongst international economic policy makers, particularly in this part of the world, that they do have to understand social safety nets and labour rights in these issues.

Senator COONEY—In that context, I notice that you have set out in your summary the various issues. May I say that the sort of submission you have made is typical, although expressed in different ways, of the majority of people who have made submissions. What I am looking for is whether you think, in spite of the vast criticism that has come against it, there are some redeemable features in terms of who may run this and what you might talk about? You have been asked about this before, but at the end of all this do you think there is nothing that can be done and we ought to start again?

Mr Harcourt—There is some merit in having an international treaty on investment, but there are some groups that can improve the process. For instance, if you have done it the way Treasury has done it, you miss out on the expertise of 'Professor'

Murphy on my right and some people who have certain knowledge and expertise.

Senator COONEY—That is what I am trying to ask. If you did that sort of stuff, do you think there is enough in there to keep this alive, or at the end of this session do you think it is just hopeless and you have to start again?

Mr Murphy—I agree with the point that if you are going to negotiate an international investment treaty you would want non-government organisations, whether they be trade unions or otherwise, represented at the bargaining table. I think that is a fair point. But, in the case of this document, the problem is that if you look at a treaty which contains a balance between rights and responsibilities—and all treaties do or should do—this is a document that grants rights to transnational investors but at the moment assigns no responsibilities whatsoever.

In so far as your question is whether there is anything in there which is redeemable, as there are no responsibility currently assigned to transnational investors, there is nothing to build upon. That would be in the nature of a fundamental rewrite to prepare a treaty that assigned rights and responsibilities. I would say you would have to start from scratch.

By way of example, if you want to regulate international investment flows, you might want to look at the extent to which tax havens and transfer pricing are used to minimise tax. This treaty actually exempts taxation, for reasons which I cannot speculate on because I have not been involved in the negotiation, but the essential point I would make is that there are no responsibilities imposed upon transnational investors in the draft at the moment. There are lots of rights, there are no responsibilities; therefore there is nothing in it to build upon in your redeeming scenario.

Mr Harcourt—I guess it goes back to the point made by Mr Hubbard in 5.2 of our submission. If you have a treaty that is binding and confers rights or has to confer equivalent rights to our representatives and other groups, barring that, the alternative is a voluntary code of conduct.

One thing that occurs when we talk to people in the OECD and Treasury is that, when we mention labour standards, they say, 'We are all very much in favour of that, but we don't like anything binding because we think it is bludgeoning other governments.' Yet the binding nature has been provided in the draft treaty to other groups. It goes back to what Mr Hubbard said about what choice you make.

Senator COONEY—From what Mr Murphy, Mr Hubbard and Mr Harcourt said, there is a need to look at the flow of international capital. If we do not somehow try to take up this momentum, is any momentum for a treaty likely to build up from any other source?

Mr Murphy—Only in so far as the IMF is looking at changing its charters to require a comprehensive liberalisation of capital account flows. There have also been proposals that even if the MAI remains on the shelf—which is where it is within the OECD negotiating process—there are other parties who wish to argue that it be taken up within the World Trade Organisation context. But I suspect it will be momentum towards—with perhaps some changes in details—a treaty of this kind rather than momentum towards a treaty of the kind that had a better balance between rights and responsibilities.

ACTING CHAIR—I find myself far more attracted to the technical legalistic objections to the draft MAI, principally outlined by Mr Murphy and also Mr Harcourt and Mr Hubbard, than I am your argument that an investment treaty has merit but only if it includes provisions relating to labour standards, environment, regulation or safeguards against global markets.

Aren't you really asking too much of the one treaty? If that is your objection to the MAI, aren't you trying to wrap up every economic and social concern a nation might have in the one treaty? If an objection is that it does not include environmental and labour standards, we are never going to get one treaty. Aren't Senator Kemp and Mr Beazley right to say that we should just have an investment treaty and then we can look at an ILO or labour standards treaty and an environment treaty?

Mr Hubbard—It might be a big ask, but I suppose the question is: why should this treaty in relation to investment be on any different footing to the other kinds of treaties or conventions that are signed in respect of other standards? This one is binding. There are quite onerous responsibilities on national governments. They can be sued. Their policy processing ability is cut short in many respects. The responsibilities on national governments are enormous.

When you go to other areas, for example, the ILO, there is virtually no enforcement power and so on about those conventions. A lot of it is voluntary in a sense. You sign an ILO convention and so the moral force of that is there, but the point we make is if they are not going to include mutual obligations and responsibilities on both sides why would you not simply make this treaty the same as all others, a voluntary code of principles? Why should international capital get something that workers or environmental concerns are not getting? Why is that? I think there is a fundamental imbalance there.

ACTING CHAIR—Because it generates jobs, development, sustainable development and the like.

Mr Hubbard—But producing things involves two sides—in our case it involves labour and capital, and the concerns of labour we would regard as high priority as to how that occurs.

ACTING CHAIR—What is to stop me as a rural member saying, 'I want the right to farming,' which is an oft talked about entitlement that we sometimes want to see in legislation, attached to the list of MAI protections or standards? Where do you stop in trying to wrap up all of our concerns and issues in the one treaty?

Mr Hubbard—I grant you that is a difficult issue. I am not arguing that we should make it all-compassing, but certainly the major issues around national control and then labour and environmental standards we would see as core issues. There are a number of others you might regard as being dealt with more appropriately in other places, but in this treaty we certainly regard that as not excessive in asking for a balance between those rights and responsibilities of capital and indeed other areas.

Mr Harcourt—It is perhaps not a matter we have that much choice in because, certainly in the region, there now is a need to focus on labour issues and social issues as what is occurring in Indonesia and Korea show. What we are arguing is that Australia, as a small but reasonably respected player in the region, can provide a role in providing mechanisms to encompass labour and development issues in such treaties and such trade policy instruments. If we do not, then I am afraid other forces will become more strong, and that will be a threat to all.

Senator COONEY—I thought what Mr Murphy was saying was that the treaty itself does affect these other issues. I thought that was his point.

Mr Murphy—It is a fair point that is being made in this sense, that if there were such an ideal treaty there would be legitimate political disagreement about what would be the core issues that would go in it. I would certainly say in respect of this treaty that if the only thing that was changed was that you had an enforceable labour standard clause, an enforceable environment standard clause, and let us throw in for good measure that non-government organisations could initiate dispute resolution and not just investors or countries, you would still be left with a whole list of policy areas that are alluded to in the country specific exceptions list.

I would argue, and the trade union movement would argue, that you would still be left with another core area, and that is industry policy. The treaty affects, and is designed to restrict and prohibit, advantages in tendering through government procurement policy, grants, subsidies, production bounties, all of those techniques that have been used by different governments of different persuasions in industry policy to favour domestic companies. They are all at risk under this treaty.

I would certainly argue that that is a core area. If you believe that you should have the capacity to regulate investment flows and also the capacity to provide some industry support measures to your domestic industry, then you would say, even with the labour standards and environmental standards clause, do not do it.

Mr HARDGRAVE—Even something like, as was put through the House of Representatives the other day, the product of Australia labelling concept itself could be represented as distorting investment in certain industries as well.

Mr Murphy—Within the lawyer's feast scenario, yes, that is true. Part of problem is that there is a continuum of possible interpretative disputes within the treaty. I tend to start with those which were on the more likely side of the continuum rather than take the more extreme.

Mr LAURIE FERGUSON—The real answer to Mr McGauran's point is that, if we look at the experience of the World Trade Organisation, they attempt to give a social charter. Governments of whatever political stripe in Australia fail to line up with the US and Canada in regard to the minimum standards. You cited the comment, on page 4 of the Victorian Trades Hall Council submission, from the president of the US Council for International Business. Essentially, that attitude means that, unless it is going to be placed in this document, it is not going to happen—full stop.

Mr Murphy—Yes, I think that is true. The point is that we would disagree about core issues. I think that is valid. A treaty that basically says that you cannot impose a performance measure on foreign investors and, for example, you cannot require technology transfer—which is what we did with some Ericsson investment in telecommunications—you cannot set export targets for foreign investors and specify a minimum proportion of domestic content in production or supply.

A treaty which outlaws performance requirements, even if it had a labour standards clause and an environmental standards clause, you may well object to on the grounds that these are key economic tools that—even if governments of some political persuasions do not want to use them—should be retained in case other governments want to use them. I think that is a fair argument

ACTING CHAIR—I have several dozen more questions I would love to pursue, but time is going to beat us. We thank you for the very considerable time and effort invested in your written submissions and your appearance before the committee now. It has been most helpful.

[11.19 a.m.]

PICCININ, Mr Claude, Assistant Director, Business Council of Australia, Level 16, 379 Collins Street, Melbourne, Victoria

ACTING CHAIR—Welcome. Do you wish to make an oral submission in addition to the very extensive BCA written submission?

Mr Piccinin—In brief, let me just say that the BCA supports the concept of a treaty such as the MAI and the principles behind it. There are a couple of areas where we would differ in terms of the draft that appeared in February, but we are quite in favour of it in terms of the principles.

ACTING CHAIR—It is a pity you were not here for the morning's proceedings because previous submissions have been very well thought out and very legitimate concerns have been raised. It would have been tremendously helpful to the committee and those appearing from the public to have had you engaged in a debate with the various points they raised.

I would ask the BCA to study the *Hansard* and reply, as we will be requiring relevant government departments to do, point by point, to what would seem—at first glance at least—to be fatal flaws in the draft MAI. That is why I say it is disappointing. It may be a lesson, frankly, for organisations appearing before parliamentary committees to not just come in at the last moment, make a pro-forma submission and then depart.

It all boils down, though, Mr Piccinin, to whether or not the draft MAI can be resurrected. Some of our witnesses believe not, others do. Frankly, with all of the conditions they would attach to it, I very much doubt if it could as it is presently conceived. You have already said that you agree with the principle of it. I think we have moved beyond that. Everybody agrees with the principle of security of investment. What aspects of the detail of the draft MAI do you want to see redrafted and how?

Mr Piccinin—We have a couple of areas of concern. The first would be in the exceptions that the Treasury is planning to put forward. As far as direct foreign investment is concerned, the area where Australia would benefit most is in the ability of Australians to invest offshore in a clear and transparent manner. Australia's practice in respect of forward incoming FDI is quite liberal. However, it does have an administrative degree of flexibility that would virtually prevent it from knocking back any proposal it wished to. If we were to set such an example to non-OECD countries in the way they could shape their adherence to the MAI, we would be setting a very bad example.

It would be good if Australia were able to articulate the areas where it has restrictions on foreign ownership in a more clear and transparent manner. For example, if it felt that media ownership should retain a certain amount of Australian ownership, it

should quite clearly and categorically say that this was an area where it would restrict it. So industry by industry.

Senator MURPHY—What other areas? You said there were two areas.

Mr Piccinin—The other area that we have a difficulty with is the need for more detail in the international dispute settlement procedure. With the concept where a foreign investor would feel that a particular country would not treat them equally before the law, there is room for an international settlement procedure. We would be seeking to ensure a couple of things. Firstly, if a company were to say, 'We will go for the international settlement procedure,' and it was not successful, it would not have to go for double jeopardy and then seek to have redress under national law. Once you pick one procedure, you ought to stick to the decision that comes out of that.

The other area that we would want to have clear definition in is which parties would be recognised before such an international dispute settlement process. Obviously, the two countries involved should be parties that should be recognised and also the company that is seeking to have investment. I think it would be best if other parties were not recognised other than under the normal laws of the country.

Mr HARDGRAVE—It was either Mr Hardcourt from the ACTU or Mr Hubbard from the Victorian Trade Halls Council, but either way they said that they see a need for regulation of global capital but not at the risk of national sovereignty. I suspect that is where things seem to be heading with this inquiry. I am just wondering where the BCA sees our constitutional requirements which could allow challenges through our High Court, let alone international mechanisms under this treaty, to any decisions the government may choose to make with regard to investment.

Mr Piccinin—If you have transparently indicated that in those areas you would limit foreign ownership then there is no issue. I would have thought your rules should be transparent and clear in terms of people coming in. If you decide that, in the public interest, a particular foreign investment which seems to be legal under your laws should not take place because of national or public interest, then you can stop it under the directions of the MAI but you have to pay compensation. I think that is fair.

Mr HARDGRAVE—I would take up the view of the acting chairman of the subcommittee that you should look back on the evidence earlier today, because there seems to be a fair weight of plausible evidence to suggest that any impositions on limits on investors, any of those sorts of national sovereignty issues, which I appreciate your organisation is all for, actually do not stack up. In the reality of it, the treaty itself is fatally flawed.

Mr Piccinin—My reading of the February draft of the treaty seemed to indicate that there were areas where you could indicate certain performance criteria in the handing

over of technology. The only question was that the companies should then be compensated for those restrictions.

Mr HARDGRAVE—Let us look at a recent example. There was a High Court case which heard that New Zealand television producers said that our closer economic relationship treaty negotiated some years ago—as would be generally accepted, without any public scrutiny, unlike the process we now have with this committee—had cultural matters as an exemption, as 'guaranteed', 'locked in cement' and 'no way anything is going to happen'. Yet the High Court has simply ruled now that New Zealand television content counts as Australian television content. What I am getting at is that the best intentions of the Australian government or indeed the state, the local or territory governments in this country can be and have been eroded because of our external affairs powers in our constitution, a matter which I submit to you—and I would like your reaction—does not seem to come into the mind of those who are negotiating these treaties at any stage.

Mr Piccinin—My response to that would be that there will always be cases where the law is tested and, if it is tested by an Australian company or a foreign company, there should be no difference. If that was not your intention but the courts interpret a decision that goes in a way that previously was unintended, you cannot retrospectively change the legislation. You have to wear it and perhaps change the legislation afterwards.

Mr HARDGRAVE—But you should at this stage, as we are reviewing this treaty and considering if it is in Australia's interest to sign it, bring up all these matters. On the matter of the transparency for Australian businesses looking at investment in other countries—that is the upside, I guess, that you would submit—do you believe that those upsides outweigh the downsides, those concerns that foreign companies may challenge our laws in the High Court as a result of this treaty?

Mr Piccinin—They could challenge now. The situation is that Australia's treatment of inward coming foreign investment is quite liberal despite the degree of flexibility that the legislation allows it. To some extent, what you fear would happen can happen now. I would put to you: what is the difference between that and what is happening today?

Mr HARDGRAVE—Can you expand that any further to give us some weight to that view?

Mr Piccinin—I cannot think of an example where that would—

Mr HARDGRAVE—Perhaps on notice you may care to provide us with a couple of examples.

Mr Piccinin—I would like to think of something like that.

Mr HARDGRAVE—To try to balance this out a bit, because previous witnesses today gave us some reasonable areas. In fact, there are probably about 15 areas in samples of their claim that may not be able to be legislated by domestic governments without then being tested or perhaps even overridden by this treaty.

Mr Piccinin—Could I also say that terms such as 'cultural exemptions' are very difficult to enforce. Somewhere in our submission we say that, if a foreign company were to set up in Australia to make meat pies, would that somehow be a breach of Australia's cultural heritage? In fact, you should really be much more transparent in the areas that you want to set aside as exemptions, because terms like 'cultural' and 'in the national interest' are so broad that really you could drive a truck through them.

Mr HARDGRAVE—I think you are starting the fight back, to borrow an old phrase, that you might have to try and employ, but by the same token Australian television producers—and admittedly it is not the biggest area of our economy but I think it is important as a section—and all that the Australian performers and people involved in that particular industry sector stand for are being told now, 'You are no longer just Australian, because if New Zealand people want to put themselves forward into this market they can also be counted as Australian.' I think that in itself is a matter that would be of great concern to a lot of people.

Mr Piccinin—The concerns are rightfully decided by the parliament.

Mr HARDGRAVE—I suspect they are probably rightly decided by the people who elect the parliaments.

Mr Piccinin—Of course, but rather than attempt to safeguard those areas by saying 'cultural industries' you actually specifically indicate media, television, newspapers, or whatever or else you really are asking for the courts to define what you might have meant by that, and you might not like the decisions.

Mr HARDGRAVE—There is also the suggestion by Mr Murphy, from the Victorian Trades Hall Council, that it was a lawyer-fest or a lawyers feast and that this whole treaty would open up the happiest day ever for the legal profession.

Mr Piccinin—I would hate to see a legal-led recovery but, again, clarity is your responsibility.

Senator MURPHY—I would certainly like the BCA to have a look at the submissions from Ted Murphy and the National Civic Council and provide the committee with a response in regard to the points they raise. On the consultative process, to what degree has the BCA been consulted on the negotiation of this treaty? Do you think that NGOs ought to be involved as part of the negotiation process?

Mr Piccinin—The first time I was actually made aware of this treaty was when I was working at ICI Australia back in 1994 when the Department of Foreign Affairs and Trade visited a number of companies to flag that the Australian government was interested in developing such a treaty within the OECD. To that extent, we were certainly not informed of details, but this was an intention. Since then, we were not informed by government but by visiting the OECD Web site it was abundantly clear that this was taking place.

Senator MURPHY—So there has been no consultative process as the negotiation has proceeded whereby you are informed of proposals to be included in such an agreement.

Mr Piccinin—As soon as the Treasury put up the exemptions—because there is no point at looking at the treaty without looking at draft exemptions—the Treasury informed us.

Senator MURPHY—With regard to the point you make in your submission on the issue of treatment applied to companies, it has been argued by many submissions to this committee that it is quite probable that foreign investing companies may receive different treatment, more favourable treatment, say, than domestic companies.

Mr Piccinin—They shouldn't.

Senator MURPHY—I accept that you say they shouldn't. I guess I am asking you this: to what degree have you investigated the expropriation proposals of the treaty? From a legal perspective, what legal advice has the BCA sought and had?

Mr Piccinin—We have not sought legal advice on that issue, but again the right to bring back profits is a good thing. If you were an Australian investor and you realised that only one per cent of the world's GDP is done in this country, and you were wanting to invest for your superannuation needs, you would want to spread your investments. How would you like it if some other country said, 'Feel free to come in here, Claude, and invest all you like, but the money stays here'?

ACTING CHAIR—You would not invest in that country.

Mr Piccinin—Precisely, which is why we want these rules to provide certainty so that people can say, 'Gee whiz, I will invest in whatever country, knowing that I am protected,' rather than, 'Gee whiz, I wonder what the hell is going to happen.'

ACTING CHAIR—I will return to that theme. I am not convinced of it.

Senator MURPHY—I guess the question I am raising with you is to what degree have you looked at the potential for domestic companies that are investing domestically

versus overseas companies investing here, in that they may receive more favourable treatment with regard to environmental laws, for instance. The point has been made that, with changes to existing laws, foreign investors may be able to receive more favourable treatment. There have been submissions made to the committee, and fairly strong submissions, that that can be the case. I am wondering to what degree the BCA, as a representative of domestic companies as much as those seeking to invest overseas, has checked that out?

Mr Piccinin—Two points: firstly, our members are both Australian companies and foreign companies; secondly, we have not sought legal advice. I am not a lawyer, but from reading the draft that was put out in February the whole point of it is to make all companies subject to the same laws.

Senator MURPHY—I understand that. That is the intended principle, but there are arguments around that that will not be the case.

Mr Piccinin—I fail to see how that could be.

Senator MURPHY—I am not a lawyer either. I am just taking at face value some of the submissions that are being made to this committee.

Mr Piccinin—I am happy to take it on board and read it again.

Senator MURPHY—Certainly. It is contained in some of the submissions. You might like to check that out because I think it is a very important point.

Mr Piccinin—Whose submission?

Senator MURPHY—It is contained in a number of submissions that we have received, and it is a matter I think that is, at this point in time, probably concerning the negotiators as well.

ACTING CHAIR—You can certainly see it in the *Hansard* of today's proceedings which we will forward to you, Mr Piccinin.

Mr BARTLETT—On page 1 of BCA's submission, and you repeated it yourself, Mr Piccinin, it says that for Australia to accept the reservations that the Treasury has proposed would set a bad example to the rest of the world. Are you not in fact saying that it would be bad to have any reservations at all to protect your own interests?

Mr Piccinin—No, not at all. But those reservations ought to be clear and transparent, and I think it would be preferable if they were industry based rather than in loose terms such as cultural, et cetera.

Mr BARTLETT—You are saying that the reservations proposed by Treasury are not clear and transparent?

Mr Piccinin—No, because the existing administrative process basically gives the government the right to look at any proposal over a certain amount and then decide yes or no. I have to say that that is the legal system rather than the actual practice. In practice, in the last 20 years, Australia has been quite liberal with respect to inward-coming foreign direct investment. I have to say that, as a country which has a chronic capital account surplus, it is in our interest to ensure that we do not restrict—

Mr BARTLETT—But surely it is in our interests to make sure that any foreign investment we have is appropriate and that Australian interests are protected in that process?

Mr Piccinin—I am not sure I would agree with industries being protected.

Mr BARTLETT—But Australian interests being protected?

Mr Piccinin—Australian interests—absolutely. But I would put it to you that this is rather than having an all-encompassing administrative system which could be copied by other countries and operated in a quite different manner. What would be the benefit of that? I just do not see why allowing non-OECD countries to set up the same kind of administrative procedure that we have and then operating it in a very illiberal fashion would not provide the degree of clarity for foreign investment that one would want to encourage.

Mr BARTLETT—How would you envisage that we proceed in a way that would encourage foreign investment but also ensure the protection of Australian interests—environment issues, wage conditions, the rights of local government authorities, et cetera?

Mr Piccinin—In terms of local governments, state governments and federal governments, the same laws that apply to domestic companies ought to apply to foreign companies. In respect of things such as labour standards and environmental legislation, the same laws that apply to Australian companies ought to apply to them. In addition, if you feel that there are certain industries that ought to be protected because of national interest, you ought to identify them and the manner by which you will see Australian interests—

Mr BARTLETT—But is it possible to adequately identify them in the list of reservations, apart from making general exclusions? Obviously, it is not possible to crystal ball gaze; therefore, the nature of exclusions and reservations would have to be general enough to cover any of those contingencies.

Mr Piccinin—If you look at the manner in which it has operated, you should be able to say, 'If that is the procedure that you used, what criteria were you looking for?'

and then just establish the criteria as part of your legislation rather than give yourself total flexibility and then effectively not even look at it.

Mr BARTLETT—Don't you have any fear that the MAI might in fact lead to conditions that are to the detriment of Australian businesses rather than to their advantage by preventing any government intervention or any policies that would enhance particular Australian industries?

Mr Piccinin—To the extent that I do not recall any hindrances to foreign investment other than in areas such as media, what has happened that would make you change your mind? You do have a provision under the MAI that, if you do not like the way it is operating, after five years you can get out of it.

Mr BARTLETT—But evidence that we have had this morning suggests that it is not as clear-cut as that. Again, we would refer you to the Victoria Trades Council's submission.

Mr Piccinin—The reading of the February draft, which I am referring to, certainly indicated that.

Mr LAURIE FERGUSON—Have you had legal advice on that?

Mr Piccinin—We have not sought legal advice.

Mr BARTLETT—I think that would certainly be warranted. Is there much evidence that Australian companies wanting to invest overseas in other OECD countries have been impeded in the past without the operation of a treaty such as the MAI? To what extent would a treaty such as the MAI enhance Australian offshore investment?

Mr Piccinin—You must have asked that question of Treasury because they came to us about a month ago and we actually did a bit of checking around of that. I would have to say that in the amount of time that we looked at it we could not find any case where an Australian company had attempted to invest in OECD countries and had difficulties.

But let me make two observations in respect of that. The first one is that is probably a reflection of how hard we looked, so it could be my ignorance rather than anything else. The other observation I would make is that, whilst I cannot think of any Australian company having had difficulty investing in an OECD country, I can certainly think of other OECD countries that have experienced such difficulties.

I seem to recall Fiat attempting to take over one of the French automotive companies and that was blocked, I think in the 1970s. The point that I am trying to make is that generally Australian companies are not so large as to threaten other countries'

national icons.

Mr BARTLETT—So the point is that there is no real benefit to Australian companies by pursuing this treaty.

Mr Piccinin—No—

Mr BARTLETT—Certainly not in terms of our offshore investment, anyway.

Mr Piccinin—Let me give an example of why that is not so. The reason it made sense to attempt to negotiate such a treaty within the OECD countries was that there is no such multilateral treaty dealing with foreign direct investment. To the extent that most of the OECD countries are developed economies and are, generally speaking, fairly liberal, it should be easier to develop such an agreement within those countries. But it was always the intention that non-OECD countries would be able to be signatories of such a treaty. In fact, I think the blurb on the OECD Web site indicated that there were at least five non-OECD countries which were attending as observers with an intention to sign such a treaty.

Mr BARTLETT—Are you saying that the only benefit to Australian companies would be the inclusion of non-OECD countries?

Mr Piccinin—Absolutely.

Mr BARTLETT—But there is no benefit if it remains exclusively the domain of OECD countries.

Mr Piccinin—No benefit that I can foresee, but it is not just about Australian companies. It is also about Australian individuals who directly invest in overseas companies or indirectly through their superannuation funds.

ACTING CHAIR—I think you have just dropped a bombshell.

Mr Piccinin—Did I?

ACTING CHAIR—You might like to enlarge on it. In answer to Mr Bartlett, you have just said that you can see no benefit of the treaty to Australian companies in their dealings with OECD signatories. I think all of us were going to come to that point because we would have asked you, 'Please name the countries within the OECD that present an investment risk to Australian companies,' and you have mentioned some long-forgotten dispute between Fiat in Italy against France—and they are big and ugly enough to sort out any disputes—

Mr Piccinin—That is right.

ACTING CHAIR—And now you have said that the only benefit will be to non-OECD signatories. At this stage, we have only five countries attending as observers.

Mr Piccinin—The five countries are attending as observers now, but I think once countries start to sign on to this there will be incredible pressure for other countries to do so, particularly to the north of Australia. I said I could not identify any benefits, but now that I think about it there are a number of OECD countries that have had a fair degree of, shall we say, non-transparency.

ACTING CHAIR—You will have to tell us what they are.

Mr Piccinin—I guess Japan and South Korea stand out as two countries that in the past have had considerable difficulty in their treatment of foreign companies.

ACTING CHAIR—We would be very interested to know how specific—for instance, there are decisions made every day by state and Commonwealth governments in Australia that can drive businesses out the door. In Victoria, allocating gaming machines to one hotel or club will drive the other down the street out of town. If you are saying that there have been Japanese government decisions on, say, the erection of non-tariff barriers all of a sudden, which have harmed an Australian investment, there are numerous examples in all countries.

Mr Piccinin—Of course. The example of anybody importing an automobile to South Korea and then being audited by the Korean taxation office is another measure—

ACTING CHAIR—And you think the MAI can provide security against such domestic decisions?

Mr Piccinin—It can provide a process by which, if that is applied, a company can ask for redress.

ACTING CHAIR—It sounds like utopia when you are dealing with developed countries. Where is the sovereign risk to an investment in Japan or South Korea, apart from changes in government policy, which every country is entitled to do?

Mr Piccinin—It is in respect of investment. If you are being blocked and you can demonstrate that, in an area where the government has not indicated there is an exemption or a reservation, either to the Korean or to the international dispute settlement process, then you will seek redress. Nothing is perfect.

Senator MURPHY—That only relates to where a foreign investor can demonstrate that they are receiving treatment less than that which is applied to the domestic industry. So you have to prove that.

Mr Piccinin—It goes beyond that because there is also a discrimination in terms of another country. So, even if you can demonstrate that you are being treated less favourably than another foreign investor, you should have redress.

Senator MURPHY—That is an interesting point.

ACTING CHAIR—It is a strong point you have just made, but do you believe it occurs significantly?

Mr Piccinin—Some countries—

ACTING CHAIR—It is time to name names, Mr Piccinin.

Mr Piccinin—I would prefer not to. It is obvious that some countries have a heck of a lot more muscle than others. One could certainly perceive that in some of those countries North American companies have received what could be argued to be favourable treatment.

ACTING CHAIR—You are certainly on much stronger ground now and we would like to pursue this. I would invite you to think through the line of questioning before you today. You are going to have to start substantiating the argument that what we would take as Western industrialised nations will favour one country's investment, or one company's investment, over another so that the Australian investment is put at risk.

Mr Piccinin—I do not believe that Australian investment is put at risk. Why is that?

ACTING CHAIR—I am asking you, because in the list of OECD countries I do not know where the Australian investment is put at risk. You are asking us to develop the MAI on the basis that Australian investment overseas is at risk. I am asking you: tell me where and how.

Mr Piccinin—I cannot give you specific examples. We did try to get those examples when you asked the Treasury for examples. As I said, we generally are not in a position to threaten national icons, so to some extent we have never attempted to take over something that is sufficiently dear to any OECD country's heart. Also, we have tended not to go into some of those countries like Japan and South Korea because we are not sufficiently large to make a presence in what are very large countries.

ACTING CHAIR—That was exactly the National Civic Council's conclusion this morning, that it is hard to foresee, if not impossible, any instance where an Australian company or collection of companies is big enough to assume major overseas investments. So why, just to hold out the theory that an Australian company may one day be big enough, incur all of the risk to your national sovereignty?

Mr Piccinin—Again, I am not convinced that there is risk to national sovereignty because, firstly, the intent is that the same laws that apply to Australian companies ought to apply to any foreign investor in this country. I do not accept that you are giving anything up that you have not already in the past. Secondly, what you are getting is certainty, because it is not the intention of the MAI that non-OECD countries should not sign on to it. Once they do start to sign on, the pressure will be on them to sign.

Senator COONEY—You say that at the moment there is no great problem with Australia investing overseas. I think you said that to Mr Bartlett and to Mr McGauran. I think you started off your submission by saying that we have no real problems getting capital into Australia. Is it right that as things now stand there is no problem with our investing overseas, if we have the money, and there is no problem with capital coming into Australia if we need it?

Mr Piccinin—I said that the practice of getting foreign investment into this country is quite liberal with the exception of a couple of areas, which are fairly readily identified.

Senator COONEY—So you really have no problems about that? The latest is Telstra where we said there should be a certain proportion kept for Australians and there should be Australians on the board. You would have no problems with that?

Mr Piccinin—If that was the intent, it would be relatively easy to say that in areas such as privatisation the Australian government or the state governments retain the right to limit the extent of foreign ownership, if that is what you want.

Senator COONEY—I would like to sum up what you keep telling the panel. There seems to be no immediate advantage we could get by signing this treaty, but it is an advantage in the future. Is that what the BCA says?

Mr Piccinin—I am saying that, in terms of inward foreign investment, the practice is quite liberal and I do not see any great improvement in the practice. However, I am saying that, in terms of Australians investing offshore, particularly in non-OECD countries, there is an advantage in Australia and other OECD countries signing on to such a treaty and then putting the discipline on other non-OECD countries signing a similar treaty.

Senator COONEY—But that is in the future, isn't it? I thought what you had been telling Mr Bartlett, Mr McGauran and the rest of us was that that is an advantage in the future when these countries sign on. Am I right in saying that or is there an immediate advantage that you can see?

Mr Piccinin—The sooner you do it, the sooner the process can take place.

Senator COONEY—I thought you were saying that these other non-OECD

countries would have to sign on. Does the BCA have any idea of when that would be? All we are trying to get from you is whether or not it is an immediate advantage or in the future and, if so, when?

Mr Piccinin—The only way I can answer that is to say that, given the Asian crisis, there would be a heck of a lot more pressure on them now than there would have been 12 months ago.

Senator COONEY—Do you have any assessment as to when this might happen?

Mr Piccinin—You cannot do that until you have an agreement in place.

Mr BARTLETT—So if it doesn't happen there is no benefit to Australia?

Mr Piccinin—That is right.

Mr LAURIE FERGUSON—Could we deal with a very specific finite area. The ACTU referred to one clause which said that this country, or any country, must grant entry, for the purposes of work to investors who commit 'a substantial amount of capital', to an employee who may be employed as a director, et cetera. I have a number of points. If we are going to basically say that Australia's visa rules, which both parties have supported consistently, should be overridden for investors and managers, why should they not be overridden for every tradesman? Why isn't there a leg in the door for a further push on that?

Mr Piccinin—My reading of the clause that looked at that, if my recollection serves me right, seemed to say they should be able to have their management come in, if that was what they wanted, and any technical expertise that was deemed appropriate. I would have thought that, because they have to be subject to all the laws the same as everyone else, the normal visa rules would apply. When I worked at ICI Australia, 62 per cent was owned by ICI plc. On occasions we did get managers who came in—

Mr LAURIE FERGUSON—Nobody is disputing that. They had visas to enter this country. The ACTU used the words 'must grant entry'. Are you uncertain or are you saying they are wrong?

Mr Piccinin—I am uncertain. We have not sought legal advice.

Mr LAURIE FERGUSON—Would you agree that, if they are right, there should be concerns by this country, given its long-term support of visa entry?

Mr Piccinin—I would suggest that in your reservations you indicate that the normal visa requirements apply.

Mr LAURIE FERGUSON—Are you aware that the current government liberalised in this area, at the suggestion of the business sector, and found that, rather than having geniuses of corporate ability, small-scale trading enterprises basically utilised this for migration purposes? So there are dangers.

Mr Piccinin—If you operate the visa requirements appropriately, you tighten up.

Mr LAURIE FERGUSON—Would you not say that, if the Australian government legislated to enforce contracts for 15 to 20 years on all companies in this country, it would be rather unreasonable?

Mr Piccinin—I think in infrastructure that is precisely what happens.

Mr LAURIE FERGUSON—Would you say it would be unreasonable if we insisted that all AFL clubs had to have contracts for 20 years with their players?

Mr Piccinin—He would be a very old football player, I agree with that.

Mr LAURIE FERGUSON—The business sector in this country would not like governments to essentially intervene and enforce long-term contracts of that sort upon reluctant companies. You would not like that, would you?

Mr Piccinin—If that is up-front—

Mr LAURIE FERGUSON—Come on! You are not going to tell me the Business Council would like Australian state and federal governments to introduce that kind of legislation.

Mr Piccinin—I would have to look at the context in which it was introduced.

Mr LAURIE FERGUSON—Really! I find it very unreasonable that the Australian people, their parliament, are essentially told that they have to give five years notice to pull out of this and it will still have another 15 years impact after that. I put it to you that the business sector in this country would totally and rigorously oppose that kind of thing on themselves.

Mr Piccinin—I am sorry, I misunderstood your question. If your point is that you have to give five years notice and then another 15 years, I would say that that is excessive, yes.

Mr LAURIE FERGUSON—I think you would say it was a bit more than excessive. You would want something far shorter than that.

Mr Piccinin—That is right. I have to say that my reading of it—I have not

consulted a lawyer—was that five years was it.

Senator MURPHY—Let me read it to you. It says—and this is the 24 April edition—at any time after five years you can give notice, that the notice takes effect after a further six months and that the provisions of the agreement shall continue to apply for a period of 15 years from the date of notification. So it is actually 20 years and six months.

Mr Piccinin—I have not read the April one. I wonder whether that has been introduced since the February one, because in February—

Senator MURPHY—No, I think you might find it is the same as the February one.

Mr Piccinin—That does seem to be excessive.

Mr LAURIE FERGUSON—The OECD at one stage states:

The MAI will not interfere with the freedom of governments to implement their own policies concerning labour and environmental standards.

Have you noted the Canadian case of Ethyl that is consistently referred to by a significant number of submissions?

Mr Piccinin—No.

Mr LAURIE FERGUSON—I would direct you to that and I would question, given that law suit, whether there are any grounds whatsoever to believe this OECD statement, because it would seem to me that it did represent, in that case, a very obvious attempt to undermine Canada's ability to legislate on environmental matters. One other point—I could be wrong on this next one—in regard to locus standi: is it the case that only corporations can take cases as opposed to NGOs and individuals?

Mr Piccinin—In the dispute settlement procedures that I read, it was extremely vague as to which parties could be recognised by the settlement dispute resolution process. In fact, that is one area where we would like a greater degree of clarity in respect of restriction of who the courts would recognise as parties.

Mr LAURIE FERGUSON—So you would like even further restrictions; you would be totally opposed to Australian NGOs or other people having a say in these processes?

Mr Piccinin—In the international settlement procedure, yes.

Mr LAURIE FERGUSON—Why?

Mr Piccinin—Because it would just lengthen the procedures. We do not have them in our foreign investment procedures at the moment. That would be a tightening of the rules rather than a loosening.

Mr LAURIE FERGUSON—You have consistently referred to 'the tremendous pressure' on north Asian countries. You used that expression 'pressure' on a number of occasions. Isn't it realistic to have an analysis of these negotiations in essentially the first world, the developed world? The major corporations, transnationals, et cetera have set a negotiation process where the leading countries are locked in and they negotiate and it has basically been forced upon the developing world, despite their objections. This pressure is deliberate, is it not?

Mr Piccinin—It certainly places pressure, there is no doubt of that. To the extent, however, that the kind of pressure you are seeking is a non-discriminatory one, I have difficulty seeing what the problem is.

Mr LAURIE FERGUSON—Why is it not a problem that a group negotiates a certain relationship which is viewed by another group as undesirable for their internal interest and then it is essentially enforced by economic measures?

Mr Piccinin—If they do not want to sign it, they do not have to.

Senator MURPHY—I asked you before whether you could have a look at the NCC submission, particularly from page 6 through to page 10, and specifically respond to those. With regard to the idea of pressure that Mr Ferguson asked you about, I have some difficulty accepting this notion that there is somehow going to be pressure on some of those countries to sign on. I always thought companies sought investment where they could make the most money. It would seem to a lot of investors that they can make the most money in those countries that are least likely to sign on, so why should they not continue to do that and seek whatever security they can get?

Mr Piccinin—I would make the observation that rates of return and risk are also associated, so there is always a trade-off between risk and the rate of return. If you can diminish the risk by providing greater certainty, such as this treaty would supply, then you actually do benefit and you are actually attracting more investment.

Mr BARTLETT—You said that in the situation where Australia has a capital account surplus we need to be encouraging capital inflows, yet you have said that the only real benefit of this treaty to Australia may potentially be an improvement of Australian investment offshore in Third World countries—and that is only if Third World countries become signatories—and that Australia already has liberal foreign investment laws so there are no restrictions preventing foreign investment in Australia as it is. How then would this lead to an encouragement of capital inflows and address the current account surplus problem?

Mr Piccinin—I have already granted you the point that in terms of the way we assess inward-coming foreign direct investment it is extremely liberal.

Mr BARTLETT—And, therefore, there is no benefit in terms of the capital flow situation.

Mr Piccinin—There is benefit if we can decrease the level of uncertainty in our foreign investment going offshore because we actually reduce our capital account surplus.

Mr BARTLETT—If there is foreign capital going offshore, that increases the problem.

Mr Piccinin—No.

Mr BARTLETT—That requires greater capital inflows from elsewhere to provide the same net capital balance.

Mr Piccinin—In a static world, that is the case. In the long term, in dynamics, as you allow funds to go to the highest rate of return, you increase wealth in this country and in the other country, so you are actually increasing the level of investment.

Senator COONEY—Has the Business Council of Australia discussed this issue with comparable bodies in the other OECD countries?

Mr Piccinin—No.

Senator COONEY—Could you provide the committee with any material from overseas from business bodies? Can you or the BCA do that?

Mr Piccinin—No.

ACTING CHAIR—Thank you, Mr Piccinin, for your sustained performance over quite a period of time. You will be able to draw your own conclusions from the *Hansard* record of today's proceedings to date and respond accordingly to pursue the arguments you wish to prevail.

I will repeat the committee's invitation to members of the public: they may, if they wish, make a short statement at 3 o'clock. It would help enormously if we knew just how many people were to make statements and we could then allocate time accordingly.

Sitting suspended from 12.10 p.m. to 1.34 p.m.

DUNKLEY, Dr Graham Royce, Voluntary Adviser, Community Aid Abroad, 156 George Street, Fitzroy, Victoria 3065

KENT, Ms Lia Michelle, Policy Coordinator, Community Aid Abroad, 156 George Street, Fitzroy, Victoria 3065

ACTING CHAIR—Welcome. In what capacity do you appear before the committee today?

Dr Dunkley—I am the Voluntary Adviser to Community Aid Abroad and also a senior lecturer in economics at the Victorian University of Technology.

ACTING CHAIR—We have the benefit of your written submission, Ms Kent. Are there any opening or additional remarks you would like to make?

Ms Kent—Yes. Both Graham and I would like to make a short opening statement. Firstly, we are very pleased that the committee is conducting this inquiry. As you are aware, this treaty has generated an enormous amount of concern in the Australian community amongst groups of widely differing political persuasions. This has been exacerbated by the limited amount of information available from Treasury until quite recently. CAA's main concerns with the MAI are based around the potential implications for developing countries.

Our concerns relate to both the process of negotiation and the content of the MAI itself. On the issue of process, we have two main concerns. First, we note that consultations with NGOs within Australia have been inadequate. Second, we also consider it unacceptable that a treaty that will have significant implications for developing countries and is intended to be open to accession by any country agreeing to its provisions has been negotiated solely amongst the OECD.

Developing countries have different needs and conditions to OECD countries, and these need to be considered throughout the negotiation stage. The only major publicly available study on the implications of the MAI for developing countries was commissioned by the UK's Department for International Development in February this year. We are concerned that this research is limited by the short space of time allowed for its completion and a lack of consultation with international bodies, non-government organisations and developing countries themselves. The study itself notes that more research is required in this area, particularly on the relationship between poor countries and international capital markets, including the consequences for poverty reduction.

In our submission, Community Aid Abroad has outlined a number of concerns relating to the content of the MAI. I will not cover these in detail now, but one of our main concerns is for the potential of the MAI to lower environment, human rights and

labour standards. While CAA acknowledges the importance of foreign investment for developing countries, we note that it has clearly had both positive and negative effects. On the negative side, it can lead to a competitive lowering of labour and environmental standards. Whether or not investment is beneficial to developing countries depends on a number of factors, including the distribution of wealth, the quality of the investment, the terms on which countries receive foreign investment and the nature of the regulatory framework.

We are concerned that the MAI will weaken the ability of governments to regulate investment and will increase the rights of investors without a parallel transfer of responsibilities to protect the environment and human rights. Developing countries with weak legislation will be particularly vulnerable to a lowering of human rights and labour standards. We understand that the OECD guidelines for multinational enterprises will be included as an attachment to the MAI, and we welcome this. However, the guidelines will be non-binding on investors. We have suggested in our submission that there is a need for a comprehensive and independent review of the social and environmental implications of any proposed agreement, particularly for developing countries. We have also argued for the inclusion of a binding code of conduct for transnational corporations within the MAI.

Given the internal flaws in the MAI, the growing list of exceptions—which I understand is now amounting to more than 1,000 pages—and the substantial opposition it has generated, we believe there is a strong case for the Australian government and other negotiators not to sign up to the MAI. Indeed, the delays in negotiation offer a chance to stand back and make a fresh start in discussing multilateral investment rules. The appropriate forum in which to do so would be the United Nations Commission on Trade and Development, where developing countries are better represented. Shifting discussions to this forum would ensure that the interests of developing countries become integral to any future agreement, and it would enable development, environmental and social concerns to become integral to a future agreement. It would also allow more time for research and consultation with international development institutions, non-government organisations and other stakeholders.

Dr Dunkley—The following comments are slightly supplementary to the report in terms of making a more general overall assessment of the MAI. Some of the points are in the submission, but in addition we feel that there has been surprisingly little comment about the underlying theory in the MAI. We feel that if you look more closely at the theory of direct foreign investment some surprising things emerge.

Briefly, I have a couple of points to make about the overall shape of the MAI. As you are probably aware, lots of conspiracy theories have arisen over the MAI and its origins. I suggest that there are really two broad aspects to the MAI: one is that it is designed to GATT-ise, if you like, the direct foreign investment concept that is subject to GATT rules; and the other is to take a crucial step that I am referring to as ‘opening the last door’.

There is a general view that there is a process of globalisation going on in which trade has been globalised, finance has now been globalised and labour has been deregulated in many countries. But foreign investment has not been substantially deregulated, and that needs to be deregulated to complete the whole process of globalisation.

Therefore there is a crucial conclusion from that that the MAI is meant to be integral to the process of globalisation and needs to be judged in those terms. Most people are tending to judge it in terms of all its provisions—that is, whether it will succeed in opening up countries to foreign investment. But really the ultimate question should be: if it does that, and it probably will to some extent, is that really what the world wants? So the ultimate question out of all this is: is globalisation good?

It is very hard to really establish just what the underlying theory of the MAI is, but people have made general theoretical statements like, 'It needs to be a rationalised agreement because at the moment we have only bilateral agreements,' or 'Foreign investment is growing fast and transnational companies need market access to be efficient.' All of these are questionable, to some extent anyway.

One of the strongest arguments put up is that trade and investment are now integrally linked so both of them need to be deregulated, and this is highly questionable. There is a slogan that is used in conjunction with the MAI, and that is that 'companies now trade to invest and invest to trade'. The two are supposedly linked—in the past they weren't; in fact they were at arms-length and quite separate—but I only partly agree with this.

They are increasingly linked, but that is because transnational companies are doing most of this and they have integrated these processes into their own structure. We still need to ask the question: is it a good idea that we free up investment to the extent that these huge monolithic organisations take over the world, so to speak? That is not a conspiratorial view; it is a statistical view. They have taken over the world in many ways. Ultimately, they argue that foreign investment is good, multinationals are good and globalisation is good. That is essentially the ultimate theoretical underpinning of the whole MAI.

I want to make two brief final points about this general theoretical question: is foreign investment good for us? It is interesting to note that all the earliest theories—for hundreds of years, until about 1960—were that foreign investment is directed simply through the market and through capital and financial flows. There was no theorising about whether the transnational company had any special characteristics. It was not until about 1960 that theorists started coming up with views that foreign investment is different and transnational companies are different. The earliest theories were Marxist theories about exploitation—which are not totally invalid even though sometimes conspiratorial—and a set of theories that have become known as strategy theories.

It has become very common even amongst mainstream theorists to suggest that one of the main reasons for the success of transnational companies and for the existence of foreign investment is that these companies have special strategic reasons for being able to be successful. This relates to marketing or technologies or economies of scale, but it also relates to things that economists call oligopolistic rivalry, the best documented being the competition between Coca-Cola and Pepsi to enter countries around the world. It was never designed for the benefit of those countries. It was designed for their own marketing purposes: if one goes in, we have to go in. There is even evidence that multinational companies often enter a country in order to forestall competition from a local company. Is that a valid reason for being able to freely enter countries? This is what the MAI is trying to do.

Later market theories adopted the concepts of internalisation in which various market functions and transaction costs could be reduced by multinational companies, and that does appear to be more efficient and would justify low levels of regulation. But most other theories that exist do tend to justify some degree of intervention. Some of them justify a considerable degree of intervention. There is no time to go into all the sets of theories that exist, but my assessment is that probably the majority of even mainstream theories of foreign direct investment justify some degree of intervention—some even quite substantial.

The final point about foreign direct investment policy was that, in assessing why a country needs foreign direct investment, the traditional theory for a long time has been what was called the 'five gap theory'. It was suggested that countries tend to have a gap between what they needed on the one hand and the resources they actually had on the other. The five main areas were savings, foreign exchange, employment, technology and skills. The point we need to understand is that certainly the MAI assumes that these gaps exist and countries will always need these gaps filled; whereas, in actual fact, in practice many countries may adjudge that they do not need these gaps filled. The classic example in the post-war period was Japan. It has had very little foreign investment. Even to the present day Japan have foreign investment that represents only about one per cent of their total capital requirements—extremely low, remarkably low. Australia is between five and 10 per cent, depending on whose figures you believe. So various countries may make the judgment that, ultimately, the costs of foreign direct investment may outweigh the benefits.

The MAI does not even look at any costs at all. It assumes there are no costs. The sorts of costs that people look at now are what are called truncation or distortion of industrial development due to foreign companies following their priorities and the importation of inappropriate technology. Many multinational companies actually do not want to generate exports even though that is what it is claimed they do. Technological dependence, the undermining of the welfare state, political influence and so on are all what could be called non-economic costs of foreign direct investment which need to be considered, and the MAI supporters have not considered those.

ACTING CHAIR—Thank you, Dr Dunkley. I cannot help feeling that you are heaping a lot on a single treaty, but we will no doubt come to that in a moment. Ms Kent, can you identify any provisions or aspect of the MAI which would allow a foreign investor to avoid, evade, or bypass a developing country's labour laws or environmental protection laws?

Ms Kent—It is not so much that they will be able to evade or bypass, but my understanding is that the competitive pressure that will be on countries to attract foreign investment will cause the lowering of those environmental and labour standards. It is not that they are directly within the treaty as it is; but I believe that that will be the trend that will occur through the MAI.

ACTING CHAIR—Do you? Why wouldn't that be the case now, though?

Ms Kent—It is the case in certain situations now. Community Aid Abroad has documented a number of cases in which labour standards have been lowered. We have been looking at Nike workers in Indonesia, for example. That is one of our case studies that we have been looking at. We have also been documenting the impact of Australian mining companies in Indonesia and some of the social and environmental concerns that have been raised there. Of course there are some positive benefits from liberalisation, and the increase in wealth is certainly apparent. We are not against the liberalisation of investment, but we argue that there are some downsides and these need to be taken into consideration. We believe that the MAI needs to be strengthened in this regard by including some binding standards on the environment and labour.

ACTING CHAIR—I wonder though whether it would be your wish to use the MAI to lift environmental, human rights and labour standards in those developing countries, which worries me a little. Is that your intention?

Ms Kent—Certainly we would wish investors to maintain internationally agreed environment and labour standards as outlined in the ILO and the United Nations definitions and environment conventions. We believe this is not always the case at present and we believe that there is the likelihood for there to be a significant race to the bottom—as the term is known—and we would not want to see this happen. We are I suppose talking about a virtuous spiral for investors—that they should be aiming to increase those environment and labour standards. Would you like to comment on that, Graham?

ACTING CHAIR—I might have a supplementary question. Again, I feel yours is another submission trying to turn the MAI into something its original draft never intended, for the business community will say that it is purely about security of investment. There have been a number of businesses, including some Australian ones, which are being deprived of their assets and their business opportunities in countries—Consolidated Rutile, the sandmining company on the Ivory Coast, recently lost its mine. They say it works both

ways. Developing countries can destroy their investment. They only want protection; they will abide by any domestic laws that are in place. Why should the MAI be enlarged to become a wish list for every grievance or wrong in developing countries?

Ms Kent—Our ultimate belief is that we do not actually believe in the MAI as it currently exists. Our comments on these amendments are intended to convey that if the MAI is going to go ahead, these are the areas that definitely need to be considered. But our ultimate belief is that we need to start from scratch in discussing these multilateral investment rules, and these need to incorporate considerations such as environment and labour in a much wider forum. You are right, the MAI currently exists to increase investor certainty, and that is its primary aim. It is not intended to address these other concerns. So, basically, we do not support the MAI.

ACTING CHAIR—It seems you do not support it because it would be a lost opportunity to enlarge on it to take into account these other pressing and immediate concerns. But, in its present form, does the MAI worsen the situation for any exploitation of developing countries or is it neutral?

Ms Kent—I think that remains to be seen. I do not think anyone is quite clear on this. We have been looking at the trends so far that have been happening during liberalisation, and we believe the MAI, because it is a treaty that is going to increase liberalisation, will also increase competitive pressure. Of course, no-one can give a definitive answer to this because the MAI is not in existence at the moment. I wonder if Graham would like to comment on this as well from an economist's perspective.

Dr Dunkley—Yes. The problem is competitive pressure, and treaties increase the competitive pressure. There is quite a lot of evidence of that; I have documented some of this in my book, *The Free Trade Adventure*, which is actually on trade and the Uruguay Round liberalisation of trade. There is quite a bit of evidence that, for instance, since the Free Trade Agreement between Canada and the USA was signed in the late 1980s—not NAFTA, the predecessor—the competitive pressure has actually increased tendencies in Canada to reduce labour, welfare and environmental standards, and there are some examples of the specific things that they have done and so on.

ACTING CHAIR—But isn't that the responsibility of the domestic government?

Dr Dunkley—Yes, but treaties make it harder; this is the problem. Treaties undermine the capacity of governments to regulate these sorts of things in various ways. The MAI would not be an instrument to try to improve the standards in some way or another. Ultimately, these clauses we are proposing would be another version of a safeguard clause—the concept of a safeguard clause in trade and investment agreements. It would be, in effect, another safeguard clause. It would not be designed to raise, to improve, standards all round the world, done by other bodies like environmental bodies and the ILO and, ultimately, governments themselves; it is a safeguard mechanism.

Mr HARDGRAVE—Looking through the submission, I suspect there is a couple of bob each way: your presentation here today suggests that you would be keen, basically, to see the whole thing start all over again; your submission suggests that, at the very least, the process should be broadened in order to include the consultation with developing countries—non-member states of the OECD is a way of putting it. But if that does not work, then you have a whole bunch of suggestions about what should be done. What is your preferred option?

Ms Kent—Our preferred option is that the negotiation process is stopped.

Mr HARDGRAVE—Flick it?

Ms Kent—Yes, basically. We do believe in some need to start discussing multilateral investment rules in a broad, global forum, and we believe that this needs to be a forum inclusive of all countries. There has not yet been enough research done on the impact of a treaty such as the MAI, so we think that, basically, the MAI is the wrong starting point. With the MAI, we are starting with a treaty and, since there have been a number of concerns raised about various issues, they have gradually been tacked on to the existing treaty.

The process we would like to see would be to begin without any treaty to start discussing the most beneficial rules regarding foreign investment, and to start looking at some form of international regulation of investment perhaps, but there needs to be a very long process of consultation and discussion around these issues. We have commented on the MAI because we basically wanted to comment on some of the provisions that we had problems with as well as suggest our preferred alternative, which would be to begin all over again.

Mr HARDGRAVE—From all that you have just said, your organisation's viewpoint is to look at other nations. You are concerned more about other nations in your submission here today, I suspect.

Ms Kent—We are concerned about other nations. We are also concerned about Australia though, because Australia's national interest is very dependent on the region surrounding us: the Asia-Pacific region. We would not see these interests as being separate; we would see them as being quite interlinked. It is in Australia's interest to have a stable region and a growing middle class in the region with thriving domestic industries. We do not believe the MAI is going to encourage such stability.

Mr HARDGRAVE—Thank you for taking up the implication of what I was offering. The committee obviously works on the basis of what is in it for Australia. I think Australia has a pretty good reputation with its near neighbours, particularly those developing nations, and we play our role as a generous international citizen. I wanted just to see your reaction to my comment regarding looking at developing nations vis-a-vis

Australia. From Australia's viewpoint, if the MAI was to go ahead, it might equalise our standing down to the standing of others who might aspire to help others in region. In other words, it might put a set of rules in place so that, with some countries not necessarily as good at helping developing nations in our general region as we are, the whole playing field might be evened out. It might make everything a standard set of rules for everybody to follow. Do you understand that, or is it too obscure?

Ms Kent—It was a bit unclear, sorry.

Mr HARDGRAVE—What I am trying to say is: if Australia has shown, because of its own particular interest in helping nations like Cambodia and so forth—and other countries from Europe may not even know where Cambodia is, and someone from America might think it is a suburb of Texas—then this sort of an agreement setting a set of rules for everybody who is investing in those countries lowers Australia's standing in that country. It brings everybody to the same level. We are up there, they are down here and suddenly everybody is at one level as a result of this MAI. Okay, I am still being too obscure.

Dr Dunkley—I am still not quite sure what you mean by the levelling idea. In terms of the uniform set of rules, the point I was trying to make before in my brief submission was that it is not so much the virtue of uniform rules; the crucial question is what the rules are, what the rules are saying. My concern was that there are still questions amongst the majority of economists, as I understand it, about the virtues of foreign investment for nations, whether it is Australia or developing countries.

It is worth keeping in mind that many Third World developing countries are opposed to the MAI and any form of deregulation of foreign investment. Our concern has been that they are being pushed into it anyway. My understanding of the politics of the MAI is that it has been shunted through the OECD because they realised at this stage they would never get it through the WTO—there are too many Third World countries opposed to very much deregulation of foreign investment.

Mr HARDGRAVE—What we have here is that the OECD club, which is a smaller club than the WTO and the United Nations, has a set of values underlying the philosophy, as you were talking about before, that are not apparent in developing countries. What I am getting at in my garbled observations this afternoon is simply that Australia, as a result of its determination to help those in our region, has a good standing in those countries.So naturally Australia companies would probably have an advantage over other countries and companies from other countries, which we could potentially lose if the rules and treatment were standard for all and well understood by all. I will now allow others to continue, but I am trying to simply take this submission from an organisation with a primary concern for developing countries in their operation and Australia's standing in those countries and I am trying to bring it back into the 'What's in it for Australia?' box, which I think is the one we normally operate in.

Dr Dunkley—It is worth keeping in mind that it is not as if we do not have any rules whatsoever worldwide at present. Most countries maintain a large network of bilateral agreements with other countries on foreign investment. Australia has about two dozen. As far as I understand, it is a fairly flexible system. It is a high cost system because of separate negotiations but at least it is flexible. You deal with other countries as you want them. If the MAI did not go ahead, I do not think it would be disastrous from that point of view, because countries still have these networks of bilateral agreements.

Mr HARDGRAVE—And Australia is probably very well placed as a result of that?

Dr Dunkley—Most of our agreements are with Third World countries incidentally.

Senator MURPHY—With regard to the 10 recommendations that you have written, do you think it is possible to draft a multilateral agreement on investment taking account of those?

Ms Kent—To draft a multilateral agreement on investment taking account of these recommendations?

Senator MURPHY—I am saying 'draft one'. Do you think it is conceivably possible to draft a multilateral agreement on investment? It goes partly to what Dr Dunkley was just saying.

Ms Kent—Just on that point, I would note that there is a non-government organisation known as the Consumer Unity and Trust Society—it is known as CUTS for short—in India who have attempted to write up a possible multilateral framework on investment called 'The International Agreement on Investment.' It is supposedly a view from civil society taking account of some of these types of considerations. I might submit that to the committee. As I made the point before, there are already 1,000 pages of country specific exceptions within the current MAI. It is looking rather unworkable already. With any further tinkering at the edges, I basically do not think that it is going to go ahead in its present form anyway. I feel that there are too many problems with it.

Senator MURPHY—Point 9 of your recommendations would make it almost impossible to draft a multilateral agreement on investment.

Ms Kent—The recommendation on the short-term capital flow in and out of a country?

Senator MURPHY—Yes, because it would somewhat vary from country to country, and you probably would never ever get agreement on it.

Ms Kent—That is right. It would vary from country to country. Each country would want to have some safeguards on that.

Dr Dunkley—Even the present draft allows a small safeguard of six-monthly reviews of any restriction a country might put on capital. The GATT agreement has these sorts of safeguards for short-term restrictions on trade for balance of trade purposes and so on. That sort of thing is actually not uncommon. It is just that we want to extend that. We want to maximise national sovereignty while at the same time having some sort of useful uniform regulations. Our ultimate ideal is a different organisation from what is proposed with the MAI.

Senator MURPHY—I was not making a criticism. I was really just asking a question.

Dr Dunkley—I am just suggesting that it is workable in that even the MAI has a partial concession to that point.

Mr BARTLETT—Dr Dunkley, you expressed a view that opinion is divided or uncertain amongst economists as to whether there are net benefits from direct foreign investment or foreign investment. Would it be a fair thing to say that, even though there are some costs, there would be Third World countries who have benefited and are benefiting as a result of direct investment?

Dr Dunkley—The point about that debate I was referring to is that you can document both costs and benefits from it for every country. It is weighing them up that is the difficulty. Some of those costs are subjective; many of them are non-economic. You may increase your savings and raise your rate of investment, and that creates a certain amount of jobs, but on the other hand you lose your sovereignty in a whole range of things.

For instance, India at one stage used to allow multinationals in so long as they maintained an Indian image. The Indian image included the famous idea that Coca-Cola had to be written in the Hindi language on coke bottles, otherwise they could keep the shape of the coke bottle. Ultimately, that maintained a sort of element of Indian culture. Ultimately, coke pulled out and said, 'No, we are going to keep out our capital,' but they let Pepsi in anyway. So they lost a bit of foreign investment but they kept an element of their culture. Ultimately, they abandoned that and everyone is saying, 'Our culture is going down the drain now,' for that and other reasons.

Mr BARTLETT—Given that there is no clear-cut case for the benefits of foreign investment in a Third World country, if the MAI were to proceed and it remained almost exclusively the domain of the OECD countries, would you conclude that that would be no great loss to the Third World countries if they were not involved?

Dr Dunkley—Speaking for myself rather than CAA, I would be inclined to conclude that. Remember, not having MAI does not mean you do not get foreign investment. The MAI would liberalise it to the extent that you would get more and more and a government would be unable to control it.

Mr BARTLETT—Might it be that, if one of the objectives of the developed economies is to pressure the Third World countries into joining, part of the pressure process might be to withdraw any investment?

Dr Dunkley—Perhaps, yes, and that is the idea of a capital strike. Most countries concede that they do want some, but they want it on their terms. In particular, there are these performance requirements which Third World countries use a lot—and even most First World countries use a lot—to control foreign investment. The MAI proposed originally to overrule the performance requirements. Originally they wanted to get rid of all of them. They have restored more and more, of course, and now a number of countries, including Australia, do not want to go any further than the TRIMS agreement of GATT. That would be an example of a cost if they lost that sort of option.

Mr BARTLETT—If it were a choice between Third World countries being totally frozen out of any foreign investment, if the MAI were to go ahead and they were excluded totally and there was a capital strike, would they be worse off in that situation than they are at the moment where they get some foreign investment, perhaps at their own discretion?

Dr Dunkley—They would be worse off if you are going to specify no foreign investment at all, but I really do not think that is a likelihood. You are talking about foreign investors being a little more nervous and so on. They may get a little less, they may get capital of a different kind, or they may get it from different countries.

The Japanese multinationals over time have proved a little more inclined than American and European multinationals to go into a country under some kind of special bilateral agreements of some kind. I think you would find countries would start entering bilateral agreements with countries in special joint venture agreements with companies, which in some ways might be better. They would have more control over the deal.

Mr BARTLETT—Do you see any negative implications of the MAI for foreign aid programs and, particularly, for Australia's foreign aid program?

Dr Dunkley—I had not really thought about that one, but to the extent that there is a link between aid and capital, perhaps. However, I have never considered those kinds of links legitimate, and I do not think CAA as a whole has.

Ms Kent—We have not actually considered that as a link but we do note that, on the whole, private investment flows have increased dramatically over the last few years

whereas aid flows have taken a corresponding decrease. There is a trend internationally towards greater private flows and less aid. We do not really know what the MAI will do on that point.

Could I just make a point about the question you asked previously. Given that the MAI is going to be open to accession to all countries eventually, there is not much point looking at the potential for developing countries being excluded because ultimately they will be able to accede to it. We had another concern that there could possibly be the potential for countries to be pressured to join up to the MAI as, perhaps, part of their IMF conditions, as an example of liberalising their markets. There could be the possibility of peer pressure on developing countries to sign up to the MAI.

Mr BARTLETT—The reason I asked that question was that Dr Dunkley had said that there seemed to be a degree of reluctance amongst the Third World countries to be involved.

Ms Kent—Certainly, but the intention of the MAI is for it ultimately to be open to all.

Senator COONEY—Community Aid Abroad has a lot of partners—if I can use that expression—throughout the world. Have we any feedback from Third World countries as to what they know about the MAI, and, if they do know much about it, what they think about it? Have you any material you could put before us about that? I will explain why. I think Mr Hardgrave raised it well when he said that we have to be interested in our own position. We can deal with that, but whether we deal with it in a way Third World countries want to deal with it is another matter. I was just wondering whether you had any feedback from them as to what they think about it.

Ms Kent—It depends if you are talking about government or non-government organisations. Community Aid Abroad has a large number of networks, with non-government organisations in developing countries—

Senator COONEY—It might be useful to know—whether it is government or non-government—what they actually think about this. On the one hand, they obviously do need capital; on the other hand, they do not want to have the downside of that. I do not want to make their mind up for them. I would be very interested to know what they think.

Ms Kent—There have been some discussions recently in the United Nations Conference on Trade and Development with developing country non-government organisations. These have been looking at some possibilities. On the whole, my belief, at this stage, is that most non-government organisations are opposed to the MAI. They believe that they have not been consulted in the process and that it has been a very unfair process. The process itself is one element. They are also concerned about the content, in a similar way to CAA's submission. We have tried to reflect that. But, if you would like, I

will try to forward you some more information on that. I will take that question on notice.

Senator COONEY—And specific countries. You can see the problem we face. We do not want to go making up the minds of Third World countries for them. We might say it is a good thing or a bad thing, but they might have a disagreement. It would be helpful if we could get some material to show what they actually think about it.

Ms Kent—Certainly. I will take that on notice and forward you some information.

ACTING CHAIR—I congratulate you on your written submission, Ms Kent, and thank you for your attendance here today. But I do confess to struggling with your submission. I find it an enormously complex submission—only because of the difficulty and range of issues raised in your 10 recommendations. As we draw to the conclusion of your evidence here today, we might return to my simplistic first question: what can you do to dissuade me that you are trying to heap onto MIA every wrong that needs to be righted in the developed world's dealings with the developing countries? If your 10 recommendations are enacted in one single all-embracing treaty, then really we have cured the historical imbalance in the economic relationship between a developed company investor and the recipient.

Ms Kent—As you know, Community Aid Abroad is very interested in the non-economic questions, and that is really where we take our starting point from. For a number of years we have been involved in discussions with Australian companies, with individual companies, on issues such as social clauses, environmental protection and codes of conduct. That, I suppose, is where we take our starting point from.

ACTING CHAIR—Fine, so why not continue that and just give them their security of investment—the MAI?

Ms Kent—We would be happy to throw the whole MAI out the window and just continue with looking at individual codes of conduct and bilateral agreements as Graham has said. On the whole we do not think that it would be viable to include all of these recommendations in an MAI either. We would rather see the MAI process finished and discussions begin again. But, if the MAI is to continue, we believe that we need to start considering not just the economic questions but some of these other social and environmental questions.

Dr Dunkley—In my book, *The Free Trade Adventure*, which I referred to before and which is mainly about trade, I advocated that even the World Trade Organisation should be shifted back to within the structure of the United Nations and then should perhaps cover investment as well.

It is worth noting that historically there was a proposal, just after the war, to set up—alongside the World Bank and the IMF—a body known as the International Trade

Organisation which was to cover all these sorts of bodies.

ACTING CHAIR—Are you sure you are going to answer my question? It is: can one treaty encompass Community Aid Abroad's entire submission?

Dr Dunkley—The original International Trade Organisation did just that. It covered all these things, including a clause on labour standards—not environment, because it wasn't an issue then—and foreign investment. Probably the only reason why it was sunk was that the United States opposed it. The main reason why the United States opposed it was that the companies suggested that they actually didn't want the investment clause in there because it seemed too favourable to host countries. They actually wanted investment out of it.

So, ultimately, the question is the balances in these things—what is covered and the balance. It gets back to the sorts of crucial issues I mentioned: do we want globalisation and what are the relative costs and benefits of foreign investment? I think an agreement can be as broad as you like. It really depends on what goes in there and whether there is a consensus. There has not been a consensus for all these things. Even the World Bank and bodies like that make a big thing about the fact that nowadays governments of Third World countries are chasing foreign investment. That is true to a fair extent. It is not completely true. But, on the other hand, non-government organisations and opposition parties in many cases—even public opinion—are, in many countries, opposed to liberalising trade and investment to the extent that has been proposed under the MAI. I have documented that for trade in the book.

ACTING CHAIR—Thank you. We appreciate your attendance. It has been very valuable for the committee.

Dr Dunkley—In due course I could submit some articles I have written on this issue and so on, including what I believe was the first article in Australia on the MAI—early last year in a small newspaper—which was ignored by everyone. Perhaps I could submit them in due course, plus a written version of what I said before.

ACTING CHAIR—Most certainly. Thank you.

[2.21 p.m.]

GRAHAM, Mrs Bawani, Economic Development, Moreland City Council, Locked Bag 10, Moreland, Victoria 3058

ROWE, Councillor Andrew, Chair, Competition and Financial Issues Working Party, Victorian Local Governance Association, Victoria

ACTING CHAIR—I would ask you to make any preliminary comments you want before questioning, although I might say there is really no need to go over the ground of lack of consultation. That is a complaint of each and every submission and witness. We are very aware of that and we have made it a central part of our interim report to the parliament. Instead, I would be happy for you to dive into some of those issues where you believe the MAI will adversely affect the independence and jurisdiction of local government.

Councillor Rowe—Certainly. I will not jump immediately away from your hope, because the issue of consultation needs a brief underlining. Local government is generally considered the third sphere of local government in the hierarchy. Its legitimacy is in the ballot box, because, even though they exist under various state and territory acts, in fact they are locally elected. Local government actually provides on the ground many of the services for state and federal government.

For example, the federal and state governments claim the credit for HACC programs but, in fact, it is local governments who deliver those services actually on the ground. Councils pick up 20 per cent—and in some cases up to 35 per cent—of the funding for those services. For local governments not to be consulted with on issues that are primarily affecting the issues of governance is critical.

The other major part of our submission is about economic development. Certainly, in Victoria under the Local Government Act, even through its revisions, there still remains a clear function of local government to be involved in economic development and employment encouragement. It is schedule 1.76 in the Victorian Local Government Act. One of the functions is the encouragement of employment as a function of local government. That clearly implies, without any ambiguities, a role for councils to intervene in the marketplace and to be involved in making local and regional decisions to encourage employment and, obviously, part of that is economic development regionally.

Where we have some difficulties with the MAI is that the MAI would seem to suggest some limitations on councils to pursue some of the local initiatives they are interested in. Local governments are interested in supporting some of the local markets, local industries and local businesses for the interests of—and no-one else's interest—their local communities.

ACTING CHAIR—This is a crucial point that you have raised. We have been pretty tough on all witnesses before the committee in asking them to detail their assertions. We do not want just to accept assumptions. You have told us that the MAI will impact more or less on your ability to enact economic development. You have to tell us how and why.

Councillor Rowe—Moreland is an example of a council that took a very distinctive role in the fight about tariffs and the textiles and footwear issue. That is an industry that Moreland chose to support. It is an industry that was essential to the economic development and employment of a large proportion of residents in the city of Moreland.

It is an area where that industry is made up of individual businesses and all those individual businesses have investors. They are actually owned by people and they have shareholders. Those businesses might perceive in some way that they were gaining some support and advantage. We saw it as a support and advantage we were giving to the community and for the local economy. Clearly, the MAI would cause some question marks about our ability to continue to operate to support particular local industries. I can give you examples of not just industries but particular businesses and other examples.

ACTING CHAIR—I think Councillor Rowe has very well explained the interest and involvement of local government in businesses of that kind, but how would the MAI have curtailed your support for the clothing or motor manufacturing industry within the municipality?

Councillor Rowe—The support that Moreland city is giving to an industry and the businesses that are part of that industry is support that any industry might perceive it was entitled to get. Given that we are having a level playing field for all investors, why are investors in other areas of activity not offered the same opportunities? Why are they not given the same encouragement and support? The MAI is not explicit on this, but there are clearly fears about opening up legal opportunities for foreign investors and businesses to challenge decisions of state, federal and local governments about how they deal with their own economic development issues.

Other specific examples are where our economic development unit in Moreland may have actually got involved in encouraging a trading venture to stay by negotiating with them some alternative premises because we thought that the market they served was significant and important. Does every investor then expect that same amount of cooperation, that same amount of support? We did it only because it was in the interest of our community served by that market. It would not be in our interest to offer that same bit of support, advice and encouragement to every investor. In the interests of the local community, we would expect to be able to discriminate in terms of what is in the community's interest and not what is in interest of the global investor.

ACTING CHAIR—If Treasury, Foreign Affairs or Attorney-General's Department were able to satisfy you on that point and interpret the MAI not to put such a restriction at such a level, do your fears begin to evaporate?

Councillor Rowe—It may need to be delivered as firmly as a reservation exempting the activities and functions of local government.

ACTING CHAIR—Mrs Graham, I keep interrupting your presentation. Please continue.

Mrs Graham—There are other issues as well with respect to finding investment for Moreland in order to arrest our unemployment problem, which is very large. Our particular concern is about technology diffusion. It seems peculiar that, while there is a federal government industry policy to encourage technology diffusion from large organisations to SMEs, small and medium size businesses, MAI does not in any way oblige foreign investors to undertake technology transfer. We consider that, unless technology transfer is possible, we will not be able to grow small and medium size businesses, who are the bulk of our employers, not just in Moreland but in Australia. Without any technology transfer, it will only be a case of where our resources are used, and then we might not get any long-term benefit.

Mr HARDGRAVE—I appreciate the input from the witnesses about those sorts of real life examples. Let us go to the heart of one of those local government activities, and that is the town planning issue. I am from Queensland and I do not really know where Moreland is. I found Melbourne today. and I thought that was an achievement in itself.

ACTING CHAIR—Are you a Queensland National?

Mr HARDGRAVE—I am not a Queensland National, and I will brief barristers if you say things like that. Regardless of where Moreland is, if somebody from another country wanted to invest in Moreland and to redevelop Moreland Road at Moreland—or whatever—and built a 20-storey skyscraper or whatever and you said, 'No, only five storeys is allowed,' which is the sort of example which was given this morning, they could perhaps brief barristers and head off to the High Court and force you to allow 20 storeys. Is that the sort of example you would be concerned about?

Councillor Rowe—I guess we are talking about the general heading I referred to in my submission of environment protection. Local governments are involved in town planning but they are also involved in creek management, waste management and a whole range of spheres. In terms of planning, at the moment you are subjected to state planning acts but they are still overlaid by local planning schemes. Those local planning schemes are still always appealable. If you do not want to end your case at the AAT you can still take it to a federal court. So there are opportunities for people prepared to have large sums of money at stake to take appeals a lot further than usual.

The examples are, in fact, very clear. Without picking on any particular business enterprise at all—and in Australia McDonald's subsidiaries are still predominantly Australian owned—very few local governments are prepared to take planning appeals that go against them in relation to the siting of McDonald's stores to the Federal Court, because very few local governments are prepared to take the financial risk involved in those sorts of cases against the opportunity of success.

Local planning is about local needs. Throughout this state of Victoria there is already considerable anger in the community about their ability to have real inputs into local planning decisions. Local governments are fighting to make sure they in fact maintain some control over the outcomes and they are not always headed off in other strange directions.

There is a real fear that, within this notion of a level playing field for all, things you do for some might not be achievable for all. Of course, that assumes different things. Planning is about land use. What might be appropriate on one piece of land is not appropriate on another piece of land. The argument can be put that, 'You let them build a 10-storey. Why don't you let us build a 10-storey?' It takes the argument away from what planning is about to what is appropriate for that site. It does allow, as you have suggested, some clear problems for local governments to face.

Mr HARDGRAVE—It probably is the case now that, if somebody felt strongly enough about a planning decision that you made that they did not like, they can appeal it. There are mechanisms through a local government court, I would imagine, and likewise there is probably a final appeal through the Victorian parliament, where major town plan alterations and so forth are finally rubber stamped, as they are in Queensland. I do not know how your Local Government Act works. If somebody felt really strongly about it, they could still take it to the High Court literally, couldn't they? What I am getting at is: is there a difference between what the MAI might do to you and what could even happen now?

Councillor Rowe—It is one of those grey areas of uncertainty, and those grey areas have been compounded by—and I am sorry to go back to it—the lack of consultation. The local governments could have been part of the development and discussion through their peak bodies—even if not individually—and been involved in detailed discussion about what the implications and problems were. But in fact what we end up having to do is pick up the negotiating text, wade our way through it, the reservations and the other documents, and try to put submissions together on that basis. They are not easy documents to understand and read. They are documents written in legalese with carefully negotiated and worded positions, and they are not necessarily easy to understand and easy to read.

If local governments had been part of Treasury's consultation and had this put on the table very early, a lot of the issues raised by local governments individually, and by

their VLGA that I am representing today, may have been able to be dealt with elsewhere. The fact is that we do not have that situation.

Mr HARDGRAVE—Your association was not consulted. I do not expect you to know, but are you aware of any consultation at a local government ministerial level or anything like that? Obviously, there could have been a mechanism.

Councillor Rowe—The minister certainly did not write to local governments informing them of what was going on and asking them to comment.

Mr HARDGRAVE—That is the local government?

Councillor Rowe—It was certainly not a process that happened in Victoria.

Mr HARDGRAVE—But you would have been happy if it had.

Councillor Rowe—Even so, this was a process run by federal Treasury, I understand.

Mr HARDGRAVE—There has been an instance in the past where the Attorney-General's Department reached for a state advocate to do some consulting through state departments and through local government, and we have turned up incidents in the past where that has not been done.

Councillor Rowe—There has been a difficulty in Victoria, of course, where the state government in Victoria still thinks that local government is there to serve its needs. Obviously, we were putting our hand out to the federal government saying, 'We are a legitimate third sphere of government. We need to be taken seriously on our own merits.'

Mr HARDGRAVE—I do not think you will have any argument here.

Mr BARTLETT—Do you see any way at all that it is possible to have an exhaustive list of exclusions and reservations that would ameliorate your concerns about the MAI?

Councillor Rowe—I am here representing the VLGA, not my personal interests and views. So representing the organisation, I believe that the VLGA could be satisfied by appropriate sets of reservations. Again, there is still concern about the notion of roll back and standstill and if reservations are then to be watered down and moved away from over the years, there are still some difficulties about their strength.

Mr BARTLETT—But the list of reservations would have to be considerably greater than is there currently.

Councillor Rowe—You might need to talk about the functions, policy and decisions of local government being exempt being a reservation in itself.

Mr BARTLETT—Do you think that might then lead to the point that the members of the OECD who want to push through the MAI might think that it is really undermining the whole aim of the treaty anyway if there were such significant exemptions?

Councillor Rowe—If the aims of the treaty were in conflict with the aims of the local communities and regional economic development and the needs and interests of local communities, then I can only represent the VLGA, and my own interests suggest that I would prefer to support the needs of local communities and local and regional organisations.

Mr BARTLETT—I understand that.

Senator COONEY—Mr Hardgrave asked you before about Moreland. It might be useful if you gave a bit of a pin picture: what would happen to the local shops and the houses if, say, the clothing, footwear or textile industries collapsed? Would Moreland be vulnerable? Is Moreland to the north of the city?

Mrs Graham—Yes. The textiles, clothing and footwear industry in Moreland is significant. Moreland is a very large manufacturing area and about 10 per cent of that manufacturing is made up of textiles, clothing and footwear employing more than 3,500 people. More than 2,500 live locally, so it provides local employment. If that sector were to collapse, we would see a collapse also in our retail sector as household incomes diminished. A lot of the people who work in that sector are women who support their family income. So we would see a reduction in family household income and the hardships that go along with it as well. There would be very big repercussions for Moreland if the TCF sector were to decline any further, as it is declining with tariff reductions. If it were to disappear altogether, I would say our unemployment, which is running at over 12 per cent, would probably be very much more significant—more like 16 per cent, perhaps more.

Mr HARDGRAVE—I think it is important, if we are going to retry TCF here, to make the point that the government has acted on the TCF sector. I really do not want anybody reading this record now to suspect that your comment that it is declining further as tariffs decline further is correct, given that the federal government has acted, very much so, in favour of the TCF industry and has only in recent weeks given it a huge package—the best part of $1 billion—to assist it. I think it is important to have that on the record.

Mrs Graham—It is important to note that that package does not come into effect until 1 July 2000, two years away; but the problem exists now.

Mr HARDGRAVE—Nevertheless, it is there and is something it did not have.

ACTING CHAIR—We are getting sidetracked here.

Senator COONEY—The picture is of how—Councillor Rowe was talking about it and perhaps Mrs Graham can come in—there is a need for local government to have concern, not only for industry but for the shops or the trams that might run along there, for the whole area, which is very peculiar to the local government's interests, rather than the state and federal interests. People are actually affected by all this.

Mrs Graham—Moreland City Council has put its resources towards assisting the TCF sector, working with the local college of textiles. This is the sort of action that probably, if MAI was effective, Moreland City Council would not be able to undertake. In the absence of any assistance from state and federal government, you see a local government actually taking proactive action to keep its local jobs.

Senator COONEY—And would it be a government that could afford to go into litigation with a big company? Has Moreland got resources that are effusive?

Councillor Rowe—Like all local governments and like any political activity of government, it is the distribution of limited resources. No local government would expect to have to put heaps of money aside to deal with litigation. When budgeting, I do not think anybody actually puts a packet of money away to handle legal actions. It is not part of budgeting in local government. When local governments have to develop their budgets, it is very much about what needs to be done on the ground to meet community demands, interests and needs and to be able to advocate on behalf of their community—the range of things that local governments do.

Moreland has 150,000-odd people. It is one of the most culturally and ethnically diverse communities in Australia. As you know, once employment is damaged in a community, it affects businesses, trade, milk bars, butcher shops and a whole range of retail activity, which again then affects further jobs. Economic activity and local employment hurt a whole community not just the initial individuals who are subjected to the original indignity.

Senator MURPHY—I would like to ask a question on the consultative process. Were you consulted at all by the Victorian government?

Councillor Rowe—No.

ACTING CHAIR—The Commonwealth is having discussions with the states.

Senator MURPHY—The Commonwealth has had discussions—or so it says—with state governments. According to the submissions to us, they have been somewhat

extensive. Local government does not get a mention, but other bodies do—NGOs and government bodies. I was just interested to know whether the Victorian government has sought the views of its local government bodies within its state boundaries.

Councillor Rowe—Absolutely not.

Mr LAURIE FERGUSON—What do you put the claimed wider debate in New Zealand and Canada down to—greater activity by NGOs or some government mechanism?

Councillor Rowe—Earlier access to the documentation. The negotiating text was not made available until the start of this process, when it was originally discussed in both houses whether it would come out for an inquiry. There were some throw away lines that it has been available on the net for a while, but not everybody in Australia has access to the net. The limit of the documents and the reservations being available for public scrutiny had a lot to do with the fact that there was limited earlier public debate.

Mr LAURIE FERGUSON—They are complaining about the nature of consultation in Australia. Are you certain that they did put them out earlier in New Zealand and Canada?

Councillor Rowe—The documents were available earlier. I had the New Zealand reservations much earlier than I had the Australian reservations.

Mr LAURIE FERGUSON—Secondly, the claim from Moreland states:

Again it is evident from the negotiating text that whilst one group of OECD countries want to retain safeguards others wish to weaken or even remove any reference . . .

Could I have some kind of background? Do you know which countries are involved and what has actually happened?

Councillor Rowe—No, I do not know which countries. But it is clearly evident in reading the negotiating text—the summary and the notes with the negotiating text—that there are various countries competing for different positions. It is evident within the negotiating text, as options are put up and various other options are again put up in their place, that there have been some significant differences about those issues.

ACTING CHAIR—In drawing to a conclusion, you may be interested to know, Councillor Rowe, that the Premier himself wrote to the committee by way of submission only a few months ago—I stand to be corrected as to the exact date, but it was not very long ago—pointing out that neither he nor his government had ever been consulted and that the state government was coming to grips with dealing with the whole issue themselves. So the issue of consultation is spread far and wide. Your solution to the local government problem is to exempt local government as a whole. That is going to be pretty

hard to do, is it not, given that you are not exempt, say, from copyright or international human rights obligations as a whole?

Councillor Rowe—My position, the VLGA's position, is fairly clear. While the consultation has not happened, while we have not been taken into the government's trust in the development of its position within the negotiations—

ACTING CHAIR—But no-one else has either, so we will brush over that.

Councillor Rowe—Brushing over it is easy.

ACTING CHAIR—It is not easy but I do not want you developing any inferiority complex.

Councillor Rowe—I certainly do not have an inferiority complex. It has never been anything that anybody has suggested of me.

ACTING CHAIR—Good.

Councillor Rowe—We are not against the notion of treaties—and treaties are important. There have been some outstanding treaties that the Commonwealth has been party to. But the government need to take the community into confidence in the development of those. While there are still significant grey areas and significant concerns and until those concerns are understood and addressed, then my only solution in terms of recommendation is that it needs to go no further and that local government needs to be part of a reservation. You could actually, through a negotiation, discussion and consultation period, further refine, discuss and negotiate to points where we could get some conclusions that did not require that but, unless that is on the table and unless that is a genuine opportunity, then I think we have to stand by our concerns that we need a reservation.

ACTING CHAIR—Perfectly understandable. You might refine it to, say, exempting industry development, although that would not overcome your problems of having different environmental standards for local reasons. There being no further questions, I thank you very much, Councillor Rowe and Mrs Graham. It was very helpful for the committee.

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FORD, Mr Neville George, 22 Westfield Drive, Nottinghill, Victoria 3168

GILLESPIE-JONES, Mrs Margaret, 94 Pasley Street, South Yarra, Victoria 3141

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WHITE, Mr David, 35 Main Street, Blackburn, Victoria

CHAIR—What we will do now, only slightly ahead of schedule, is allow members of the public to make brief statements. So far, we have seven people listed. I would ask that, because there is the potential for questions from members of the committee, statements be no more than four minutes. In fact, I will have to gong you at four minutes, to be frank. The order will be David Barnett, Neville Ford, David White—if he ever recovers from writer's cramp; he has been jotting word for word ever since this morning; Alan Griffiths, Mervyn Vogt, Serena O'Meley and Margaret Gillespie-Jones. If there are any late additions, we can do that from the floor.

Mr Barnett—I do not represent any political party or organisation but I am a concerned citizen. I am a member of the Uniting Church in Australia, a member of the Defenders of Native Title, and I teach ethics at a Catholic secondary college. That is a bit of my background. I welcome the opportunity to publicly express my concerns regarding the MAI.

I am concerned that there is a lack of detailed information available to the public for public scrutiny. Hence, I am hoping I am not talking in ignorance here. I am concerned that increasing globalisation may be a reality but that it appears that the intention of the MAI is not to regulate investments but to regulate governments. The MAI appears to favour multinational corporations at the expense of workers' rights and conditions, environmental integrity, the wider economy and the rights of indigenous populations and citizens generally.

I am concerned about the expropriation clauses of the MAI—that corporations will be able to sue governments for damages for any legislation that increases their costs, such as increases in wages, social and environmental standards. With such a threat hanging over their heads, governments will be hampered from introducing any measures that will improve social and environmental well-being.

Furthermore, existing laws which are in conflict with the MAI may be subject to roll back, which means a gradual phasing out of these laws. Under standstill provisions, governments will not then be able to enact and enforce new laws to protect our culture, environment, and indigenous and economic rights. While the MAI increases the legal rights of multinational corporations and restricts the ability of governments to regulate them, it contains no binding enforceable obligations for corporate conduct concerning the environment, labour standards and human rights. The MAI gives foreign investors exclusive standing under a legally binding agreement to attack legitimate regulations designed to protect the environment, safeguard public health, uphold the rights of employees and promote fair competition.

The MAI will be binding for 20 years, and so future governments will not be able to remedy the situation. As such, the MAI will undermine the national sovereignty of democratically elected governments and impede governments from making laws which reflect the wishes of the electorate if those laws also interfere with the operation of multinational organisations.

In Australia, two examples are the laws protecting native forests and foreign ownership laws. Australia has also accepted limits on levels of foreign investment in the media, rules about Australian content in film and television, and limits on foreign ownership in privatised bodies such as Qantas and Telstra.While the Australian government has listed 17 areas of exceptions, there is lack of detailed information, and all may still be subject to roll back.

There is a concern about the effects of the MAI on developing countries, including their need to democratically control investment in their economies. The level of liberalisation contained in the MAI has already been opposed as inappropriate by many developing countries. However, non-OECD countries are under increasing pressure to join. Also, citizens, indigenous peoples, local governments and NGOs do not have the access to the resolution system and can subsequently neither hold multinational investors accountable to the governments or to the communities which host them nor comment in cases where an investor sues a government.

The MAI is explicitly designed to make it easier for investors to move capital including production facilities from one country to another, despite evidence that increasing capital mobility proportionally benefits multinational corporations at the expense of most of the world's peoples. As such I find the MAI unacceptable. Even if there were a net benefit to Australia, I would not support any proposals that would enable multinational Australian companies to undermine the sovereignty of other nations.

There has been a lack of public consultation regarding the MAI by the Australian government, despite the Prime Minister's promises prior to the 1996 election to make Australia's treaty making process more transparent and participatory. We should refuse to let our government sign away our rights. Any proposed MAI should contain stronger

national and international regulation and accountability systems to control the activity of corporations in areas like the environment, human rights, labour rights and the rights of indigenous peoples. Such an agreement should be signed only after widespread public consultation and debate.

ACTING CHAIR—Thank you, Mr Barnett. Obviously, in a few short minutes we cannot expect anyone to be able to present the same long written submissions nor the carefully thought-out presentations we have had here and elsewhere. So it is really a matter of each of the public witnesses raising the concerns and thereby requiring us to find answers to them in our recommendations to government. But there is one assertion which you kept returning to that it may be possible for you to substantiate. You said that the MAI will be a platform for foreign companies to attack Australia's environmental labour laws. Conversely, you said you do not want the MAI allowing Australian companies to undermine developing countries. That is pretty strong language. Where within the MAI is a platform provided to do so—or conversely for Australian companies?

Mr Barnett—Just answering the question about possible effects on Australia itself, I will give you an example. This is a hypothetical example, and it is an exaggeration, but let us say that a multinational company were invited by the federal government—and this was passed by the federal government in both houses—that they build a national road link or freeway system around Australia. Let's say we call them, in hypothetical terms, Natlink. If they decided they were going to impose tollways around the freeway system, how would that affect any future government that might be elected later on if they instead wanted to build up the national railway system, say, and in doing so they caused this foreign company which has built the freeways around Australia to lose money? It is my understanding that that foreign company would then be entitled to sue the Australian government for damages. That could cause Australian governments to close or wind back some of the existing highways and networks to encourage more people to go on this freeway. I know this is a hypothetical question but I think there probably is something there.

Mr LAURIE FERGUSON—You mentioned the question of public consultation. On our side of politics we recognise that the current government is undertaking steps that we should have undertaken a long time beforehand in regard to the treaties committee. What is the extent of consultation required in regard to this? Essentially, we have a large number of people here today and the government might have been remiss originally in actually getting the knowledge out in the marketplace. What worries me is that some people have conspiracy theories about world government and a plot by the corporate sector and the Australian government. What is your personal requirement in regard to public consultation being sufficient?

Mr Barnett—I do not personally subscribe to conspiracy theories. I just think that on something that has such a national importance and can affect the sovereignty of the nation there must therefore be full and wide consultation. There should be public debate

and there should be information available in the media. There has been very little information in the media. There has been very little information presented by any of the major political parties, which is a major concern. Neither the opposition and the government have really come out with a lot of information, and I think that process should happen.

Mr LAURIE FERGUSON—To be fair, the Democrats, for instance, have been very public in their concerns about this treaty. Do you think the facts that we have these hearings and that the committee has come down with an interim report which says that it remains to be convinced are indications of sufficient public consultation? When you say that there must be wide public consultation, what do we have to do?

Mr Barnett—Obviously, today is an example of a starting process. I am concerned that somehow there is not a lot of information in the media. I do not know why that is. I do not know why the opposition and the government have not made public in a bigger forum what is happening. There has been lots of public consultation about the Wik case, for example, but similar information has not happened with this.

ACTING CHAIR—You may be interested to know that, since May 1996 when the committee was established, there has been a requirement that no treaty can be signed without, firstly, a national interest statement being tabled in the parliament which analyses how it is in Australia's interest. Nor can it be signed until this committee—it is a bipartisan committee—has reported to the parliament, except in rare and special circumstances—emergency matters—and there have only been two of those. In the last two years, we have dealt with 1,800 submissions on various inquiries from individuals and organisations. We have tabled 16 reports dealing with 110 proposed treaty actions.

I think your frustration is more that it has not had a public debate. We have advertised and we have been everywhere. You missed the point earlier on that we have had 850 submissions on this matter alone. It does not seem to have been a media generated debate. The reason is probably that neither of the major political parties will dive into definitive positions until we conclude our hearing. I think you are not going to find contentions political debate, except in a few circumstances, until the committee has reached its conclusions. Thank you, Mr Barnett.

Senator COONEY—Just a question.

ACTING CHAIR—You'll have to be quick.

Senator COONEY—Did you say you came from Yarram?

Mr Barnett—Yarraville.

ACTING CHAIR—If he had been a constituent of mine, he would have got 15

minutes. He is not from Yarram so he can exit quickly in that case. By the way, are there any constituents? Please make yourselves known.

Mr Ford, to the extent that you have been here this afternoon, please avoid some of the other issues, if possible, about consultation and the like, and give us your views.

Mr Ford—Sure. I am here because I am submission No. 708 in the eighth book. I will not repeat that submission. Suffice to say that that submission is in favour of a new type of MAI, which I believe is a big ask but doable, and it does not result in a treaty about everything. I am calling for human rights, and I would remind the committee that it is 50 years since 1948 and the creation of the UN after World War II. Fifty years after the UN, we do not have human rights that have teeth attached. Attaching human rights to the MAI automatically gives it teeth. I do not think that politicians, including you, really understand that the MAI is about you losing power. You might choose to lose power yourselves, but in doing so you actually take power away from us—the electors who put you there.

I am speaking because I am personally involved in a bilateral treaty; that is, I was on the receiving end of an old bilateral treaty between America and Australia. The redeeming feature of this MAI debate is that we now know all about it, and I believe we must act. I believe that doing nothing is not viable, because stopping the MAI—which is a popular theme of many other submissions—is not a proposition. Stopping the MAI does not stop bilateral treaties. A good example is what I would call the treaty between America and the desperate countries, which has occurred step by step since 1982. There are six criteria to that bilateral treaty, and the desperate countries include places like Egypt, Bangladesh, the American lake in the Caribbean, Bulgaria, Kazakhstan, Moldavia—44 countries that are so desperate for foreign investment that they will sign anything. They have in fact signed effectively what is an MAI.

Mr LAURIE FERGUSON—What are you referring to, by the way?

Mr Ford—There are bilateral treaties on investment between America and those nominated countries.

Mr LAURIE FERGUSON—Fair enough.

Mr Ford—I believe that doing nothing is not a proposition, because all that will happen is that APEC and WTO will take over the negotiations that are presently stalled or on the shelf in the OECD. The reason for that is that the ideology behind it is incredibly powerful and is backed up by immense force, so if they are stopped in one spot they will just transfer it over to the other. I recently got some information on APEC, and its terms of reference are quite wide enough to include investment.

I believe that local culture, the definition of what is liberal or liberalisation, the de-

governing of Australia and safety are issues. In a former life, I was a safety engineer with the SEC here in Victoria. The flow of international capital, money and the nature of corporations and their power are also issues. I believe they are all issues; not just globalism itself and certainly not just whatever NGOs can do, because they basically do not have money and power.

The expropriation clause is very close to my heart. There has already been expropriation of nearly $10 billion from Victoria because of a bilateral agreement, and that is my own personal experience. I believe that the skills of Australia—and particularly the skills of the eastern suburbs of Melbourne—are so multilanguage, multicultural and there are so many different skilled people that we could in fact negotiate a proper MAI with the appropriate human rights attached, even from my own area. Imagine what you could do if you added that to the rest of Australia. I believe that Australia could take a lead, create a new MAI and bring all of these existing, very nasty, bilateral agreements into a more rational and people-friendly overall picture.

I will give you an example from my own personal experience as to why I believe this globalisation is absolute rubbish. I have had the privilege of travelling to China twice and in the outback of China they get steel and wire and hammer out a wheel. It is used on a cart; it is an overgrown bicycle wheel. It is a wheel for China. We in Melbourne and South Australia cast wheels out of magnesium and aluminium. That is a wheel for Australia. There is simply no need, in international trade and investment, for factories to make wheels in China and wheels in Australia. This ideology that trade and investment should be at the centre of the world's activities rather than a peripheral activity is at the heart of why the MAI is presented in the manner in which it is.

I believe if we are not careful we will end up with a cargo cult in Australia where we import everything and produce almost nothing. I would leave you with this shot, and that is that already there are firms wanting to leave Australia because the Australian government, even in its own buying policies, does not favour local manufacturers and innovators.

All told, I think the position is grim. We have to react and create a new MAI that is acceptable. I will give you some hard numbers. It has cost Victoria $10 billion because of the bilateral agreement over the electricity supply to Alcoa Portland—$10 billion is one half of the additional debt that the previous Labor government imposed on this country. You ask Mr Crozier why he signed a letter that said that Alcoa Portland could have electricity at 1c per kilowatt hour.

ACTING CHAIR—Wasn't that just a bad business deal on the part of the Victorian government of the time, rather than a bilateral agreement?

Mr Ford—No.

ACTING CHAIR—Who was the bilateral agreement with?

Mr Ford—The bilateral agreement was that the then Prime Minister made each state compete in an overall electricity supply for aluminium scenario. Each state bid the other down and the end result was 1c per kilowatt hour offered to Alcoa. The end price was a little higher than that.

Mr White—I wish to thank the committee for making this time available and also express thanks for the sincerity and sensitivity of the committee. I come as a member of the democratic constituency of Australia. I am a bread-and-butter conservative in outlook.

The MAI treaty, if signed, will affect national and state sovereignty down to the local community level. If assented to, the MAI theory would be an affront to the dignity of Australia and the democratic constituency of the Commonwealth. The MAI treaty, if signed, will be a culmination of lack of due exercise of leadership in Australia. Philosophically, the MAI treaty would have appeal to parliamentarians and others in authority of economically dry inclination. Patriotism ought to come before dry economics expressed globally.

The MAI could have appeal to those on the right who sense institutional decline in Australia and may think that the MAI will fix it. The MAI could have appeal to those who wish to simplify governance in Australia, such as proponents of gambling revenue or of economic theologies such as competition or Hilmerism—that competition produces best policies—without consideration of the fact that every policy has associated with it some inherent evil. The MAI, if enforced by treaty, will be a permanent hindrance to a nationalistic research and development policy. Again, state by state competition after R&D and technology ideals could do much better than a national inferiority complex engendered by a rigid MAI system.

On a local level, churches and community groups gain rates exemptions, public worship is a civil good, and there are tennis courts and kindergartens associated with these churches also for civil good. Under de-nationalisation of Christian values, local councils ‘see’ church kindergartens as providing a commercial service. The MAI, it seems, allows transnationals to see organisations that socially provide the framework of the local communities as having commercial advantage through rates exemptions and council subsidies of local festivals or groups. Other examples would be the use of sporting grounds that were once historically privately owned but through community usage have had their titles transferred to the local council.

The MAI would impact severely on local communities when combined with the observable trend of commercialisation of recreation. The MAI treaty, if it becomes an internationally enforced document, will severely emasculate the legislative process in Australia in all three tiers of government. Australians are a proud people. I do not think they would like to see their parliamentary representatives so emasculated.

Leadership in Australia suffers some embarrassment about the smallness of the size of Australia's population and the small number of cities in comparison with the United States and its many states with all their institutions. There is the trap from this for the Australian political leadership to blame worldwide conditions rather than establish bread-and-butter policies to contain unemployment, for instance, or substitute punitive economics for constructive leadership. For the executive to consent to this treaty would be to step into this trap. The MAI, if in place, would certainly, in its overall damage to the democratic framework of Australia, breach the rule of bad cases make bad laws.

On this matter of leadership, I believe that the previous generation of leadership in this country had a much deeper understanding of the nature of mankind through all the exigencies of war and administering a nation subject to heavy external forces. Using this experience combined with an ardent nationalism, leadership managed to the 1960s in this country and was lost by the end of the 1970s. So I hope that the treaties committee would try to bear these types of philosophy in mind and, through its deliberations, discourage the executive from signing this treaty.

ACTING CHAIR—You have been here all day, Mr White. You heard Rick Brown representing the National Civic Council first off, and you may recall his reply to a question along the lines of 'Do you oppose all treaties?' He enunciated many of the same arguments you have spoken of there about leadership, the role of government and the like. His reply was, 'Well, frankly, generally speaking, yes.' How would you answer the same question?

Mr White—There is a tendency to use the treaties power of the Commonwealth constitution to centralise power and override states' rights, such as in the Tasmanian dam situation. I disapprove of that. I disapprove of treaties being used to hinder domestic policies.

ACTING CHAIR—But in your submission you seem to go one step further by saying that true leadership means governing the nation according to accepted philosophies and values. Do most treaties compromise that sovereign independence? Rick Brown thought they did.

Mr White—No. I am not an expert. I am merely a part-time student of politics, and I do not think that is the case.

ACTING CHAIR—You have answered my question. It was whether or not you are opposed to MAI or treaties in general. It is MAI that you are strongly opposed to.

Mr White—Yes.

ACTING CHAIR—Thanks, Mr White.

Mr Griffiths—I live in Brunswick, which is in the City of Moreland. I sent letters to the council when I first heard about the MAI. I got no reply, and when I rang them up they hung up on me. They thought I was a fruitcake.

ACTING CHAIR—There is a lack of consultation in the City of Moreland. See how it filters down?

Mr Griffiths—Indeed. I first heard of the MAI in September 1997 from friends in New Zealand. I looked it up on the Internet out of curiosity, and I found close to a couple of hundred thousand documents relating to the MAI on other countries but none on Australia. Why is that? You are probably asking yourself, 'How can that come about?' I know you come from diverse political and philosophical backgrounds, but this is one issue, I am convinced, which transcends all political parties. I know the federal Labor Party has not made this a federal election issue. Why not?

Wik has brought about a split within Australia. A lot of people see Pauline Hanson as the godsend for stopping globalisation, and I think this is largely, in part, due to both political parties not addressing the MAI. I believe that a lot of people voted for Pauline Hanson because they were totally against the MAI—never mind that she is a downright racist. Her policies do not fit for Australia. If you are going to address the issues of racism in Australia you have to be honest on all fronts, and the MAI is one big issue—one big whole—which has not been addressed in Australia. Both federal parties have to be honest about it, and the federal Labor opposition has to raise questions in parliament about it, otherwise it will be missed.

I resolved to alert Australians to the dangers of the MAI. However, I ran into a few obstacles. After writing letters, sending E-mails and making hundreds of phone calls, I found hardly any investigative journalism. The media is still largely silent. Those who did answer my queries seemed to be completely ignorant of the whole affair both in political and journalistic spheres.

The blatant unwillingness on the part of our supposed democratic representatives to enter into discussion about it also greatly concerns me. I wrote hundreds of letters and made many phone calls. After bugging Lindsay Tanner, federal MP for Melbourne, shadow minister for transport, for one whole month, he finally sent me a letter. I will quote from it:

I refer to your letter of 3 December 1997 regarding multilateral agreements on investment. I am aware the negotiations regarding the MAI—

He is aware. Why haven't the rest of your parties—both sides—been aware? Later on he says:

Any MAI can only have force in Australia as a result of legislation passed by the Australian parliament.

It goes a hell of a lot further than that. A submission was made to your committee by the Federal-State Relations Committee of the Victorian parliament. What irritates me with this report—the two things I am primarily concerned about with the MAI—is standstill and roll back. You know what they are. Basically, standstill means that, when all Australia's exceptions are rolled back—if they are—Australia will be unable to enact new reservations or strengthen them or pass legislation to protect our rights, whether in local, state and federal laws. I would like to quote to you a segment from the submission sent to you about the exceptions. Paragraph 2.3 on page 861 states:

There is a provision within the draft text for a party to lodge exceptions to the application of the MAI with respect to existing laws, or certain sectors of its economy (eg to protect domestic ownership of the media, or essential infrastructure). Once lodged, it will be permissible to vary an exception only if such variation would not increase the discriminatory effect of the exception.

Where is the mention of roll back and standstill? We are talking about state parliamentarians writing a report about the MAI. Accompanied with that was the treaty they were talking about. If you go back a page, perhaps this illustrates where they are coming from. Under preliminary notes on page 858, paragraph 1.3 states:

The Australian Government is taking part in the MAI negotiations. While it is not committed to signing the agreement, it takes the view that a successful MAI would encourage investment, and therefore economic and employment growth, in Australia.

The view from whom? If they cannot even acknowledge standstill and roll back, which are serious implications which will destroy democracy, and we have heard that today, then what is their view? I would like to quote from your interim report which perhaps illustrates their blunt view, their blind view. If I can quote this to you.

ACTING CHAIR—We know it word for word.

Mr Griffiths—I will quote it for the people here. On page 12 of *Multilateral agreement on investment: interim report*, paragraph 1.54 states:

The Treasury submission is a disappointing document especially from the department responsible for the MAI, because it does not assist us significantly in evaluating the agreement. Running to only eleven pages, it provides a quick summary of issues rather than addressing the MAI in more detail. It fails to provide, for example, systematic discussion of the implications to Australia of particular aspects of the draft text, though it asserts many advantages.

What is the point of that? Where did Australia get the information to take the view 'that a successful MAI would encourage investment, and therefore economic and employment growth in Australia'? Where did they see it? Did they read it on the toilet walls of the OECD? Why not? Are our parliamentarians' reputations worth so little to stake them on nothing? After that unastute gentleman's presentation from the Business Council of Australia, I managed to get him into a corner whereupon he stated that his policies are

based on the belief of direct investment being good for Australia. I asked for evidence. He said, 'Well, we have beliefs and theories.' He has asked you to give the MAI the okay so that you will give them the certainty that it is good for Australia. How can you convert belief and theory into certainty?

Why not take things further? This is how ridiculous it is, I believe. The worship of money is prolific within business circles. You only have to look at what is happening internationally or what the MAI proposes. Why not go further? Why not remove the monopoly the Catholic church has on transmogrification? If you believe you can transform water into wine, why not legislate to make it certainty? That is how absurd it is. I challenge the Business Council of Australia to provide their facts. I challenge Treasury to actually release empirical evidence.

ACTING CHAIR—They are very valid challenges indeed.

Senator COONEY—Have you found this committee a useful forum to put forward your views?

Mr Griffiths—It is certainly encouraging to have a form of public consultation, but I am frustrated in a way because there is no public debate about this. The federal Labor opposition are being silent on this issue. Especially with an election coming up, you would assume that if you really wanted to protect workers' rights you would do as the Victorian parliament was doing with the MUA down at the docks. There were photographs of Victorian parliamentarians linking arms with workers, while at the same time tabling a joint report not concerning themselves about standstill and roll back with the MAI. I am excited with the fact that you are here asking me questions, that you are asking members of the public. That is excellent. Perhaps this is a sign that we are realising that we cannot lose what we have got—just the basic premise of talking to people. The democratic process is a start. That is very exciting.

Senator COONEY—People have avoided calling the silence a conspiracy. Have you got any thoughts about that?

Mr Griffiths—It is interesting you say that because the MAI negotiations were started underneath the Keating regime. There is so much at stake here that you cannot say that it is not a conspiracy. I challenge you to prove to me that it is not.

Mr LAURIE FERGUSON—I will not debate much of what you say because I agree with you. In the local paper in Sydney last week one of the local aldermen said that the Queensland election results and the support for One Nation indicated concern about flat development. You have said on the public record that the support for Pauline Hanson stems from the MAI debate. There is no evidence for that, is there?

Mr Griffiths—You can only gauge public reaction to One Nation's success when

you listen to talkback radio. Radio National is a very good instrument for that. There was a dramatic rise of consciousness over the MAI from the smaller parties. I am not saying that it is the only reason that Pauline got support, but I largely point the finger at your political parties because you are keeping silent on the MAI. The only way people can vent their frustration is by—

Mr LAURIE FERGUSON—There is no evidence whatsoever that the MAI was a central issue in the upsurge of support for Pauline as opposed to guns, unemployment, insecurity in the workplace and a million other things.

Mr Griffiths—Of course there is no direct evidence, but there is no direct evidence that the MAI is good for Australia.

ACTING CHAIR—There is no doubt that Ms Hanson has raised the issue of the MAI many times over. Disappointingly she did not make a submission to this committee. By the way, did you say Radio National is a good way to judge public opinion?

Mr Griffiths—That is where discussion took place. It is a good way to gauge reaction.

ACTING CHAIR—Isn't that for the intellectuals? It has ratings of less than one per cent. Isn't it 3AW and 3LO that you would gauge public opinion by? I am only stirring. Thank you very much, Mr Griffiths. Another stayer is Mervyn Vogt. You have handed us a written submission.

Mr Vogt—Indeed. It is part B. The submissions were sent earlier. It appears that the committee did not get part B, which was part of my reason for appearing today.

ACTING CHAIR—We formally receive your submission into evidence. Can you speak to matters that are not covered by part A or part B?

Mr Vogt—Yes, as far as possible. I would like to just take up an issue. I have spoken on 3AW as well.

ACTING CHAIR—You are reaching the masses. I thank you for that.

Mr Vogt—Once I became aware of the MAI, which was no thanks to the OECD or anybody else other than the Canadians who were good enough to breach it, I started doing a great deal of research on it. I have been doing a paper at Monash University as part of my masters in industrial relations on the matter, which is the reason for the volume of material I have given in. But the part that distinguishes it from anything else I have heard at this stage is that I believe it is not enough just to oppose something. I am not a destructive person, nor are the people I represent destructive people. We believe that something should be put in its place.

Burns—I forget the name of the other lady—who has published a book on commercial law in Australia, has made the point quite validly that the law and lawmakers have always been a minimum of a decade behind the commercial and corporate community in making laws to regulate. The one good thing about the MAI is that it has awakened such community unrest that it has caused us to look at it.

At a public meeting at the Melbourne Town Hall I first raised the issue of putting something in its place, and what should be put in its place, we believe, is a code of ethics for the manner in which corporations, both transnational and multinational, operate. I distinguish between the two in that those that are multinational are based in a country, owe their loyalty to a country and pay their taxes and fulfil their obligations within that country.

We have had the emergence of transnationals which appear to have loyalty to nothing. Not even in the land of the creed of greed, America—or in the land of the Farrenghi, if you happen to be a science fiction fan—has President Clinton been able to control the activities of transnational corporations. They do not pay their taxes. We already know that nearly 60 per cent of transnationals and multinationals in this country do not pay any taxes here. They come in, use our work force, our materials and our resources, but they do not fulfil their obligations to the long-term needs of the working community. They do not subscribe to pensions. They do not fulfil any of those obligations. Not even President Clinton has been able to make them do it.

I would make the point that never before in history has the working community—and in Australia—been as productive, never have corporate profits been so high and for such a prolonged period, but indeed we are declining in our working conditions, in our pay and in the security of work. This is surely, even in the view of multinationals and transnationals, self-destructive in the long run. Unless there is effective demand—that is, demand backed by money—they will eventually end up in a situation where they will also decline.

Indeed, that may well be part of what is behind the Asian collapse and a possible further collapse in the world economy. You must have effective demand. It is a false economy. Recent work done at the University of Queensland has shown that 60 per cent of corporations which have downsized in this leaning towards ‘let’s go for profits only without the morality behind it’ have actually declined in their operations. It has been counterproductive.

Telstra has been downsized by almost 30,000 people. That is 30,000 people who are now a burden on the community—not in total; I am being a little broad, because some of them will have found jobs elsewhere. They are now the responsibility of the government. It is counterproductive and services will decline.

ACTING CHAIR—Does the MAI worsen that?

Mr Vogt—I believe it will. One of the first things that happens as soon as a corporation looks like gaining international investment is that it downsizes. That has happened throughout the world. The Canadian and Mexican experiences are a sufficient indicator of that. In Canada, over 97 per cent of direct foreign investment has been taking over existing companies. I ask: what value is that? Telstra, it is said, may well be protected under an exemption, but the principle has been adopted and how long morally can you then delay opening it up like the rest of the community is?

ACTING CHAIR—Mr Vogt, you are very thorough and you substantiate all your points, but because of the limit of time it is best that you make your assertions. You are doing the right thing in backing up your points with evidence, but I fear that time will beat you.

Mr Vogt—Fundamentally, having spoken at these public meetings, the support has been almost unanimous. Some of those meetings have had members of all parties represented—admittedly, one sitting member did not vote rather than make one dissenting vote—and they have all said, 'Yes, we want to take control back into our own hands. We want to set the ethics by which corporations exist.' This should be a worldwide movement. After all, we are realists. It is a global village now, but we want to control that village.

It has to be seen, we believe, that multinationals and big corporations should exist not to exploit us but in a joint situation where it is to the welfare of all, where all benefit. I have no objection to profits. I think they are a wonderful thing. I would like to be wealthy too. I am quite happy with that concept, but with a fair division. The way it is now makes it understandable that the sole criterion for corporation management and the executives of those organisations is based on how much profit is made, not on how much good is being done in the community while making a profit at the same time. We believe that that has to change.

ACTING CHAIR—Sure, but will the MAI worsen that lack of corporate ethics?

Mr Vogt—Indeed, it will. The concern is that the MAI be stopped as it is. There are sufficient avenues for protecting investment. After all, bear in mind that these corporations themselves have greater incomes than do nation states. They do not need protection. It is we who need protection.

In the MAI itself, they do not accept responsibility. Open it at any page and it says, 'One delegation says, two delegations say.' We have no ability to go and say to our government, 'Why the heck did you bring this up?' because we do not know who it is. That is in the copy of the MAI that I have. I have heard some people say that such and such a country said something, but I have no idea how they have got that information because it certainly is not in the copy that I have as to who says what.

Thirty-five odd times throughout the submission the word 'disciplining' is used. Goodness gracious me! I cannot discipline our government—it is an unruly rabble—thank goodness. I do not see why an MAI or any international, amorphous, faceless group of men or women should be able to control what our government has to say. The government represents our people. Thank you.

ACTING CHAIR—Thank you, Mr Vogt. It must have been extremely frustrating for you, being an expert in the area, to have had to condense it to a few minutes only. There are no questions. Thank you, you have made some strong points.

Ms O'Meley—I would like to quickly address the comments about conspiracy theories with something that Susan George wrote in a book called *A Fate Worse than Debt*, which was published in the late 1980s. In it I believe she said that you do not need to be having a conspiracy if everyone just thinks the same way. That is what we are finding with these economic rationalists: they all think the same way. That is the danger for the community because we do not have that kind of strongly articulated ideology to fight them with.

I would like to thank the parliamentary inquiry for coming to Melbourne and for travelling around—this is part of the public education that needs to be going on out there—and I would like to thank you for your thoroughness. I would also like to encourage you to come to the regional centres of Victoria and not just go into the major cities, because the regional centres have a crucial interest in this kind of inquiry. They are the ones who are suffering the most from globalisation, as the Moreland City Council's submission and the VLGA's submission would have pointed out. In Geelong, for example, with the textile, clothing and footwear industries, the car industries, additional problems with things like 24-hour trading and gambling have decimated our regional centres. I see the MAI as impacting upon that even more.

Senator COONEY—Belmont is in Geelong, isn't it?

Ms O'Meley—Yes, it is in Geelong. We have had some difficulty, as everyone else has, accessing information about the MAI. We have had a great deal of difficulty publicising the MAI to a non-specialist audience. I think it is a credit to the community that we have been able to get this information out into the public.

However, it is a very abstract issue and we are having to publicise this issue in the face of ideological campaigns by organisations such as the Business Council of Australia who have—compared with us—unlimited funding. Yet it shocked me to have heard today, in the submission from the Business Council of Australia, that it seems to be completely unaware of the key debates surrounding the MAI. That confirms to me that it is ideologically driven and that its position on the MAI is completely irrational. Where does that leave the community?

It should not be up to the community to have to prove that the MAI is not in the national interest; it should be up to organisations such as the Business Council of Australia and other business interests to prove that it is in the national interest. In terms of national interest tests, I am concerned that we might find it is in the short-term national interest, based upon opening up markets in the Third World but, in the long term, we are going to suffer anyway.

What the ideology of these economic rationalists is predicated upon is that the economic realm is somehow encapsulated and separate from the social, the political and the environmental realities in which the rest of us live. At a local level, for example, we should be able to favour local businesses and favour local labour. We should be able to enforce binding conditions on environmental standards and human rights.

If the treaty is signed, it will override all of the progressive treaties which Australia is already a signatory to, and that is of great concern to people within the Geelong community. Also, future generations will be locked into this treaty for up to 20 years. Why is it that people in government today think that they can actually sign away the rights of my generation and people younger than me to multinational companies? I think it has to be really emphasised that we will not be given the opportunity to go back on this. Once the government has signed it, we are stuck.

Also, it concerns us that the multinationals are given the opportunity to take advantage of our infrastructure, the infrastructure which Australian communities have put in place over several hundred years. They can just come in and buy it up at bargain basement prices because they have the buying power and the political power to do this sort of thing.

I think that this kind of an inquiry is the opportunity for the government to take citizens' concerns seriously, to think about the implications of such treaties, and to think about the possibility of now saying, 'Right, we have identified a concern in the community. We are seriously concerned about the almost unlimited rights of multinational companies even now, even before this treaty is signed, and now is the time that we should be thinking about taxing fairly and making them pay fair prices for entering into Australia.' Thank you.

ACTING CHAIR—I find myself in agreement with much, if not most—possibly all—of what you said until the last phrase, which was that it is time that we stopped giving multinationals unlimited rights in Australia and time they paid their taxation. What rights do transnationals or multinational companies have in Australia above and beyond Australian companies' rights?

Ms O'Meley—To my understanding, they pay extremely little tax—less than one per cent, I believe.

ACTING CHAIR—The Treasurer has addressed this in the parliament many times. He says that every foreign company operating in Australia pays the exact same tax at the exact same rate as any Australian company.

Ms O'Meley—If that is the case, then we should be taxing our own companies as well.

ACTING CHAIR—I see Alan Griffiths wants to challenge that. We will speak afterwards, Alan. What are these unlimited rights that multinationals have? I am not trying to put you on the spot; I want to learn something.

Ms O'Meley—I am not an economist; I am an ordinary member of the community representing a community organisation. It seems to me that a multinational company has economies of scale that they can use. For instance, they could go into Geelong and decide that they are going to put out of business all the local milk bars, or something like that. They would have the money to do that and there would be no way of stopping them.

ACTING CHAIR—That is fair enough.

Senator COONEY—I think there is some suggestion that they can trade between themselves in different countries. Was that what you were thinking of?

Ms O'Meley—Sorry.

Senator COONEY—I will come back to that. You go ahead.

Mr BARTLETT—You said that these hearings provide the opportunity for the government to take the concerns of citizens seriously. I want to assure you that this is the whole reason for this series of hearings; in fact, the reason for the establishment of the treaties committee is this government's desire to listen to the concerns of the public. Our commitment is to make the treaty-making process transparent. It is the whole reason that the committee exists, the whole reason for this series of hearings. I want to assure you that we are taking your concerns seriously.

Ms O'Meley—I appreciate that, but there is one comment I would like to make about that. In Geelong, we have lobbied our state parliamentarians, our federal parliamentarians and our councillors. We have had absolutely no indication that our representations have been taken back to this committee and that is of great concern to us.

Senator COONEY—What organisation do you represent? I do not know whether you told us.

Ms O'Meley—I represent the Geelong Community Forum.

Senator COONEY—Does that cover all of Geelong or part of Geelong?

Ms O'Meley—We are not a peak body but we are an organisation, a loose network of environmentalist workers and social activists.

Senator COONEY—I think you said that you would like to see the committee go into the regions.

Ms O'Meley—Absolutely. Organisations in Geelong—the Centre for Citizenship and Human Rights, the Geelong Trades Hall, the Geelong Environment Council, the Geelong Community Forum, the local branch of the Progressive Labor Party and Wainwright's Tree Environment Centre—are all aware of the treaty and are opposed to it. It would be good for you to actually hear their opinions.

ACTING CHAIR—Thank you very much, Ms O'Meley.

Mrs Gillespie-Jones—I am representing myself, and I think a lot of older people. I am 82.

ACTING CHAIR—Excellent. Please proceed.

Mrs Gillespie-Jones—I think the representative of the Labor Party has disappeared. He was the one who felt that everything was open and above board, that everybody knew the Labor Party was going to vote for the MAI if it got into power next time around, but such is not the case. It took me two months to get hold of what the Labor Party was going to do about the MAI. It required three letters, two visits to the office of my local member and then two months to get it. People do not know about it. I was speaking to the ABC in Sydney on these matters and they did not believe that the Labor Party was going to pass the MAI. It is quite clear from their statement that they are.

Personally, I do not see all parliamentarians as traitors, but there is a very big groundswell of opinion that does. I think it is because economic rationalists are wall to wall in the Treasury and wall to wall in the Reserve Bank. I do not know, if they had other economic input, if we would be faced with the mere possibility of the MAI being signed. Oh, Mr McGauran MP! Hello.

ACTING CHAIR—Hello.

Mrs Gillespie-Jones—You have been very kind to me in the past. We know each other now.

ACTING CHAIR—Most certainly; we are regular correspondents.

Mrs Gillespie-Jones—Yes, indeed. I have been studying economics for a year and

a half. I promised I would only read you one thing:

> Economics, we are told, is the dismal science. This is too kind. If economics is a science, so is sorcery. And if it merely is dismal, a train wreck would begin to look like a picnic. But here is the awful part. Economics does matter. Worse, economics policy gone wrong often changes the world.

I will not read you any more; I promised I would not. That is the sort of theory that is abroad, I do promise you. Pauline was a surprise to you, but the feeling is general and not confined to Pauline. Nobody wants the MAI out there in the community. In spite of you thinking that everybody knows about this, I only knew because I am a member of Aus Buy. I also have other sorts of tentacles, but it was through Aus Buy that I discovered your existence. There is a thought abroad that parliamentarians should not be trusted with signing these treaties. They have got us into an awful lot of trouble in the past. While it is not generally known how much trouble they have got us into, there is a feeling abroad that they can sign them but they should not come into effect until, at the next election, the populace at large gives its okay. That will pretty well stymie a whole lot of things, I would think. I think my time may be up.

ACTING CHAIR—Not quite.

Mrs Gillespie-Jones—I could always read you some more about what economists do.

ACTING CHAIR—No—always leave them wanting more. That is the best advice I can give an actor or a politician.

Mrs Gillespie-Jones—I think that is the best idea.

ACTING CHAIR—It is a delight to see the face behind the name now.

Mrs Gillespie-Jones—Yes. Yours, too.

ACTING CHAIR—You have given me many suggestions on science over the years. Thank you very much, Margaret Jones. Our final speaker, Mr Paul Rogers, is a late inclusion. Kerry Bartlett, our member from north of the Murray, is excusing himself.

Mr Rogers—I am involved as a property improver or developer in a number of ways—mainly in the building industry these days. I have been involved in financial services and financial planning for some seven years, so I have a fair idea of how money flows in the country and also of the jargon that people use in their own industry, which becomes quite complex at times. Therefore, people involved in financial planning have their own set of jargon, as do politicians. This jargon sometimes makes it very difficult for the common person to understand what is going on in this country. It needs to be explained—by politicians for politics, by financial advisers regarding finance. But,

basically, I believe that people in Australia do not know about the MAI. They really have a right to know a lot more. I only heard because someone told me about it. I have not seen articles in the press. Mind you, I do not follow the papers a great deal anyway, because I believe they are largely controlled by large corporations but small interests—in a concentrated form, perhaps.

Basically, I do not know a great deal about the MAI. I deserve to know more as a person in Australia. Our rights and our legal system are changing day by day. That happens through the political system which the public do not really have a say in. We vote in politicians, but how many people knew about this meeting today? There are no notices in town. Most of the front steps here have barriers to people. The doors to parliament should be more open. There should be more advertising to the public of what is going on. Where is the notice board out the front of this organisation telling the public what is being talked about today? How many people do we have here today? How hard is it for an 80-year-old woman to come into this place today? It must have been a difficult journey for an 80-year-old woman. It is an important issue. She would not have been here otherwise. She is an intelligent woman and I applaud what she said.

I do not think that people in Australia know about the MAI and I believe they deserve to know about it. Things happen abroad in our country at times without our knowledge, in many respects. I bought a packet of Vicks Vapordrops on the way. A good Australian company, yes? Perhaps? They are manufactured in Indonesia, a country where, obviously, the company would pay taxes to the government. The government is highly militarised and causing genocide in Timor. We all know about it. But what are we doing? We are importing their products. We are importing their labour. Our labour is going to be very similar under the MAI, isn't it? We are going to have people on who knows what wages, who knows what conditions? Throw the whole system open, but don't tell the public about it. That is the danger. Laws get passed in parliament all the time and the public simply do not know about it. We have a right to know. We have a right to have a say. Is this not a democracy here in Australia? We really deserve to know about these issues, to know what is going on and the public should be able to have a say. I know most of us are too busy. We have our own jobs. We are tied up in commerce, in business—just earning the money to pay the bills, to feed the kids, to make our way in life.

We trust the politicians in our country. We pay them highly. They have the best superannuation system that anyone can have in this nation. But that is only one thing. Politicians deserve to be looked after. They deserve to be respected, but people have the right to know about important issues that will change this country. We have the right to know and we have the right to have a say. There should at least be some sort of system in place where the public can be told—by way of a referendum or en masse—about what is going on. They simply do not know. Thank you.

ACTING CHAIR—Thank you, Mr Rogers. We have drawn to a conclusion now. On behalf of the committee, I would like to thank all those who are still with us who

made the more formal structured submissions in the course of the day. I also thank those members of the public who strongly, even passionately, put their points of view. As a result, it has been a very enlightening day. Some extremely strong points—even killer points—have been made by a large number of people which have not been lost on the committee. Thank you very much. I understand Mr Rogers's urgings for public consultation. It is of course a problem in every aspect of government administration.

For the purposes of this inquiry, we have developed a reasonable mailing list. Frankly, it is better than that of any other committee. It has been built upon those who have made submissions and those who have ever expressed an interest. We have written to them all about our hearings in their different cities and have put it on the Internet. Obviously it is inadequate. Unfortunately, we do not have a limitless budget to advertise all of our movements, but we take on board the need to involve people. The end result is that, of any parliamentary inquiry I have ever been involved in after 15 years in parliament, today has been the largest, sustained turnout. Thanks for your involvement.

Resolved (on motion by **Senator Cooney**):

That this committee authorises publication of the proof transcript of evidence given before it at public hearing this day.

Committee adjourned at 3.58 p.m.