COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

(Subcommittee)

Reference: Multilateral Agreement on Investment

SYDNEY

Friday, 21 August 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 McClelland
	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

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Present

Mr Taylor (Chairman)

Senator Bourne	Mr Laurie Ferguson
Senator Cooney	Mr Hardgrave

Subcommittee met at 10 a.m.

Mr Taylor took the chair.

CHAIRMAN—Before we commence the hearing into the Multilateral Agreement on Investment, would somebody like to move the resolution in relation to the Convention on the Rights of the Child?

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

That this subcommittee adopts the proposed executive summary of the report on the Convention on the Rights of the Child for tabling with the main report.

CHAIRMAN—I formally open the public hearing. This is the fifth public hearing into the matter known as the Multilateral Agreement on Investment, the so-called and often criticised MAI. We have taken evidence in Melbourne, Brisbane and Canberra. As many of you would know, we have already tabled an interim recommendation to executive government—which, of course, has the treaty making power—that no signature be forthcoming at this point in time.

I have to say that the evidence given to the committee on the public record since the tabling of that interim report has reaffirmed the wisdom of this committee's recommendation that the government not sign the MAI at this particular point in time.

I have a couple of comments before we start. One of the main reasons for that view is that there has not been enough consultation between and within government departments at the federal level, with state governments, even with local government and, importantly, with ordinary Australians. I have no reservation whatsoever in once again saying that this committee is strongly opposed to the signature of the MAI at this point.

I emphasise 'at this particular point in time' because it may very well be that, with further evidence and with further action at departmental levels and in conjunction with OECD authorities in Paris, it may be possible in the future for some signature. We are a long way away from that and, on behalf of the committee, I would like to say once again to the government which I represent that it would be foolhardy at this point in time to entertain even an initial signature, which of course is a signature ahead of which this committee normally gets involved.

We are normally involved between the first signature and the second ratifying signature. On this particular occasion we have been asked by the Minister for Foreign Affairs to carry out and make some recommendations in advance of first signature. As I say, we have done that and we have done that strongly. We would hope that in the very near future executive government would agree with our recommendation, that is, not to sign at this particular point in time.

[10.04 a.m.]

EVANS, Mr Ralph John Lancaster, 6 Green Street, Cremorne Point, NSW 2090

CHAIRMAN—With those few opening remarks, I welcome our first witness.

Mr R. Evans—I am here as a private citizen with a strong interest in the long-term future of Australia. I am a director of some companies in the venture capital field and a consultant part of my time, but I am here in a private and unpaid capacity.

CHAIRMAN—Would you like to make a short opening statement?

Mr R. Evans—Yes, thank you. If I may, I will concentrate as much on article V of the GATS, the free flow of capital, as on the MAI and perhaps come back to the MAI under the broader topic of globalisation briefly towards the end.

Article V of the GATS will provide for freer trade in financial services. In this country trade in financial services is pretty free as it is already. What I see as being the principal impact of article V of the GATS is its broad coverage, which one hopes to see extend eventually to all of the 132 countries of the World Trade Organisation and perhaps to future members such as China. It is in the breadth of the potential coverage of article V and the GATS in general that its value lies.

Financial services is an enabling technology and an industry in itself, but it is an industry that contributes to others. It makes possible the channelling of money in appropriate forms for all sorts of productive purposes and for social ones, such as housing and savings for retirement. A strong financial sector should assist Australia to be strong in many other industries and to fulfil its social goals better.

I would go further in fact than advocating the support of article V of the GATS and suggest that this committee and the government should put all possible support behind the idea of Australia being as competitive as possible as a centre for the provision of financial services to this part of the world. This is not a new idea. It has been published at various times and I have written on it myself. There was an article by John Hewson recently in the *Financial Review* making the same point.

The essence of the argument is this: we have a comparatively strong and sophisticated financial services sector in this country in comparison with others in our region of the world. Despite current setbacks, there is a fast growing economic region to our north, which has a growing demand for these kinds of services. It would profit us as a country and strengthen our financial services sector—which is valuable in its own right and for its benefits for other purposes—if we assisted it or did not stand in its way in becoming as competitive as possible and providing these services to our region.

However, there is a series of impediments self-imposed in Australia: things like stamp duties on securities transactions; FID and BAD on bank accounts; interest withholding tax; capital gains tax; and a tax regime for limited partnerships which are not internationally competitive when it comes to things like venture capital. It would be good to see those go. I am pleased that the government's proposed new tax package does include doing away with the bulk of those things—FID and BAD and the stamp duties on securities transactions—which I think is a good thing, and I hope that this committee would support it, even if some of its members felt unable to support the entire tax package.

I would like to refer to the theory of industry development associated with Professor Michael Porter of Harvard, which is very well known and has been around for about ten years. Professor Porter says that first of all a country needs to have its macro settings right—a reasonably stable currency, rule of law, et cetera—and then what will follow is uneven development. Certain parts of the economy will race forward and some others will not. That reflects partly comparative advantage but also the phenomenon of clustering, where you get a combination of demanding customers, competitive suppliers and various support services—training institutions, competitions, components suppliers, providers of IT services and the like—which provide a vibrant industry. Economists will recognise echoes of the theories of Alfred Marshall from a century ago which were based on geographic clustering.

We have an excellent example, for instance, of a Porter cluster in our wine industry. Another one is in lightweight fast shipbuilding, which is something few would have predicted a few years ago would have occurred in Australia, and there is another one in financial services. We have a pretty good example of a Porter cluster in financial services.

The thing about this theory is that nobody has worked out how to get one of these things started. Really there is a big gap in the literature and theory about how to start one of these clusters. But what it can say is that once you have one, it is a great asset for a country and you should do all you can in the interests of the economic development of that country not to stand in its way and, if possible, to help it. I think we have that potential in financial services.

My background is in business strategy, and the fundamental idea of business strategy is to study your competitor, whoever it may be, and organise to do better than the competitor. That is an idea that could well transfer to public policy. In this particular field we have a key competitor and that is Singapore. Singapore in turn is competing strongly with Hong Kong to be a centre for financial services for our region.

Singapore has put one of its absolute brightest people, Lee Hsien Loong, Deputy Prime Minister and Chairman of the Monetary Authority of Singapore, son of senior minister Lee Kuan Yew, in charge of this effort. There is no question that he is pushing a

campaign which thinks very competitively and thinks in terms of taking international business away from Australia and possibly even domestic business as well. People would need to go to Singapore to get their money for a corporate need or something like that. In a recent article he was saying:

> Until now Hong Kong had more critical mass, but Singapore has been able to catch up in areas where we have been behind like for ex trading. Now we are trying to build fund management. We are looking at other areas like developing a bond market. It is being run a little bit like a corporation.

I think you would be surprised to hear this sort of language from the mouth of an Australian minister.

Strangely enough, I would not necessarily recommend that we follow exactly the pattern of Singapore ourselves in doing this. While it is the most successful country in terms of economic and industrial development, it is a very different place from us. I think successful public policy has to be related to the culture of the country and the time in which it is working. I would suggest that, if we have in mind pursuing something like the growth of financial services in this country, we should look at an example which is closer to us in cultural terms, even if not geographically. I am thinking in particular of the Republic of Ireland, which has been very successful in recent years in building up its financial services sector as well as several others. I had an opportunity to work in Ireland 15 years ago on an industry policy project and I found it very interesting at the time.

So to sum up, I think article V of the GATS does not have an enormous direct impact on Australia in that we are pretty close to being a free-trader in financial services as it is, but it has some positive benefits. By joining it I hope we will join a large number of countries that will join and extend its cover around the world and therein lies a significant benefit. I would hope to see the government go further and help remove some impediments to Australia growing as a centre for financial services for the region.

Mr Chairman, if I may I will spend a little bit of time on the MAI before I stop. It has had some very shrill criticisms raised against it. The more strident ones remind me a little bit of the people who opposed fluoride in the water. They seem to see something terribly frightening and sinister in it. I do not see that particularly. However, as an old management consultant I keep looking for tangible gains from doing a change and I am a bit hard put to find the tangible gains that will result from the MAI.

I can think of cases where investment barriers have been raised against Australian companies in the Philippines, Malaysia and China, but none of those are members of the OECD and, therefore, are not going to be signatories of the MAI. The only case I can think of where it is possible that we would see a tangible gain quickly out of the MAI is in Korea, which is a member. There may be Australian companies trying to buy something in Korea at the moment opportunistically, I do not know. They may be helped if Korea signs the MAI, but on the one hand there are a lot of let-outs and conditions on the things

so the benefits may not be all that great. On the other hand, one can see some possible complications in areas where we see on our side foreign ownership as being a sensitive matter. I am thinking of telecoms, airlines, media, banking and real estate—traditional areas where foreign ownership is a sensitive matter.

So my private view is that the MAI is not likely to do us a lot of harm but it is not likely to do us an awful lot of good either. I see it as essentially a solution in search of a problem. I would be much happier to see the idea reborn in the World Trade Organisation, which instead of 29 members has got 132 members, including most of the countries that raise impediments that really are a nuisance for Australia. In the near term I think it is much less important than fighting trade barriers. There are a lot of trade barriers around the world and they really are a tangible problem, including those with the United States, for instance, that hurt Australia in many ways. I could go on, onto the subject of globalisation, but I have got a paper I will leave with you on that and I have got some thoughts on that of course.

CHAIRMAN—Thank you very much. I take this opportunity to formally thank you for appearing this morning. We welcome your input, albeit that you have not put a submission in but you appeared this morning at our request. Before I move on initially to the Fifth Protocol of the GATS, can I just say that even in our interim report we made the point about the WTO wider umbrella. I do not know whether you have read the report, but we do make the point. I personally—and I am sure the committee does too—agree with the logic that having an OECD grouping has the potential if you did not watch it to perpetuate have and have not groups of nations. First of all, we will cover the Fifth Protocol rather than the MAI. Have you got a copy of the national interest analysis in front of you?

Mr R. Evans—I have not brought it with me. I was sent one.

CHAIRMAN—There are 10 commitments spelt out in the NIA made by Australia. I wonder whether you might give us a few seconds against each of the 10—the Commonwealth bank and most favoured nation treatments—if you are able. If you can, please just quickly run through the 10 and make any comments that you would like to against all or any of those 10.

Mr R. Evans—They follow a general theme of providing, in that well-known phrase, ‘level playing field’ access to business opportunities in the financial sector. The general principle is that, by and large unless there is some specific reason to inhibit it, it is generally a good thing. The burden of proof is like the test of innocence in the courts. You have to prove a case against free trade rather than saying it has to prove itself each time. These 10 benefits are all, I think, in that general line.

CHAIRMAN—So you really just want to make a collective comment?

Mr R. Evans—I think so, yes, if I may, Mr Chairman.

CHAIRMAN—Do committee members have any questions on the Fifth Protocol before we go straight to the MAI? Okay, let us move on to the MAI then. The MAI as presently structured is a draft. I emphasise it is only a draft and I hope the public who are here this morning understand that it is only a draft and nothing has been signed at this point in time, which is not what some people would want you to believe. It is open and aboveboard; it is not in the shadowy dark corridors of the OECD in Paris. I understood you to say—correct me, if I am wrong—that, yes, there are no real problems, no difficulties, for Australia in it, but on the other hand there are no advantages. Is that because there are so many reservations, some of which have not even been expanded? Is that the point you are making?

Mr R. Evans—No, I wanted to say that there are few advantages and few disadvantages. I do not think they are very strong either way. The essence of it is about foreign investment outward and inward. It is an agreement being proposed among members of the OECD, the wealthy 29 countries of the world, excluding a few wealthy places like Singapore. I do not think that is in the OECD yet, is it? Singapore is a wealthy country.

Australia as a country, taking the output side, has businesses which have invested very heavily in the United Kingdom, America and a number of other places—predominantly OECD countries; France, for instance. The ability to invest in those countries is pretty open at the present time and I do not think that will be improved a great deal by the MAI. There are still definitely inhibitions, say, in the United States. The business that I deal with now needs to incorporate an American entity because American customers will not buy from funny places like Australia or Mongolia; they will buy from a local. You have to have So and So of America Inc. with a president and vice-presidents. It is just the way they work. The MAI will not fix that; it will still be the same. It is essentially a social or behavioural problem. So on the output side I do not see it as giving us a great gain.

There are investment barriers that are significant to us, as in Asian countries, where there is a smaller quantity but there are quite a lot of Australian companies wanting to invest in Asian countries. For instance, I can think of a mining company that has interests in the Philippines. It has done some exploring but there have been inhibitions to foreign companies, like Australian companies, developing a mine in the Philippines. You have to be majority locally owned. There have been changes going on to that and I am not sure what the new government is doing about it, but that has been an inhibition. That is the sort of thing that the MAI would change, but the Philippines is not a member of the OECD so it will not have any positive effect there. On the inward side, of course, it promises foreigners exactly the same rights as domestic companies in Australia. That is the essence of it, with a lot of complexities.

That is pretty much the case as it is at the present time, except for a few areas where the FIRB is active in making sure that the government makes a decision that perhaps a takeover is in the country's national interest. The areas are the ones I went through: media, real estate and I think airlines and banking are potentially significant as well. So perhaps there will be some issues that might be reasonably tricky for Australia to deal with, although I do not think they are mortal for us. They are of modest impact for us. So I see the benefits are small and the potential threats are fairly small, too.

CHAIRMAN—How realistic do you think it is for the OECD to be expecting signature when we read of major objections from the United States, Canada and France, supposedly based on cultural grounds? Is it cultural grounds, in your view, or is it something other than cultural grounds? The French have a funny way on occasions of masking, through another avenue, what they really feel.

Mr R. Evans—Culture is extremely important to France. Its diplomatic activities in Africa are largely to preserve the French language and culture and, through that, both a sense of importance in the world and some commerce. They sell a lot of cars and other things in Africa as a result, and they engage in wars to protect this. So I think it is very important in the case of France.

In other cases it is not so clear. In the United States, remember how Rupert Murdoch could not own television stations unless he became a citizen? I do not think they are culturally threatened—they threaten a lot of other people with their commercial kind of culture—but there is a sense of nationalism and protectionism there.

Mr HARDGRAVE—That is the point, isn't it, Mr Evans? Any conceptual fairness and any good intention that might be contained within the MAI does, in itself, in practical terms, come at the expense of people in countries watching their national sovereignty and their national laws being eroded. We run the risk of leaving ourselves wide open to be powerless if we sign this thing.

Mr R. Evans—There are of course lots of let-outs and exceptions being built in as various countries have tried to protect areas that they are concerned about.

Mr HARDGRAVE—But those let-outs and exceptions start to stack up and you wonder: if it so heavily pollutes the original intention of the document, what is the point of having the document?

Mr R. Evans—Indeed. It gets quite incoherent after a while.

Mr HARDGRAVE—Our trade laws in this country are heavily liberalised. There is not much that the FIRB ever knocks back anyway, so in one sense not much changes if we sign on to this thing.

Mr R. Evans—That is right.

Mr HARDGRAVE—But in another sense our constitution leaves us open to having changes forced upon us through High Court challenges. Would that be your experience?

Mr R. Evans—We did see one recently, in the challenge from New Zealand in television programs.

Mr HARDGRAVE—Closer economic relations seemed like a good idea and we were promised there would be no impact on our culture. Now New Zealand television content counts as Australian television content, which I find bizarre. I am sure almost every other Australian finds it bizarre, too.

Does the real problem with the MAI, in your mind, centre on the fact that there is such a narrow group of nations involved? You would much rather see this thing under a WTO kind of arrangement where it is thrashed out amongst 130 nations and, even then, it will probably end up with more exemptions which make the thing almost pointless.

Mr R. Evans—It will take 10 years, I am sure, like the major rounds of trade liberalisation that have occurred within the World Trade Organisation and its predecessor, the GATT. A lot of talking and a lot of thinking will take place, and that process that goes on around the world and makes people think about how these things work is as helpful as the end result.

Mr HARDGRAVE—When it comes to the countries that Australian companies would like to trade with or invest in but do not have the opportunity to because of those countries' internal decisions in foreign investment, would we have a lot to gain if more countries were more like us as far as trade or investment policies are concerned?

Mr R. Evans—Countries are not like us. That is not the way the world is. Japan, for instance—our number one market—is a very different society. They dress up in suits, but they have social structures and ways of thinking that are very different from ours. It is very difficult to invest in Japan, and I do not think that will change.

Mr HARDGRAVE—That is fair enough. Each country should be able to make its own laws, after all.

Mr R. Evans—Let me think about the implications of what you are saying.

Mr HARDGRAVE—The implication from me is that I was elected to the Australian parliament, as were all of my colleagues. None of us was elected to some international body, so I think we have a role to play to make laws to the benefit of our constituents. Likewise in Japan, I am sure that the Japanese parliament has the same

intention and therefore makes laws that benefit Japan. If they decide to make it difficult for foreigners to invest in Japan, that should not be a concern to us—just a fact of life.

Mr R. Evans—We have to think about whether it is to the benefit of the people of this country or, in their case, to the people of their country. I think in this case we have largely benefited from a free and open trading environment. We are a trading nation and we have largely benefited from it. I referred to Singapore before as the most successful country in economic development in our time. It is a very open trading environment.

Mr HARDGRAVE—But we have an open trading environment because it is to our advantage as Australians, not to Japan's advantage.

Mr R. Evans—It generally is to most people's advantage. Japan is a very unusual case, and I think the Japanese are having great difficulty changing gear from a very complex settlement that got them going from post-war ruins to the 1980s and is no longer working for them terribly well. Changing from that into a more open system is very difficult for them.

Mr HARDGRAVE—So you would put the MAI into the big question mark box rather than the tick or the cross?

Mr R. Evans—As the chairman said, a major concern of mine is that it is coming out of the wrong place. It would be better if it came out of the wider group of the WTO and allowed a broader discussion right around the world before it actually happened.

Senator BOURNE—With your knowledge of WTO rules, if the MAI were to give up its present form and then be suggested as part of WTO rules, what sorts of things would have to change with what is in the MAI as it stands?

Mr R. Evans—I think, because there is a much larger number of countries involved, they would probably start again with a clean slate. It is a separate organisation and they might just start with the principle and go from there and have 10 years of committees and discussions.

Senator BOURNE—That is far preferable, as far as I can see.

Senator COONEY—Have you looked at the suggested rollback provisions and the standstill provisions in the MAI?

Mr R. Evans—Not in detail. Is there any one you are thinking of?

Senator COONEY—With your knowledge of countries like the United States and European countries, do you think they will feel they can live with the concept of a standstill and a rollback in the laws that a country puts up? I was going to ask you particularly with reference to the Congress—I do not know whether Congress will have to

have a look at this; I suppose it will.

Mr R. Evans—I am sure it would, just like you do.

Senator COONEY—I was just wondering whether the provisions of their constitution are that they accept a treaty—if this is to be considered a treaty—and enact it in terms of a treaty. We do not do that. We tend to bring it into our domestic law.

What I am really asking is: what do you think the reactions would be around the world to a law that said, 'As far as changing regulations goes, that is out for 20 years or 15 years'—or whatever it is?

Mr R. Evans—The United States is the biggest one. It is very complex. There is a very strong tendency and commitment in a certain part of the American community toward free trade, but there are also some very strongly protectionist elements. In agriculture and military supplies, for example, they have a 'buy American' act. We may do a reciprocal deal on equipment for the RAAF, but it is pretty difficult to sell them something if they have an act that says they have to buy local—which you would not think they need, being by far the biggest and strongest country in that field in the world. It is very complicated and there is, of course, a very powerful political system there. I do not think that they would unequivocally accept such a thing as this any more than you do. They go through a similar process of thinking about it.

Senator COONEY—I know this is an agreement that is not in its final form by any means and that you therefore have not looked at it in ultimate depth, but from your contacts around the world have you had any reaction to it from, say, the United States, France, Germany or the other OECD countries? Have you picked up on any of that in your reading and in your contacts overseas?

Mr R. Evans—Yes, I see mentions of it in the press, and I guess some of those impressions are built into what I said earlier: I think it adds up to something that is really a solution in search of a problem.

CHAIRMAN—To take Senator Cooney's question a bit further, we have had a lot of public comment from individual Australians and from groups over the last year or so—I have to say, not most recently since we tabled the interim report. There has been a lot of public criticism, some of it misinformed. Nevertheless, some of it was very genuine concern about what has been happening. In your experience, is there the same sort of public comment in other countries?

Mr R. Evans—Yes, unevenly. But certain countries, like France, as Mr Hardgrave said, are very exercised about it and there has been a lot of discussion there.

CHAIRMAN—What about the very strong view in some quarters in this country

that an MAI impugns sovereignty? How do you react to that sort of comment? Do you think that is simplistic or do you think there is some substance to what some people are saying?

Mr R. Evans—Let us look at the very freest environments for trade and investment—say, Singapore and Hong Kong. Is there any doubt about who is sovereign in those two countries? I do not think so.

Mr HARDGRAVE—Mr Evans, I would like to follow up on that. This goes back to my earlier question. Singapore and Hong Kong have a completely different constitutional arrangement from what we have. The provisions within our constitution are being used, can be used and could be used against us. I am not a lawyer, but I believe there is a very good chance they could be used in a High Court challenge situation. Someone overseas, aggrieved about a ruling made here under this treaty, could simply turn around our national intentions, our national interest, in the interests of that particular foreign entity. I think that is one of the bases of the great failure of this proposal—the fact that our constitution is very open to this sort of use as a device.

Mr R. Evans—But businesses will pursue opportunities as best they can—

Mr HARDGRAVE—That is understandable, isn't it?

Mr R. Evans—and I do not think you should expect them to behave fairly. They will look after their interests with as much power as they can bring to bear.

CHAIRMAN—Do you think, for example, that Teoh and Blue Sky—the two High Court cases, one of which you made mention of—have further complicated the scene, particularly in relation to the MAI?

Mr R. Evans—I am only familiar with one of them. It certainly raises some very interesting issues for us to think about.

CHAIRMAN—That is Blue Sky, is it—or Teoh?

Mr R. Evans—It is the television programs one—Blue Sky.

Senator COONEY—Are you suggesting that sovereignty in Hong Kong and Singapore is subject to agreements such as the MAI, and that in that context their sovereignty is not impinged on, or are you simply saying that, as a matter of fact, their sovereignty is not impinged now, which is a different issue?

Mr R. Evans—Hong Kong is a bit complicated because it is a special administrative zone of China, but take Singapore, as an independent city state. The biggest industrial employer there is General Electric USA. They will watch the economics of

manufacturing and various other things in Singapore compared with elsewhere. They shifted making television sets out to Singapore then took it back to America and put it into an automated plant. They will continue to do that sort of thing. In some sense people may see that as threatening their sovereignty, although the nation will weigh up the totality of all of those kinds of things—and it does so. It has been very successful in courting foreign investment and in living and riding with it. But who owns the country and who has the right to influence its laws, for example, is not threatened at all. Singapore is very strong. It has a very strong sense of who it is and where its sovereignty lies.

Senator COONEY—That is the interesting point I want to make. In the situation you have described, Singapore will change with the times and if it sees an opportunity it will take it. Am I correct in saying that that is the approach they take?

Mr R. Evans—It is a long-term thing. For instance, they have saved a lot of money. They have a very high savings rate. That has helped them be strong.

Senator COONEY—I do not want to go into all of that. I thought you were saying that Singapore is in control of its own destiny and financial laws.

Mr R. Evans—That is right. Yes.

Senator COONEY—What would Singapore's attitude be if it were asked to sign a treaty where it did not have the ability to make the laws that it thought would best suit it?

Mr R. Evans—It is very hypothetical. They are not going to sign the MAI because they are not a member of the relevant body.

Senator COONEY—That is the point I want to make. I thought you were quoting Singapore as being an example of where a thing like the MAI might help.

Mr R. Evans—No.

Senator COONEY—You were asked about sovereignty and you quoted Singapore. It seems to me that that is not really an example of sovereignty being impinged—in fact it is quite the opposite.

Mr R. Evans—Perhaps I have not made myself clear. Singapore has a very free environment as far as trade and investment is concerned—as free as would apply to a country that signed the MAI—and yet its sovereignty is not impeded.

Senator COONEY—If you sign the MAI, the ability of the government to make laws is impinged. That is what has been put to you. As I understand it, you are saying that Singapore's ability to make laws is not impinged by any treaty or anything else.

Mr R. Evans—As far as I know, they do not have any laws that are relevant to what is going on in the MAI. They are already so free that it does not affect them.

Senator COONEY—Perhaps we could look at it this way: you are saying that there is no treaty or instrument that operates at the moment which in any way impinges upon Singapore's ability to make laws about financial matters.

Mr R. Evans—Not that I am aware of.

Mr HARDGRAVE—Should we be looking at changing our constitution so that these foreign affairs powers—these external powers—do not impact on our domestic laws? Are the MAI and other associated treaties of such a great benefit to this country that their misinterpretation or misuse through our High Court, as provided for under our constitution, in fact perverts their good intentions? Perhaps the problem is not so much the MAI but the provision within our constitution. That is a question, not a statement.

Mr R. Evans—I am not advocating the MAI. It does produce some complexities and it does not produce tangible gains that are all that great. Let us keep on talking about it and put it back into the forum where it should have been and have it work its way through the global system over a period of years.

CHAIRMAN—I have two final questions. The international instruments legislation still remains before the Senate. Do you have a view as to whether putting that legislation through will clarify the domestic situation in terms of the treaty making process, or don't you feel competent to make a comment?

Mr R. Evans—That is too technical for me, I am afraid. I am not familiar with it.

CHAIRMAN—The second question relates to consultation. I said in my opening comments that we had been critical of a lack of appropriate consultation in relation to MAI, in particular within government departments, and particularly within and between Commonwealth departments, in the lead-up to the present and even the previous draft. Would you, as a private citizen rather than as an official, agree with the criticism that this has not been thought through at official levels as well as it should have been?

Mr R. Evans—That did appear to be so. I am not working in Canberra and I am not an insider to that environment, but we were aware through international media that it was somewhere working its way through the system yet it had not explicitly been a matter for the national agenda here in Australia—public or within, to my knowledge, the confines of Canberra departments. It would have benefited from a wider canvassing earlier.

CHAIRMAN—If you were in the position of being the official in the OECD tasked with signing at this stage, would you be saying to the government that we should sign?

Mr R. Evans—These people do what they are told. If you are appointed to do the government's work there as a diplomat, you follow the instructions in your cable.

CHAIRMAN—Let us work the other way. As an objective bureaucrat, would you be going back to government and saying, 'We are not ready for signature.'

Mr R. Evans—Dare I say it, but that is a very hypothetical question. I repeat that I think this thing is poorly conceived. I do not know who thought of it or why it is on the agenda in this peculiar fashion rather than coming from the place that global treaties ought to come from.

CHAIRMAN—It is my understanding that you are saying it is not really in a format that is acceptable, in your view.

Mr R. Evans—If countries like the United States and France are not backing it, what is in it for us? Why would we go out on an extreme and be the protagonist of it in the absence of important countries like that?

CHAIRMAN—Thank you. You have been a great help.

[10.43 a.m.]

ROCHE, Mr Michael, National Manager, Strategic Planning and Review and Chief Economist, Australian Stock Exchange, 20 Bond St, Sydney, New South Wales 2000

CHAIRMAN—Welcome. Would you like to make a short opening statement?

Mr Roche—ASX made only a very brief submission on this treaty but we are very conscious of the widespread community interest and concern attaching to the draft treaty known as the Multilateral Agreement on Investment, or MAI. I would hazard a guess that few parliamentary inquiries have attracted nearly 800 submissions, mostly from members of the public.

That said, ASX's general approach to the MAI as stated in our brief submission is that international agreements which encourage the free flow of investment capital will be beneficial to the Australian economy, subject to appropriate prudential considerations. The fact is, Australia is heavily reliant on foreigners' savings to fund necessary investment to create wealth and jobs in this country. Increasingly, Australian corporations are generating wealth for Australian investors through investment overseas. In this context the MAI is intended to provide investors with greater certainty and confidence in considering investment in other countries. This will benefit Australian investors and the Australian economy generally.

I am not here to comment on the appropriateness of the MAI as the vehicle for achieving a treaty through the OECD as opposed to, say, a treaty through the WTO. ASX endorses submissions to this committee such as that by the Business Council which put the view that, by improving wealth creation for Australians, in the long run the MAI should lead to greater investment domestically and offshore. However, the Business Council's position relates to direct foreign investment, or FDI. ASX, on the other hand, is more concerned with foreign portfolio investments. I will turn my remarks to that.

ASX operates in a global environment for portfolio investment. Australian investors can and do choose to direct some of their savings on to overseas stock markets. Similarly, ASX attracts foreign savings into the Australian capital market. The latest figures for the end of 1997 show that foreign investors held 30 per cent of the value of equities listed on the Australian Stock Exchange. The reality today is that financial instrument trading no longer has regard to territorial boundaries. Foreign investors can choose which country's external deficit they will fund.

Cross-border flows of equity capital around the world were estimated by ASX to amount to a staggering $10 trillion a year. It has been estimated that one in every four stock market trades around the world each year involves a foreign share or a foreign counterpart. If Australia is to successfully compete for a share of those foreign capital flows to fund our investment needs—remembering that we do not save sufficiently to fund

our investment—we have to be able to offer foreign investors appropriate degrees of certainty.

ASX's submission canvasses some issues of specific interest to our markets. We set out three areas where ASX would seek reassurance that the MAI would not impair our ability to properly regulate our market. Those instances cover the necessary regulations in relation to foreign or remote members of the Stock Exchange, certain disclosure requirements for foreign listed companies and the listing of certain foreign companies. That said, our reading of the draft treaty—and we have only had access to the draft that was available earlier this year—suggests that our concerns would be met by provisions in the draft MAI to recognise necessary prudential requirements.

ASX has also been invited to comment on the Fifth Protocol to the General Agreement on Trade in Services. While it is true that the MAI first came to our attention not via Treasury but via, I think, Senator Murray, ASX was consulted by DFAT during negotiation of the Agreement on Trade in Services. We would have to congratulate DFAT on their consultative processes. ASX had no specific matters to raise in terms of liberalisation that we were seeking from other countries. However, ASX did agree to the inclusion in the Australian offer of a commitment to remove the most favoured nation treatment, which covered requirements for reciprocal access to membership of the ASX. ASX has no issues it wishes to raise today in relation to that agreement.

CHAIRMAN—I have two questions. Firstly, in relation to consultation, you made the point that ASX was very happy with the DFAT consultative processes in relation to the Fifth Protocol, and we are pleased to hear that—we mention that word over and over again. But what about consultation in relation to the MAI? You said that your first involvement was the latest draft of the MAI. Are you saying there was no consultation, again by DFAT or others, in terms of the development of that draft?

Mr Roche—I am presuming that the lead role was taken by Commonwealth Treasury. We had no formal correspondence from Commonwealth Treasury. I would suspect that it may have been different if it had come from DFAT given that they are regularly consulting us on a whole range of matters, many of which are of no interest to us as a business. They pay us the courtesy of giving us the opportunity to say no.

CHAIRMAN—Are you saying that, if ASX had been consulted earlier in relation to the MAI, the draft may have been better?

Mr Roche—No. As I think my remarks outlined, we are not fearful of the MAI. We do not comment on the appropriateness of an OECD treaty to achieve this objective as opposed to a more global treaty, although I have read that some have argued that the OECD vehicle could be a vanguard for opening up investment barriers in some non-OECD countries. I am not expert enough in that area to know whether that would come about.

CHAIRMAN—My second question relates to foreign investment. We have heard in the political process in recent months, and as recently as this morning on television, some further criticism that Australia has no need for foreign investment and that some of these foreign instrumentalities pay less than their due in terms of that investment. The committee would be very pleased to hear what you have to say within the ASX about some of that misinformation and fallacious comment.

Mr Roche—As my opening remarks would indicate, ASX believes that there is no way that Australia could close itself off from the rest or the world or pretend that we could operate as a growing country, generating jobs for our citizens, if we did not take advantage of the savings of foreigners. We do not save sufficiently for our own investment needs. In addition, Australian corporates are becoming increasingly global in their operations and are opening up new markets for Australia through their global investments. There have been many studies and I am sure the committee has been apprised of the benefits of overseas foreign direct investment by Australian corporates. I will not go through that debate.

That is in relation to direct investment. As I have outlined in relation to portfolio investment, foreigners tend to own, at any one time, around a third—30 per cent or just over—of the value of the Australian market. At the moment, that is $138 billion of the Australian Stock Exchange's total capitalisation as at December 1997.

Likewise, Australians invest overseas. About 15 per cent of the assets of Australian managed funds, superannuation funds and the like, are invested overseas. That percentage will grow as Australian investors seek diversity and better returns on a global basis. While there are swings and roundabouts with that, we expect growth in the overseas investment activity of Australian managed funds and of Australian investors directly who, via Internet technology, can access global markets from their homes. Likewise, the US and Europe are looking to the rest of the world for places to invest and are supplying valuable investment capital for Australian corporates to grow and create jobs.

CHAIRMAN—Do foreign investors pay their due share?

Mr Roche—I am not a taxation expert. In relation to portfolio investors, the arrangements are such that a dividend only leaves the country after the withholding tax has been taken out. In relation to foreign direct investment, we all know about the issues and the devices that multinational corporations will seek to use. It is always a battle between the tax authorities and the corporates to ensure that people pay their fair share. I think it would be wrong for the community to regard foreign corporates as being somehow different to any other tax-paying entity in Australia in terms of seeking to produce the most tax effective outcome for that entity.

CHAIRMAN—Does ASX support the double taxation agreements?

Mr Roche—We do, but we are concerned that in the current tax reform context they are a device which needs to be regularly kept up to date. We have seen some evidence that failure for them to be up to date is perhaps going to lead to some undesirable outcomes for Australia as a regional financial centre and as a home for large corporates. But the remarks of the Treasurer in recent times show that he is very aware of those issues and will be addressing them.

Mr LAURIE FERGUSON—You note on a number of occasions that your submission is, indeed, brief but you did associate yourself with the Business Council and you say that you are 'supportive of the thrust of the MAI'. Today you are essentially focusing very much on your particular interest. Have you given any consideration to wider issues and the criticisms that you know are to do with you?

Mr Roche—The criticisms, as I understand them, relate to the tying of the Australian government's hands to be able to properly pursue public policy interests of Australian governments. We have no objections to Australian governments making those decisions. It will be for Australian governments to negotiate through the interests of Australia, as through all treaty making exercises. We have not been drawn into this exercise by Commonwealth departments, nor have we actively sought to be drawn in, but our experience in relation to other negotiations is that we are given every opportunity to put forward to government exceptions where we seek to say that 'this treaty applies to Australia except in these circumstances'. I think it is a legitimate process for Australia to say: 'We want to protect our interests in relation to these matters.' They might be in relation to foreign ownership of the media or of banks or of whatever. We have a view about the desirability of those sorts of rules but we do not begrudge the government making those decisions, such as the foreign ownership limits placed on Telstra or Qantas and the like. There are great difficulties for us as a conductor of a stock exchange but at the end of the day it is the government's call and we work around that.

Mr LAURIE FERGUSON—But you have put in a submission—

Mr Roche—We were invited to make a submission.

Mr LAURIE FERGUSON—the slant of which is support, right? You are aware, as you noted—800 submissions—that there is a degree of criticism in the Australian electorate. Have you given any consideration to those concerns? Do you have a view that binding Australia, for instance, to 20 years is reasonable?

Mr Roche—No, ASX has not taken a view on that.

Mr LAURIE FERGUSON—So we do not leave anything unsaid, are there any aspects of it which you have seen comment about and which you do have concerns with?

Mr Roche—I have seen plenty of the debate and as a private citizen I have views,

but representing the Australian Stock Exchange, no, we do not have those issues. We believe that, the way the provisions of the treaty have been drafted, our concerns should be capable of being addressed.

Mr LAURIE FERGUSON—The nature of the reservations by Australia, you are aware of those?

Mr Roche—Not in detail, no.

Mr LAURIE FERGUSON—So you are not aware of them in detail, but of those that you are aware of, are there any that you feel are unreasonable, that Australia should back down on?

Mr Roche—That Australia should back down on?

Mr LAURIE FERGUSON—And basically not try to reserve on them?

Mr Roche—No, I think it is appropriate for Australian governments to arrange reservations to protect our interests and reflect the views of the Australian community.

Mr LAURIE FERGUSON—There is an argument that this treaty is desirable because, for instance, of a number of our neighbours, investment is not transparent, there are basically requirements to be involved with local partners, and there might be allegations that people connected with regimes might siphon off money, et cetera. That has given us a reason why it would be a desirable treaty. Are there any aspects in that direction for Australia? Do you feel that we as a nation require it ourselves?

Mr Roche—To be opened up to a greater transparency? The thrust of my remarks this morning was that it was more in the interests of Australians looking to invest overseas to be provided with greater transparency, as you say, and certainty for those investments in foreign jurisdictions. I am not saying that Australia is perfect, but I think Australia probably offers a fairly certain, confident investment location at the moment.

Senator BOURNE—My knowledge of stock exchange matters is spectacularly limited. On page 2 of your submission, you mention disclosure by foreign entities and three points in particular that you think would be helped by having a treaty such as the MAI. Would those three points be able to be rectified through Australian law itself rather than having to go into a treaty? Would we be able to regulate stock exchange matters so that we could in fact provide maintenance of an Australian share registry or transfer agent for an overseas company? I understand that is point 3 there on the top of page 2.

Mr Roche—The thrust of those first three comments in relation to access by, say, foreign stockbrokers, disclosure by foreign entities and the treatment of exempt foreign entities was more to say that ASX does have some provisions in the way we seek to

properly regulate our market as it would impact on foreign entities. That could potentially run up against the provisions of an MAI unless there was appropriate recognition of those arrangements. Our reading of the treaty is that there is probably scope within the treaty as drafted to provide ASX with the ongoing ability to properly regulate these aspects of our market. We sought to draw these out so that it was absolutely clear and was on the record.

Senator BOURNE—I see what you mean now. When you say that ASX needs the capacity to require disclosure, that does not mean that you do not have it. You do have it and you do not want it taken away.

Mr Roche—Yes, we would be concerned at the MAI impact on our ability to regulate our market in that way.

Senator BOURNE—It might be that it would take that away. Okay. These are the things that you would be looking at, for instance, if the MAI fell over, which I live fervently in hope of, and it came up under WTO or something like that. This is the sort of stuff you would be looking at.

Mr Roche—Sure.

Senator BOURNE—With any luck, WTO would be done by the Department of Foreign Affairs and we would all know what was going on right from the beginning.

CHAIRMAN—You don't really expect an answer to that question.

Mr HARDGRAVE—I was interested to note that it is roughly 30 per cent foreign investment through the Australian stock exchange. That means that roughly 70 per cent is domestic investment, if my school maths serve me right. I guess it is not well understood that Australia needs foreign investment with which to create the regime where we have jobs. Is that foreign investment coming at the expense of domestic investment, or is it simply a case that if it was not there a lot of things would not happen?

Mr Roche—It is add-on, it is not competing with domestic investment.

Mr HARDGRAVE—In other words, additional economic activity comes from foreign investment.

Mr Roche—What it is doing is filling a gap in the shortfall in domestic savings in Australia. It is also adding to the liquidity in the Australian capital markets. Having more buyers and sellers gives all investors greater confidence to invest in the markets and, the greater confidence someone has about the ability to buy in and exit a market, usually the cheaper the price of capital out of that market.

Mr HARDGRAVE—How does foreign investment today stand compared with,

say, 20 years ago? I guess if you go back 200 years ago it probably would have been 100 per cent foreign investment. How does it stand today?

Mr Roche—In my knowledge, the share of foreign investments in our markets has been remarkably stable at around that 30 per cent or one-third.

Mr HARDGRAVE—Over what period of time?

Mr Roche—I am only looking at the last 10 years.

Mr HARDGRAVE—So we have had stable foreign investment, which has created employment and industries that perhaps we might not have had if we did not have that foreign investment. Is that a fair summation?

Mr Roche—I would agree with that.

Mr HARDGRAVE—That foreign investment is coming on our rules, on our basis, isn't it? As a sovereign nation we are able to set certain rules and conditions. It would be the concern of the ASX, despite the fact that you may not have looked at the broad brush of community matters, that our rules would change as a result of signing up to this treaty. Would that be the ASX's concern?

Mr Roche—Our concern would be that Australia's approach to such treaties would erect new barriers to foreign investment. The way we read the treaty, the thrust is not so much to open up or further liberalise foreign investment into Australia, which is quite liberal, but to provide that certainty by way of a treaty to those foreign investors. So to the extent that we are not attracting some foreign investment because of the absence of such a treaty, and the absence of certainty that such a treaty may provide, there may be a benefit, but I am not aware that there is anything in our approach to foreign investment that is holding back foreign investment other than when government specifically regulates or legislates to place limits on foreign investment in certain industries.

Mr HARDGRAVE—Even then, the limits the government has imposed on the partial sale of Telstra and the completed sale of Telstra are well within the general limits that the markets provide anyway.

Mr Roche—Yes, it very much approximates the share foreigners would seek to have in that stock.

Mr HARDGRAVE—How would you rate Australia as a nation as far as its liberalised trade and investment scenario is concerned vis-a-vis those of other nations? Are we one of the most liberalised or one of the most unliberalised; are we in the middle or what?

Mr Roche—I would certainly rate us in the top quartile.

Mr HARDGRAVE—So, in other words, in one sense perhaps not much would change if you signed this treaty. You may have been here earlier when I raised the question of our constitution and the way foreign investors aggrieved by a ruling by government could use provisions in our constitution to argue the case that they are being unfairly dealt with. Would you have some concerns about that?

Mr Roche—I would not be able to comment on that. I am not sufficiently across that matter.

Mr HARDGRAVE—Would the ASX consider the way our constitution impacts on this agreement? You might like to drop the committee a note to give us your view, based on the constitutional situation. I think it is a fair comment to make that we have a unique constitution—we have one of the best constitutions in the world—but it does have within it a provision that could be used by others, I suspect, as a result of this. I would value whether or not you have a contrary or complementary view to that.

CHAIRMAN—You will take that on notice?

Mr Roche—Yes.

Senator COONEY—Have you looked at these standstill and roll back provisions in the treaty and the idea that once a person invests in Australia the laws should not change for a particular period? Have you looked at that or has ASX looked at that part of the proposed treaty?

Mr Roche—As I understand it, it is part of the certainty giving processes and that should be as applicable to Australian investors as it is to foreign investors.

Senator COONEY—It is. As I understand it, there is this roll back provision to take the impact of the law away from investment if possible. That is why I was asking whether ASX had looked at that.

Mr Roche—Not in detail, but in principle we are comfortable with that sort of approach.

Senator COONEY—Under this treaty if you have a greater liberalisation could you see a position where we would not really want an ASX as a regulator? In other words if you roll back the provisions that operate, if ASX did not have their regulatory power, you would have much greater freedom of flow.

Mr Roche—Perhaps I should clarify the role of the Australian Stock Exchange. We conduct a market in equities, equity options, warrants and the like, where companies

and investors can meet to provide capital one to the other and where investors can find buyers and sellers for those equities. What we regulate is the conduct of that market, both the people who participate in it and the companies that list on that market, and ensure they meet the continuous disclosure requirements. That is our role as a regulator. There is nothing in this treaty or in liberalisation of foreign investment per se that in any way goes to the question of ASX's role as a regulator of the market—

Senator COONEY—I thought it regulated according to legislative provisions, that there is a relationship between the Corporations Law and your regulatory activities.

Mr Roche—We effectively have some—sorry.

Senator COONEY—I was asking you if, down the line a bit with the standstill and rollback provisions, the ASX would have any objection to its role being modified?

Mr Roche—Can I answer in a slightly different way by saying that there is nothing in this treaty or treaties per se that should in any way impact on the way that we regulate the participants on our market.

Senator COONEY—I take it from your answer that the ASX would not mind if its regulatory role was rolled back under this treaty. Is that correct?

Mr Roche—No, that is not what I am saying.

Senator COONEY—I am not sure what you are saying, Mr Roche.

Mr Roche—I am saying that the ASX's delegated powers under the Corporations Law to regulate the participants on our market should in no way be impacted. Can I put it more clearly than that: there is no relevance to your question, as far as I can see, in terms of the role of the ASX as a regulator.

Senator COONEY—Have you looked at the roll back provisions? They mean that down the line there is a suggestion that regulatory provisions be rolled back. Does the ASX have a view about that?

Mr Roche—The fact that you are insistent that you believe there may be some impact—I will certainly go away and have a look at it.

Senator COONEY—Do that. Arising from that—if the MAI was introduced and you had the standstill and rollback provisions, depending on what they were, what would ASX's position be if its role was taken over by, say, the stock exchange in the United States or in Japan? Would there be any problems for ASX in that?

Mr Roche—The concept of an exempt foreign company that we refer to on page 2

of our submission does just that at the moment. There are companies listed on the Australian Stock Exchange whose listing we accept on the basis that we regard the regulatory regime under which they are governed in their home country as being sufficiently adequate. I do not think anyone regards the US Securities and Exchange Commission as being anything but at least as good as our regime in terms of regulation of corporates and such. So, a US corporate would probably readily find itself as an exempt foreign entity listed on the Australian Stock Exchange. That is, we are effectively recognising the adequacy of the regulation in their home country and their home exchange.

Senator COONEY—You would still want a few controls, as I understand from your answer to that question. Do you still want to keep some control over the regulation of companies here?

Mr Roche—We would want to able to say who was an exempt foreign entity, yes.

Mr LAURIE FERGUSON—On the broad question of roll back, et cetera, why should Australian elections largely become irrelevant, and changes of government or changes of views in regard to a variety of these kinds of issues? It means essentially that once you are in you are bound and there can be no variations. Would we see that in any other sector of the economy? Do we see, for instance, workplace relations remain as they were in 1900? Do we see it in regard to banking? Are you saying that banking in this country should not have been varied 20 years ago? Why should there be this particular protection?

Mr Roche—The position I actually put was that as long as there was equivalent treatment of foreign investors and domestic investors in terms of government policy impacts—yes, governments can change policies. I have got no objections to that.

Mr LAURIE FERGUSON—I might misunderstand the treaty but that is not the way I read what essentially is involved in this—you make certain exemptions, you make certain reservations, et cetera, and that is the end of the line. There is no ability for a future government to vary those.

Mr Roche—That is what I thought this process was about in terms of recommending to government the approach it takes to the treaty.

Mr LAURIE FERGUSON—You said in relation to Senator Cooney that foreign investment deserves certainty, as do Australian investors.

Mr Roche—Equivalent certainty to Australian investors, exactly.

Mr LAURIE FERGUSON—You are not necessarily rabidly supportive of the role of the roll back provisions?

Mr Roche—There is nothing rabid about the Australian Stock Exchange.

Mr LAURIE FERGUSON—No, but you are not fervent?

Mr Roche—We very much respect the rights of Australian governments to govern, and to make rules and laws on behalf of the Australian people, as long as they apply equally to all investors in Australia.

Mr LAURIE FERGUSON—Are you saying by implication that perhaps the current suggested provision is unreasonable?

Mr Roche—I would not go that far.

Mr HARDGRAVE—You said earlier something about appropriate degrees of certainty. I suspect that the most appropriate degree of certainty for a foreign investor is to know the country that they are investing in has a relatively stable political environment, that we are not about to see civil wars and great unrest, the deposing of a monarch or whatever. Elections in themselves are still part of the stable political environment. Is that reasonable?

Mr Roche—I would agree with that. You can see it in the current environment. In our region, Australia is regarded as a safe haven for what we have to offer, that is true, which are political stability, democracy, a good set of laws and the sound legal system. They are all very attractive vis-a-vis the rest of our region.

Mr HARDGRAVE—On that sort of basis alone, Australia is a very attractive place to invest and may not really get any great enhancements in those investments through this MAI.

Mr Roche—It cannot be certain that there would be additional benefits in terms of attracting investment to Australia. The thrust of my remarks was to point out that Australians do want to invest overseas, that investment overseas actually generates benefits back for Australia. It is that aspect that may be of benefit to Australia—the certainty that Australian investors have when they put their funds in other jurisdictions.

Mr HARDGRAVE—But most of the countries they want to invest in are not part of the OECD, will not be part of this agreement, so WTO should step in.

Mr Roche—I acknowledge that point.

Senator COONEY—There is nothing in the agreement which says that the Australian government must treat its domestic companies as favourably as it treats overseas companies, is there?

Mr Roche—I am not sure that it is put that explicitly. I could not say.

Senator COONEY—If an investor from overseas wants special provisions in Australia, the MAI does not stop that at all. Could you have a look at that? If you have got the time.

Mr Roche—Certainly, it is well known that foreign companies do seek concessions from Australian governments, state and federal, in planning investments in this country, and those concessions are often granted.

Mr HARDGRAVE—That would be reasonable from the ASX's point of view, given that foreign investment provides a premium on economic activity in this country.

Mr Roche—As long as those concessions are available to the entity that offers the most to the Australian public.

CHAIRMAN—That is why the bilateral double taxation agreements are so important. If they are right that is why they are important because they give certainty at both ends. The point that Mr Laurie Ferguson is raising is an important one in terms of reservations because for this committee, as you may or may not know, once a treaty is ratified with reservations a country cannot add further reservations.

We can withdraw those reservations, but the difficulty for a country like Australia in dealing with the draft as it is—and I think this was at the root of Mr Ferguson's question to you—is that there are so many reservations or exclusions or whatever you want to call them in there already that, once you get to ratification and you have a document, it is technically impossible or unusual for a country to then insist on further reservations. But we can withdraw reservations that exist. I think that was the point that Laurie was making. As there are no further questions, thank you very much, Mr Roche. You were very helpful.

[11.24 a.m.]

GLENNY, Major General Warren Edward, Chief Executive Officer, Austcare, 69-71 Parramatta Road, Camperdown, Sydney New South Wales

CHAIRMAN—Welcome. Would you like to make a short opening statement?

Major Gen. Glenny—Thank you, Mr Chairman. Austcare is grateful to address the committee. The committee, in a relatively short time, has been a relative force in ensuring transparency and accountability of the processes involved in Australia committing itself to international obligations, especially the MAI. I am personally pleased to have had a chance to appear before you. We have had some association in past lives, and, Mr Chairman, I understand that it is getting close to your last day. I wish you well and I also wish your committee members well. The contribution to the treaty process and this particular one has been credible.

It may be surprising that Austcare has an interest in turning to a trade agreement, as we are an NGO, but that is not uncommon when I look at the list of organisations that have made submissions. Neither I nor my organisation would claim any expertise in the finer details of economic philosophy or practice, or some of the matters that the previous presentation gave to you. Nor does Austcare pretend to have the capacity to pursue some of the broader issues within the subject.

Most of you will be aware that Austcare does not normally take an advocacy role in its work, though you will be aware that we have been active in relation to the campaign to ban landmines. Where it does become involved is when it sees there is a fundamental issue that may have a long-term effect on our constituency—refugees—and on the national interest. Thus our reason for the submission. Our reasons are also simple. We have limited resources, but we do owe it to the hundreds of thousands of Australians who support us to make a statement when issues such as the MAI may affect refugees and our donors in that sense.

Austcare is concerned about the MAI because we see it as having a potential to exacerbate the already desperate situation of many refugees in Third World countries. Most refugees, as the committee will be aware, are located in the very poorest of areas. Those areas are characterised by fragile economic situations, adherence to basic human rights and environmental protection issues. Refugees are in double jeopardy: they are outside of their countries normally and they are subject to the regimes of their host countries. We are concerned about the MAI because of what we see as its potential effect to distort the balance of wealth and power globally at the expense of basic welfare, social, cultural and environmental issues, particularly of the less developed countries which have got less capacity in the international scene to represent their own issues.

Specifically, Austcare is concerned about the fact that the agreement has been

drafted without the participation of countries likely to be affected downstream. It is quite clear from the scope of the text that the intention is to set a standard which will exert pressures towards compliance by other countries, particularly less developed countries. Those are the very countries that are restricted by their capacity to regulate, and they should be able to regulate in their national interest. There are profound implications for civil, political and social rights—that is, the use of child labour, protection of forests and other issues. We cannot believe that there would not be implications in the Australian scene.

We believe that the agreement—until this committee and the community at large started to become aware of it—did not take on some of these assessments of domestic and international interest. Therefore, Mr Chairman and members, while in my opening remarks we commend you for your role in asking a lot of questions, many remain unanswered and they leave doubts as to whether any response now would simply be a matter of patching the garment which should really go back to the cutting table and start again if it is to start again.

A week ago I appeared before Treasury—one should not say one appears before Treasury; Treasury invited me to have an afternoon with them. I related some personal issues that suggested to me that my staff and I should take it up. When I talk about transparency, I have been involved in the army too long where great plans have been kept secret, where great reorganisations by government or defence have been kept secret until they have been leaked and all the good intentions have gone out the window as rumours became paramount. I think this is the same with the MAI.

I have also come out of the corporate world. I was in a rather big corporation in which I saw aspects of corporate behaviour in governance that finally the courts of this land saw that does not convince me necessarily that big corporations have the most altruistic of motives. Sometimes you cannot blame them for that. Their responsibility, as they see it, is to shareholders.

I referred earlier in my opening statement to the countries that will be affected. The countries that we aid have enough difficulty now coping with big NGOs or other governments as they try to set their priorities which may not be in line with the country. I am talking in the millions or hundreds of millions. The MAI multiplies that out and the effect on those countries dramatically. I said to Treasury that there are plenty of obligations on countries and the recipients but that there are very few obligations on the companies, the multinationals. It is a one-way exchange.

As part of our interesting discussions we talked about exemptions, and almost anything that we raised in the submission they suggested could be an exemption. If you took the 700-odd submissions received by you, Mr Chairman, and your committee and multiplied them by all of the exemptions that all of us talked about, you would wonder why we have gone through this whole routine at all. I am not sure that exemptions with

roll-back and compliance over 15 years would be as firmly set as is possible.

I think the agreement by way of definitions and its process has been poor. There is a balance and a responsibility one way only. That does not apply to the multinationals; it applies to the companies. Treasury was good enough to suggest that pressure to perform on companies will be part of their structure of being part of the European Community or any other arrangements. I do not think it has any power or real ability to implement it. I think there is a possibility of undermining responsibilities of governments towards their constituents, and I do not talk only of overseas governments. I heard some of the questions that were related to the Stock Exchange. We certainly have a concern as to how we would regulate internal process regulations for the betterment of Australians rather than some corporate organisation. I touched on the implications of child labour, environmental degradation, public health standards and things right down through the whole fabric of our society.

I would like to make it clear that Austcare does not dispute the value of foreign investment. It helps developing countries if it is properly structured in generating wealth and employment. I think the key there is 'if it is properly structured and regulated'. It is not all that many months ago that we looked at the practices of some of the multinationals dealing with shoes which we as a nation even took an interest in. Therefore, what we are saying is that the MAI does not appear to be balanced. It does not appear to have had a sufficient process until the community, through your committee, started to take some interest in it. I am sure committee members—because a number of you serve on other parliamentary committees—will be aware that I have appeared before parliamentary committees on defence issues. There has been no-one sitting over there and there have been about four submissions. There are 700-odd submissions in this instance. If you accept just that fact, there is tremendous interest, and a lot of interest is common across the themes, however they are presented.

I conclude by saying that Treasury claims ownership and carriage of it in some senses. Within the territorial nature of government I ask: does it have the authority or does it exercise the authority to bring the whole thing together? Foreign Affairs should have a key role because of our external affairs and treaty obligations. It seems to have been relatively low key for an outsider spending more time on refugee issues than the MAI.

There are other departments that seem to have had scant regard for the dissemination of useful information that could be handled by all of us out in the community rather than just within government. We suggested—and at least it proved that Treasury had read our submission—that Prime Minister and Cabinet have overall responsibility for bringing it all together under one head, putting aside the responsibilities of this committee, Mr Chairman. Treasury had a different view to that, as did I.

I conclude therefore—and thank you for giving me the opportunity to make an opening statement—by saying this: our last recommendation, which is the last paragraph

in our submission, I think covers a great deal of it. But it does not cover all the overseas detail, as do the other recommendations. In that paragraph, I say:

Australia must not surrender internal government with all the checks and balances of its current democratic system—

and we will go to an election on 17 October—

and its inherit accountability . . .

CHAIRMAN—Do you know something that I do not know?

Major Gen. Glenny—Only that a number of places we had organised for refugee week have cancelled because they believe there will be greater priorities in Canberra. Following on from that recommendation, we do not believe we should give away that accountability, those checks and balances, to further the aims and objectives of non-accountable financial corporations, having no national obligations or social, democratic or cultural standards. We accept their place in the world; we do not accept that they should be at the top of the pecking order. Mr Chairman and committee, thank you.

CHAIRMAN—Warren, as always, I personally thank you for a very balanced presentation. Warren Glenny and I, for those in the public gallery who do not know, have had a good working relationship over the last 10 or 11 years since I have been in the parliament. I have a lot of confidence in what he has to say; it is always very objective. I know that my time in the parliament may be limited, but I also thank you on behalf of the committee.

Without falling into the trap of being too self-centred, I think this committee has, in fact, injected into the processes a degree of participation, of consultation, particularly for people who are sitting here today, that we have never had before. There are some even within the parliament who do not accept that and who want to shoot from the hip in terms of some of these things, and particularly in relation to the MAI. I think if one person in particular were a little more interested in some of these issues, she might join some of the committees and might understand a little more about the issues. She may, as a result, not be so simplistic as she is in some of these.

Nevertheless, as I said in my opening remarks, there is a very large measure of genuine concern, rather than uninformed concern, in relation to the MAI. In particular, we welcome the input from the NGO sector. This committee takes evidence from not only departments of Commonwealth, state and local government but also the non-government organisation sector and ordinary Australians, such as those who are sitting here today who have appeared before this committee on many, many occasions.

This gives me an opportunity, ladies and gentlemen out there particularly, to make

a point that Major General Glenny has raised. I just want to make the point that, irrespective of what might be said by some who purportedly are within the political process, this committee is not a mouthpiece of government. This committee will make objective assessments and recommendations to government. So, please, to those of you who take the view that the whole process is just a rubber stamp, it is not a rubber stamp. I hope that this morning's hearing in itself will prove this to some of you—and some of you may be difficult to convince and perhaps I am misreading some of you.

But I think the point to make is that anything that is entered into under the new treaty making processes will only be entered into in the national interest. I cannot make it any stronger than that. This committee will be involved; the parliament will be involved. Yes, the treaty making power still lies with the executive. But I think it would be a very brave executive that would fly in the face of a very, very convincing argument and recommendation, as indeed we have made in the interim report on MAI, that this not be signed at this particular point in time. I just wanted to make that point because Major General Glenny as given me the opportunity to do so.

I make another comment about Treasury officials: I think they must have had their happy pills when they spoke to you, Warren; they must have read our first report where we were very critical of not only Treasury but also a number of other government departments. Of course, that criticism has only been reflected in subsequent hearings, I have to say, in relation to the MAI.

You are quite right that this particular draft—and I emphasise that it is a draft—is very unique in that it does not only involve a nation to nation situation; it involves individual entities like NGOs, like commercial entities. That in itself is very, very unique. That makes it very important that this committee deal with it on that basis.

Senator BOURNE—I would say how well put together the submission is, and I am so pleased that you had such a good response to it from Treasury. You mention under 'Transparency' the other agreements that Australia is a signatory to, and I think a lot of them would have to be far more basic than this. Could you nominate the ones that you think would be the absolute basics of agreements that would always have to take precedence, just in case this falls over and comes up again somewhere else?

Major Gen. Glenny—Thank you. I should acknowledge that my ACT manager did a lot of work on this and had carriage of it. So I am speaking to it, and I agree with it by way of my statement.

With the question of transparency or what you do, it is difficult. I think the process is getting better. But, if I go back to Treasury—and Treasury were courteous; in the hour, I had the opportunity to talk for 10 minutes, which will probably be reversed at this time—they had a view which could not be supported by documentation that there was transparency; that our financial regulations, foreign investment, would stand unique

because it is a national interest and a sovereign issue.

But, even with my limited experience of it—and the committee will be far more deeply knowledgeable about this—that does not appear to be true, because it goes from the top spectrum of transparency or accountability right down into local government, into the NGOs, as the Chairman said, to individual organisation identities.

Financial integrity and transparency of agreements, as such, must be maintained. If a multinational were to move outside of the guidelines or best practice, it has been said that the European Community ought to be able to apply a sanction in response. But that is five or six years down the track. That is not transparency or agreement at this point in time. That is just a means of saying, 'We've looked at those issues'—and I would not like to get into the *Tax Pack*—'and we'll address them when the need is there.' Most of the people who have made submissions say that, with the lack of transparency to date, genuine concerns—such as, 'All right, we'll exclude this,' or 'We'll ensure that there is a return of pressure to the multinationals'—are going to be there.

In answer, you would really want to be spelling out now, as an addendum, an annexure to the regulations or however it is formed, that these things are going to be prescribed. You would have, from your interests, a number of issues that you would prescribe in the national interest, and there may be a number that I would prescribe—and I would not like to list all the ones that I would. But if this is to proceed, there is the question of how you ensure the checks and balances are there that people just loosely throw around as being there. But, as it goes through the process, they just drop off the perch and are not there. So you are left with the agreement, but with none of the checks and balances that your question implies.

Senator BOURNE—Just for a free kick, would you like to mention what you think of rollback and standstill clauses?

Major Gen. Glenny—A short time in the investment community is that of five-, 15- and 20-year notifications and withdrawals. That is a long time in the life of people with whom we deal where there is a need today and tomorrow for sustenance and to work in a proper environment or an environment that is as good as it can be in their country. Too many financial pressures can be impacting on countries with whom we deal, and those financial pressures may be bigger than the gross national income of that country.

Last Friday I talked about Cambodia, and Treasury asked me whether I would come up a grouping of nations into that of Singapore, Malaysia or Thailand. But there are any number of countries in that second layer that still have considerable difficulty in coping with the poor aspects of multicultural activity—and I am not referring to the good ones; I would perhaps be a small 'l' liberal in that sense. But they just do not have the power, the constitution, the strata of government and committees and so on to ensure that the national interest is protected. So, even when Treasury brought me up into that level of

countries, any of those would still face major problems.

I think the other danger is: all right, if you have First World countries—that is us, the developed countries, those with large capital bases—in it, having the pressure to draw up the next level, what happens to all of the countries that are then affected that are excluded—and perhaps it would be good to be excluded in that sense—that are out there that just do not have the economic power, clout, international influence to change one dot or comma on it?

Senator COONEY—Has Austcare read through this? I am following on from the point of whether anybody has gathered it together. Reading now a sentence from an introduction to Australia:

The possible application of the MAI to measures under the jurisdiction of the Australian States and Territories (and the expansion of this schedule to cover their non-conforming measures) will need to be assessed in the light of developments in the MAI negotiations. Accordingly, this schedule is without prejudice to the application of the MAI to measures coming within the jurisdiction of the States and Territories and the reservations that may be necessary to cover their situations, including, for example, in relation to privatisations and monopolies/state enterprises/concessions.

The point I am trying to make is that this draft has interesting concepts of federalism and what have you. I am just wondering whether anybody from Austcare looked at all this to see whether or not it had some adverse effect on the states as well as the government; and, if so, how that might affect your work, if at all.

Major Gen. Glenny—As I said in my opening comments, no. We did work on this and we do believe—we made these statements—the effect of it cascades right through. Even that clause that you were good enough to read out covers so many aspects, questions and brackets on and off that you wonder where it is going.

There is another point that I would make about where it is totally coming from. It is not a national or world body that is bringing this to the fore, in many senses; it is an organisation that, in itself, in not 'responsive', shall I say, to the UN—we think that there is a UN value in it—the UK government, the US or whoever. It is a grouping which operates to different rules from our national government, our state governments and our local governments. In actual fact, if you look at the mix of government systems—as you have in your varying responsibilities—there is such a mix of government systems that that clause there where you start is terribly interesting. There are cantons in Switzerland, municipalities and shires in Australia and the different processes right across. I go back to my opening comments: if you make that many exceptions to cover every nation's own justifiable self-interest, what are you left with?

Senator COONEY—There does not seem to be anybody who is actually in control of the thing. It seems to be spilling out in all directions and people make exceptions. As you say, in the end you wonder what it is all about in any event.

Major Gen. Glenny—That organisation will not be voted in or voted out if the thing goes wrong. It has got a time frame, but our refugees will not live beyond the 20-year withdrawal or pick-up issues on it.

Senator COONEY—Have you had any feedback from the various places that you have contact with overseas?

Major Gen. Glenny—No, not really because we would want to get input from countries that we are not highly visible in—Thailand and the reasonably stable ones. Of course, it is beyond the people we are dealing with in Somalia, Bosnia, Mozambique and some others at this point in time.

CHAIRMAN—Warren, to what extent was Austcare involved in the lead-up to the previous draft or this draft? Was there any involvement at all? Were Austcare's comments sought by Treasury?

Major Gen. Glenny—No.

CHAIRMAN—So consultation was a big zero?

Major Gen. Glenny—Yes. I think any number of departments were off doing something. Unfortunately, I think a lot of it was internal to their process rather than external to reach out to the community. That was unfortunate. I think that also produced a lot of the emotion and anger over the nine or 10 volumes. People suddenly started to hear by radio, et cetera, rather than by government process or information. It took on a monster appearance that started to get reaction. Then the departments started to react. Treasury was courteous and wished to pursue the issue, but that was after all your hearings and after all the submissions. It is at the wrong end of the information and decision chain, I believe. It should have been a long way out at the beginning of it.

CHAIRMAN—I think you were here when this point was being made: does Austcare have a view about scrubbing the MAI under the OECD umbrella with a few observing nations and moving into a more multilateral forum? Provided that that was simply transparency of investment—whatever the definition of 'investment' might bring—would that satisfy you? Would you be more relaxed if it were in a more multilateral setting?

Major Gen. Glenny—I think yes. In answer to some of the questions that the committee asked earlier, it needs to be multinational or broad. There needs to be accountability of the carrying organisation, in some sense, so that it is not business carrying it, driving it and having the priorities, but rather government or—I am getting outside my territory, almost—world trade organisations or the UN.

I read somewhere that 18 years or so ago the UN picked up on this issue, but

never pursued it to the degree it has been pursued since 1995. There must be accountability and transparency and a system of checks and balances as part of that accountability, so that the obligations on states, governments, NGOs or individuals are matched by the obligation on the corporate world. If the playing field is level, and it has the checks and balances that any of us have grown up with, I would be far happier than the way it appears to have burst into our national knowledge.

CHAIRMAN—To this point?

Major Gen. Glenny—Yes.

Mr LAURIE FERGUSON—I do not in any way decry your organisation having a wider agenda, and you mentioned landmines, et cetera. Are there any aspects of this specific refugee issue that you might think are worth amplification here today that we might not have considered, whether it is internally with refugees coming to Australia or the push factor from other countries? Would you like to develop the refugee aspect a bit more?

Major Gen. Glenny—The world at present, as the committee is aware, has large movements of refugees. With natural disasters or small scale internal conflict, that is not going to ease. You will then start to see the influence of the corporate need for stability, availability of work force and a rule of law within an environment. You can almost start to cocoon the world into islands of what I have just described with the refugees outside of that island.

There are enough international conventions that should protect refugees with the goodwill of the nations. If you then start to overlay and remove some of the national or international obligations through business needs and pressures, those lowest on the totem pole will be the ones who suffer rather than those further up the chain.

CHAIRMAN—Any further questions? Thank you very much for that. It is very important in a lot of these things, whether they be bilateral or multilateral, and it is surprising the degree to which NGOs are important in the consultative process. That is one thing that we have found in the albeit limited life of the committee over the last 2½ years. We have been heavily involved in the NGOs and we thank you for that.

Finally, you mentioned Cambodia. I hope you are aware that on Monday I will be chairing as chairman of the foreign affairs committee the seminar on Cambodia in Parliament House in Canberra. I hope Austcare was invited to come along to that. Would you like to check? We would be delighted to have you along. It is a full-day seminar from 10 until four in the main committee room in Parliament House in Canberra sponsored by the Joint Standing Committee on Foreign Affairs, Defence and Trade, Foreign Affairs Subcommittee, and we will be having quite an interesting day's discussion.

I have just come back from three weeks in Cambodia. If you would like to be represented, it is free. I am sure if you rang Lieutenant Simon Gould—who is the seminar's coordinator as Chief of the Army's fellow this year in Parliament House—he would be delighted to have Austcare representation. I would be very surprised if at least the ACT office was not already invited. If you can come along, I would be very pleased to see you.

Major Gen. Glenny—I will pick up on that and make the necessary arrangements. I thank you and the committee.

[12.02 p.m.]

ARNOLD, Mr Clive, Chalmers Street, Sydney, New South Wales 2000

CHAIRMAN—We cannot have a lot of people coming up here this morning because we have a very structured morning. We have about 10 minutes before we are due to hear the next witness. I am happy to hear what you have to say, as long as it is relevant. Would you like to make a short statement?

Mr Arnold—Yes, I will. I went to some effort to put this submission in and we got a reply that it had been received. We got a reply a week ago that they had lost it. You talk about a public inquiry, but is it a selective public inquiry?

CHAIRMAN—Let me come back on that straightaway. No, it is not a selective public inquiry, and I regret if something was lost. The inquiry secretary does not know anything about it. If you give us the details, we will check into it. Of course, it is not selective. It is not selective.

We cannot have everybody who has written a submission to this inquiry appearing before us, because it would just be unwieldy. In terms of the overall hearing, depending on the geographic area, in Sydney we thought we had picked a selective group. You have a few minutes to say your piece, so please say it.

Mr Arnold—I will not take long. I want to clear up a couple of points. The first one relates to the OECD and WTO. All my information has come off the web sites. William Weatherall, the director of the OECD, has made it quite clear that the multilateral agreement will be run by the OECD without any connection to the WTO. He makes that quite clear. As to the question of whether it is going to expand from the 29 to 132, this is the man who is running it and he makes that quite clear.

CHAIRMAN—In the evidence that was given, all the witnesses were suggesting is that the OECD forum is not the appropriate one, because it is 29 nations with four or five observer nations. A number have said this morning that that generates a perception—rightly or wrongly—that you are likely to generate a two grouping approach in the world, the haves and the have-nots.

They were saying that it would be more appropriate for something like this, if there is to be a multilateral agreement on investment, to be done under a more multilateral forum, and some of them have given the example of the World Trade Organisation. In fact, we made that very point in our interim report. We have not suggested it should be the WTO, but we have said that that would be more representative of the world of nations, rather than a selective group like the OECD. Does that answer your question?

Mr Arnold—I agree, but that is not the case; the case is the opposite of that. It

will not be involved with the WTO but people seem to imagine it will be.

CHAIRMAN—Why do you say that?

Mr Arnold—Weatherall states quite clearly that there will not be any connection with the WTO. He is the chap that is running the show. I have got the Web sites here if you want them, but I should have it in the submission there.

Mr LAURIE FERGUSON—I think what has been suggested is that, if there is such an international revolt with regard to the international negotiation process, this could be an alternative, regardless of what Weatherall thinks about anything.

CHAIRMAN—That is all we are saying.

Mr Arnold—I understand that.

CHAIRMAN—That is what witnesses this morning were saying.

Mr Arnold—I will tell you what I am concerned about. I belong to the bottom level of Australians, those with minimal income. I do quite a lot of work but I do it all voluntarily, so I do not get paid for anything. I am speaking about the bottom row of people: pensioners, people on welfare et cetera. What we are concerned about is that the MAI governs governments, not corporations, as you are well aware. The agreement has a 20-year lifespan—

CHAIRMAN—Let me interrupt. That is wrong. As I said in response to some comments that General Glenny made, this draft MAI agreement is unique in that it not only is a government to government thing, which almost all treaty arrangements are, but also it involves entities, whether it be non-government organisations like Austcare or whether it be individual commercial entities. That is the big difference. So you are incorrect in saying that. Guidelines is not just between governments; the big difference in this one is that it is between governments and individual entities, which is very unusual. That is what is proposed.

Mr Arnold—What I meant was that it is an agreement between unelected billionaires and governments and the people have not got any say in it. As an ex-trade union member, I say that we cannot even put in a submission on it. We are excluded from it. The multimillionaires in the United States and the government are the only two bodies, according to what they are telling us about the multilateral agreement. If it is not that way, I would like to know how it is.

CHAIRMAN—That is why this process that we are having this morning and your ability to sit up there and make the comment is so important. That is what this process is all about, to hear those comments. Quite apart from your submission being lost

somewhere—

Mr Arnold—You have lost the submission.

CHAIRMAN—I regret that, but I do not know anything about it.

Mr Arnold—I have got two witnesses here to that effect.

Mr LAURIE FERGUSON—Can we get that voted in as a submission?

CHAIRMAN—We will do that. We will formally vote on that.

Mr Arnold—I have got a section here which is absolutely horrifying—you people will shudder when you read it—about what has happened under NAFTA, which is the predecessor to this particular agreement that there is a possibility of being signed. NAFTA is unbelievable, what is happening on the border: the wealthiest country and the lupus rates are the highest in the world; rampant tuberculosis; children born without brains in their heads—

CHAIRMAN—Let us put it this way: give us now a copy of your submission—

Mr Arnold—I am not going to give you this one—it is the only one I have got left. No way, mate.

CHAIRMAN—We will get a photocopy of it. Before you go, we will take a photostat of what you have got there and we will formally introduce it into the evidence. I can assure you that it will be taken on board in terms of this inquiry.

Mr Arnold—I would love to read it, but it would take me half an hour to do that.

CHAIRMAN—The committee secretariat will take a copy of it.

Mr Arnold—I want to watch while he copies it.

CHAIRMAN—Gee, these trade union officials. Thank you.

[12.10 p.m.]

ISBISTER, Mr James Wallace, Strategic Alliance Specialist, National Campaigns, Amnesty International, Private Bag 23, Broadway 2007

LAUBER, Ms Sabina, Member, Legal Network Member, Amnesty International, Private Bag 23, Broadway 2007

SULLIVAN, Mr Rory, Convenor, Business Network, Amnesty International, Private Bag 23, Broadway 2007

CHAIRMAN—Welcome. The committee has received your submission. Do you have any editorial changes that you would like to make to the submission, or are you happy with what it says?

Mr Isbister—I just want to ensure that there was an appendix attached to it entitled 'Human rights guidelines for Australian business'.

CHAIRMAN—That is fine. Would you like to make a short opening statement?

Mr Sullivan—Yes. First of all, Amnesty International would like to thank the joint standing committee for the opportunity to present evidence here today. We also commend the recommendations made in your preliminary report recommending that extensive consultation be carried out on the Multilateral Agreement on Investment. We would like to provide an overview of our submission and to highlight what we see as some of the key issues on the MAI.

First of all, Amnesty International is a membership organisation which basically campaigns on human rights issues. Our major focus includes freeing prisoners of conscience, ensuring free and fair trials for political prisoners and abolishing the death penalty. In addition to those specific campaigns we have a promotional element on human rights. In other words, we are encouraging governments, businesses and individuals to act to promote and uphold human rights principles, such as those articulated in the universal declaration on human rights.

In terms of human rights and trade, Amnesty International does not want to stop trade. We are not here on a principle that trade is bad or that trade adversely affects human rights. Our position on the MAI is that trade has implications, both positive and negative, for human rights, and our submission needs to be read in that light. Our position is that any international agreement relating to trade must act to protect and uphold human rights principles.

Our specific concerns regarding the MAI have been outlined in the submission. To summarise them briefly, first of all, we are concerned that the MAI provides business or

transnational corporations with significant rights to invest in countries. However, it does not impose corresponding obligations on those organisations. It appears to preclude the ability of national governments to impose obligations on such companies to actively uphold human rights. Secondly, we have concerns about the dispute resolution mechanisms in that it appears the proposed model for dispute resolution relies on closed door dispute resolution without providing opportunities for NGOs, such as Amnesty International, to participate in these dispute resolution mechanisms.

We see the MAI as an opportunity. Many of the trade treaties over the last number of years have not explicitly addressed the issue of human rights. Our position is that we are concerned that increasingly transnational corporations are being given rights, yet traditionally the subjects of international law are our national governments or our nation states. International law is not moving with the increasing role that businesses are playing in trade and in human rights issues.

For your information, we had a meeting with Treasury last Friday at which we went through and discussed our submission. Again, we certainly view Treasury's willingness to discuss this issue with us as a very positive development. However, we see it as very much the start of a dialogue rather than one meeting being the completion of consultation. A number of concerns have arisen as a result of that meeting. The first is that Treasury indicated that they are not going to articulate a formal policy position or even a list of issues that they will consider when they go to the OECD in October. We have some concerns that the consultation or the meeting we had with them will be seen as satisfying all consultation requirements. We have concerns that that may not be evidenced in the position that they take, which is representing the Australian government.

The second issue is that Treasury appear to be imposing deadlines on the MAI negotiation process. They suggested to us that there is a meeting of ministers at the end of next year and that they want to have the MAI ready for that. In terms of deadlines, we do not really mind because deadlines can help to proceed issues, but we are concerned that the deadlines can be seen as being fixed and could potentially lead to certain issues being rushed through or not being given the type of due consideration that an agreement of this type warrants.

To summarise our position on the MAI, we have three major issues. The first is that of negative implications in that it restricts the ability of government to meet its obligations under international human rights law. For example, if products are made in other countries and the manufacture of the products has had associated human rights issues, it appears that there is no way Australia can impose restrictions on those products. Similarly, for multinationals which have subsidiaries or which are involved in activities which involve human rights violations, again, the ability of the government to impose restrictions because of those violations of human rights issues is undermined within this agreement.

Secondly, we see the MAI as being a real opportunity to actively involve multinationals and transnational corporations in creating raised awareness and another pressure for improved human rights in the world. Companies such as BP and Shell have recently articulated codes of conduct on human rights which go beyond even the kinds of things which Amnesty International would expect from business. We certainly see that there is at least a move amongst business towards recognising its responsibilities and perhaps even taking a lead on some of these issues. I suppose they are very much a small minority of the total number of organisations that are involved in international trade, but at least it is a starting point. The third issue is that of national sovereignty, which is the ability to impose restrictions on foreign investment or on companies acting overseas. We think the MAI compromises this sovereignty. That concludes our formal presentation.

CHAIRMAN—Thank you very much. In terms of the consultation with Treasury, everybody seems to have been having meetings with Treasury in the last few weeks. Some would suspect that it might have been as a result of our first interim report. Is that the first consultation that took place with Amnesty in terms of the MAI?

Mr Sullivan—Yes.

CHAIRMAN—On the time scale, the committee takes on board your comment about the next round of officials' meetings being scheduled for October. As I understand it, the next ministerial round is in about April-May next year. Without discussing it amongst ourselves, I think the committee would agree that under no circumstances—and it is very consistent with our recommendations in the interim report—would we want that time scale to necessarily drive something that would be imperfect and unacceptable to anybody. I think you can rest assured that that is what we would be saying.

At the end of this session I will make a couple of comments about where we might go from here in terms of this inquiry, bearing in mind that maybe this parliament has a limited life. I will make some comments about that, but I can give you some assurances that we would be reiterating what is already in the interim report; that it is premature to be considering anything at this stage that is substantive. The ASX, Major General Glenny and others have made the point that in the text at the moment there are more exclusions or exemptions than substantive text, and that does not make it a very strong text. I think we can give you that assurance even at this point in time.

Mr LAURIE FERGUSON—I have a question on this suggestion of a monitoring mechanism in the OECD. What faith can we have in the internal mechanisms of the OECD to actually come up with something worth while? Can you develop for us the financing of it and how it is going to operate, et cetera?

Mr Isbister—There is some concern that, in the preparation of the MAI, a lot of thought is being given to the barriers to foreign investors being able to get fairly into particular countries, et cetera, but no thought is being given to what the impacts might be

of expanding that investment on, particularly from our point of view, human rights. We are proposing that, in affording those rights to corporations, there has to be similar recognition of what obligations or code they must meet. Following on from that, there should be some sort of monitoring mechanism—whether the OECD is the most appropriate body for that or not.

We are saying that, up until now, no thought has been seriously put into that issue. We are not proposing the technical way that it may be done, but we are saying that some serious thought needs to be put into that.

Mr LAURIE FERGUSON—Given their determination on this agenda, their mechanisms, the way they operate and how they are run, I would question that. It might be nice to have a few words with them or to have them put together some kind of statement but I doubt their reliability in monitoring it.

Mr Isbister—That is probably right. We are saying that the countries that are negotiating the deal should be taking that into consideration. If Australian negotiators do not think it is an appropriate mechanism, what should be there? What would be most appropriate? That is what we are really emphasising. Up until now no real thought has gone into it. Thought has gone into what we need to do to ensure that foreign capital is able to freely cross boundaries in particular circumstances.

Mr LAURIE FERGUSON—Who is going to 'show flagrant and consistent violation'?

Mr Isbister—Look at the well-known example of Shell in Nigeria. If this was an agreement to go beyond the OECD, the argument would be that it is for the Nigerian government under its own national legislation to deal with Shell. We are arguing that that is not acceptable or effective. In drafting up an agreement which is affording these rights, companies like Shell have to be prepared to meet basic human rights principles and obligations. That is what we are basically arguing for.

Mr LAURIE FERGUSON—I have no dispute with that. I am just questioning the mechanisms and whether any reliance can be placed on the OECD. I am essentially asking who is going to decide these violations—who is flagrantly abusing them.

Ms Lauber—I can address that from a legal perspective because that is my area of speciality. We currently have in the world some fantastic mechanisms which have established human rights standards and mechanisms for monitoring and trying to enforce those standards. At the same time we have various international institutions around the world trying to go on their own and reinvent the wheel. Perhaps the OECD is trying to do that with the MAI. Amnesty International is most concerned that current international human rights standards are enforced and are part of other international agreements. I would not encourage the OECD to try to reinvent the wheel on international human rights

standards because we have some great ones. What we need to do is tie them in together.

I do believe that suggestions have been made at the level of WTO negotiations to tie ILO agreements to international trade agreements. I do not see why that is not possible with the MAI. The ILO already has monitoring mechanisms for that. The UN also has monitoring mechanisms for international agreements that exist.

Our concern is that the MAI affords international corporations incredible rights. Look at the text of the MAI; it goes far further than any agreement that has come out of WTO, APEC or any other international trade group. If we are going to afford international corporations those rights they must have corresponding responsibilities in the same way that a country wanting to join the European Community must sign the European Convention on Human Rights. There are rights and, at the same time, there are obligations. It is very easy to look at which obligations they should be because they already exist. All we are saying is that they should be tied in together.

Senator COONEY—Have you looked at the processes whereby you can litigate your rights under the MAI?

Ms Lauber—I have had a look at what I think are called the 'dispute handling procedures' where international companies would be given the right to challenge any domestic law in an international forum as being anti-competitive, and that would be enforceable in a domestic court.

Senator COONEY—I think what it says is that you can enforce the agreement either in the local courts or you can go to an international body. There is a mechanism for putting that on. Do you think Amnesty International would like to have those sorts of mechanisms available to it to enforce rights in a country?

Ms Lauber—Speaking from a legal perspective, Amnesty International would be very concerned with the dispute handling procedures that have been proposed under the MAI. Australia over the last 200 years or so has developed an incredible range of common law and legislation which accommodates Australian concerns and Australian rights and responsibilities. In the last 20 years, for example, we have been dealing with the Trade Practices Act—

Senator COONEY—I was not thinking of Australia, though. I was thinking of enforcing them overseas. As you know, it is not only Australia that is involved; it is procedures overseas, as well.

Ms Lauber—Are you talking about Australian companies enforcing—

Senator COONEY—Yes—or Amnesty International enforcing rights in overseas countries.

Ms Lauber—Are you saying that Amnesty International would have rights under the MAI?

Senator COONEY—No, I am simply asking if you would be pleased to have such rights. That was the question.

Mr Isbister—For Australian corporations that might be investing overseas?

Senator COONEY—Yes.

Mr Isbister—Yes, that is exactly what we are arguing for. There needs to be clearer rights within the MAI which hold corporations accountable.

Senator COONEY—I am trying to clarify whether the procedures set out here, if they were operative in a country—whatever country; I will not name any country—would be to the liking of Amnesty International.

Mr Isbister—As it is presently put, no, because there is nothing within the agreement which actually holds corporations accountable for issues such as violations of human rights.

Senator COONEY—No, that is not what I am saying. I am talking about the mechanism. They talk about arbitral tribunals, suing the local courts or consolidating multiple proceedings—those sorts of mechanisms. Have you looked at those? Have you got any comments on them?

Mr Sullivan—In principle, I guess we would certainly like to see that the findings are public, that hearings are held in public and that NGOs are given standing to bring cases independent of national governments. The kinds of mechanisms that have been debated in international courts and so on are probably the kinds of frameworks that we would be looking for in this particular issue.

Senator COONEY—I think you have anticipated what I was going to ask. No doubt you would see this as resurrecting something out of the wreck of the MAI, but I wonder whether those dispute settlement procedures as put out in this draft could not be used to enforce civil or other rights in overseas countries.

Mr Sullivan—Potentially. There certainly could be a framework along those lines.

Senator COONEY—If the NGO had the rights the multilateral corporations have under this you would be fairly happy with that, wouldn't you?

Mr Sullivan—Probably, yes. But, along with our rights to take cases like that, we certainly would also expect to have the responsibility for the findings, the submissions and

all those sorts of things to be made public, not just the decision. So, if there were suitable standing provisions and suitable documentation, both for the basis of the case and the decisions made—

Mr Isbister—The other problem with the dispute mechanisms is that they are primarily focused on looking at holding nation states obligated regarding their responsibilities under the MAI. For example, if it is seen that the Australian government, or whatever government, is discriminating against a particular corporation or foreign investor, they are able to bring that up in dispute mechanism against the country. Our concern is that there is no similar dispute mechanism for or monitoring of what transnational corporations who flagrantly violate human rights can be held accountable for.

Senator COONEY—I suppose the reason for that, within this context, is that it is governments that are going to pass laws that may inhibit. If you had multinational companies that were inhibiting rights, in an arbitral system one of the options would be reasonable, would it not?

Mr Sullivan—Yes.

Senator COONEY—In clause 121 it says:

> The arbitral tribunal shall notify the Parties Group of its formation. Taking into account the views of the parties, it may give to any Contracting Party requesting it an opportunity to submit written views on the legal issues in dispute, providing that the proceedings are not unduly delayed thereby. Any Contracting Party requesting it within thirty days after receipt by the Parties Group of the notification to the tribunal's formation shall be given an opportunity to present its views on issues . . .

I am saying that there is some sort of potential in all of this. Perhaps you would disagree that it should be carried forward in a document like this, but there are some concepts coming out of this MAI that may be worth developing.

Mr Sullivan—On any kind of agreement like this, an effective dispute resolution mechanism is essential. Arbitration is, in many ways, the most cost effective and rapid way of solving a lot of environmental disputes. In principle, we think it is an integral part of such an agreement. We would have concerns about—

Senator COONEY—The agreement itself?

Mr Sullivan—No, even about arbitration necessarily being the primary means of solving disputes. To go back to Ms Lauber's comments on monitoring, one of the issues for NGOs generally is that we will probably not have the resources to effectively gather all the information we would require if we were to bring a case. We would find it very difficult with our resources as a membership type organisation to accumulate the type of evidence that would stand up in a case like this. So there are also some broader equity

issues associated with dispute resolution.

Senator COONEY—So your resources would not be anywhere near the resources that a multinational company would have?

Mr Sullivan—There is that issue but also, if you are dealing with a case specific issue, it will be the people who are involved in the case who will have the most information. There is also the access to information issue, and the onus would be on us to ferret around and gather information. There are evidentiary issues—which I am not sure we need to go into at this stage—that identify, as a general principle, that there are equity and access to information issues that the absence of effective monitoring, irrespective of how that is done, makes our job difficult.

Senator COONEY—I suppose that would be one of your problems with this agreement, that if there were insults to human rights around the various parts of the world it would be very difficult to effectively do something about them when you were up against the country plus the company.

Mr Sullivan—Very much so.

Mr HARDGRAVE—I state for the record my membership of the Amnesty International Parliamentary Group.

CHAIRMAN—Same here.

Mr HARDGRAVE—Probably everybody here at the table is a member but I thought I would state mine, for what it is worth. I am interested in the use of human rights as a mechanism to refuse investment in the sense of a nation such as ours saying to a company wishing to invest here, 'Yes, we like foreign investment in Australia but we understand you have a record that is not appealing as far as human rights violations are concerned in your conduct elsewhere.' Would you support that kind of a mechanism within the MAI?

Ms Lauber—Definitely. We discussed this earlier. The MAI will effectively prevent the Australian government from properly regulating against that kind of activity. For example, if you have a company that has a subsidiary in another country that is violating human rights or perhaps produces material in another country that is in breach of child labour standards, there is no way of legislating to prevent that company from investing in Australia. That would be anti-competitive under the MAI.

Mr HARDGRAVE—Invariably there are some household names that might leave little to desire, I suspect. When we were conducting our very effective inquiry—it was effective because the government, to its great credit, adopted our recommendation on the use of antipersonnel landmines—it was somewhat astonishing to learn that there were

some very well-known household names that were making components used in landmines. Yet we have no way, as a civilised society if you like, of condemning them in any real form. So you would like to see the MAI extend the use of human rights concepts, apart from what you have been talking about today, perhaps to not take investment? I am not saying we would rule investment out, but we might—

Mr Isbister—To be able to regulate or discriminate against corporations that have been shown to flagrantly violate basic ILO or ICCPR treaties.

Mr HARDGRAVE—Would you hazard a guess as to what sort of an impact that might have? Would we lose a few investors if we wanted to enforce that right now? I do not really want names unless you feel bold enough.

Mr Isbister—It is really hard to tell at the moment because there is absolutely nothing in place which is monitoring whether corporations meet what we understand to be basic international human rights principles. In hazarding a guess, I would say that it would make a significant difference in the number of resource based companies in Australia, both Australian owned and foreign. As you said, there are probably a number of household names through retailers et cetera that are questionable.People know the cases of Nike and a lot of those in the foot industry.

Mr HARDGRAVE—This is where child labour is being used?

Mr Isbister—Child labour is being used or the working conditions of workers in those particular factories do not meet basic standards—all of those sorts of things.

Mr HARDGRAVE—There have been charges laid in recent days in Brisbane by authorities against a couple of fashion houses—their names have been suppressed so I have no idea who they are—apparently using child labour in certain parts of Brisbane. We could even find ourselves as a nation running the risk on that sort of an application too.

Mr Sullivan—We do not necessarily expect that the MAI is going to take the place of existing international law on human rights. That is not what we are suggesting here; what we are suggesting is, firstly, that we ensure the MAI does not override any of those provisions and, secondly, that we tighten up the whole area of international law as it applies to companies. We see this as an opportunity to bring those issues forward and to ensure that some of the mechanisms which could be used—and we are not saying they would be used at all, but it is the big stick that is there if you ever need to use it—are available if it is decided that a case is serious enough to warrant it.

We see the MAI in many ways not necessarily solving human rights issues or being the definitive framework on human rights issues but as establishing certain frameworks that can then be used. In other words, you are using investment as one of the tools to encourage companies to improve their performance on human rights.

Mr Isbister—There is no question that international trade has impacts on fundamental human rights and that has not been considered at all in this agreement.

CHAIRMAN—I wanted to make a couple of comments in relation to the gentleman's comment about the thing being lost, and I will come back to that in a moment. As a general comment, in case some of you do not come back this afternoon, because of the question mark over the time that this parliament has to run, obviously we are going to be constrained in terms of public hearings on the MAI. As I said in my opening comment, we have already tabled a very strong recommendation in the interim report. People should not go away from this hearing with the misconception that, simply because the parliament may or may not be prorogued, this inquiry will die. It will not. If we do go to the polls in the next couple of months or so, I can give assurances that this subject will be reconvened in the next parliament. At that time, people like the gentlemen here will be afforded much better time to appear before the committee.

It is only because of the limitations that we have picked these groupings, to get a feeling for the issue, rather than individuals. In Brisbane there were a number of individuals and in Melbourne there were a number of individuals, but there are now limitations on time. So it is not any sleight on people like yourselves. Individuals have every right to make the comments and submissions they have and we will take that all on board.

The submission to which Mr Arnold was referring was No. 821 and was received on 4 June 1998. It will appear in volume 10. There was some confusion because it came in handwritten and had to be typed to go into the volumes of evidence.

Mr Arnold—Of course you understand that poor people like us have not got computers and things, so they are handwritten.

CHAIR—The point I am making to you, Mr Arnold, is that it was not lost; it was in the safe hands of the secretariat of the Treaties Committee. It will be in the appropriate volume.

Sitting suspended from 12.40 p.m. to 1.30 p.m.

EVANS, Mr Graeme Wheller, Policy Resource Coordinator (International Treaties), Australian Council of Social Service (ACOSS), Locked Bag 4777, Strawberry Hills, New South Wales 2012

CHAIRMAN—The committee has received the ACOSS submission of May 1998. Do you have any technical amendments or other amendments to that submission?

Mr G. Evans—No amendments as such, but in my remarks I would like to add somewhat to it.

CHAIRMAN—All right. So you would like to make a short statement?

Mr G. Evans—Yes, thank you very much. The basis from which ACOSS's concern comes is stated on page 6, where it says:

> The reason for ACOSS involvement is quite straight-forward. It is central to our role that we support economic development of conscionable character equitably distributed within and between countries. International investment can be, and often is, a major contributor to economic development. The issues of concern to ACOSS are the character of the investment and the distribution of its benefits, not whether it happens as such.

That is quite fundamental to our position. It leads on to the three questions that were also stated on that page which are of great concern to ACOSS:

(a) would the proposed treaty be germane to social justice questions as they relate to the Australian workforce or to those not in the workforce?
(b) would the proposed treaty be germane to social justice questions as they relate to the workforces or citizens of other countries, including third-world countries?

We do not believe it is appropriate for the matter to be looked at purely from an Australian viewpoint and from the Australian interest viewpoint. We think there is a wider context. We believe the third relevant question is:

(c) would the proposed treaty be germane to issues of intergenerational equity?

ACOSS is concerned to see equity achieved both within the current generation and also between generations. I am sure that is common ground to everybody here.

The framework of our approach to international instruments is set out in part 1 of our submission. I think it is not necessary to canvass any of that, but I do stress that it is important to see the MAI in the continuing context of the development of international instruments. At page 5 you will see that ACOSS has responded to some of the gloom generated as represented by earlier heady concerns. We do not see those as valid in themselves, but we do see them as a very strong indicator of the need for more and harder work in the development of this instrument. I have now sat in at a number of days of your

hearings and I have been very impressed by what I think is your concern that there be more and harder work on this instrument to make it a beneficial instrument.

It is very important to recognise the draft nature of the present proposal. I think the committee has done that. I think the community more widely, at least until recently, has not been doing that. I think that has been quite a problem. The draft nature of the present proposed instrument and the need and the appropriateness of change to it I think need to be underlined very strongly. I was impressed by the evidence given today by Austcare and Amnesty International. I think that indicates that a number of specialist organisations are adopting the view that there is need for more and harder work and a need for, and appropriateness in, there being change to the present draft.

One of the things that we hoped would be helpful to the committee was the quotes we gave from two commentators that we selected. Although they came from prima facie similar cultural backgrounds, they were on opposite sides of the world and they were five decades apart. We thought the similarity in their views or the common threads were very important. Marjorie Griffith Cohen, who is a Canadian, has commented on the absence of international legislation and international standards equivalent to those that have been progressively developed in domestic levels in most countries over a period of time. We think that is a very important notion. We think that there is a need to develop and to apply internationally measures of the quality that has been developed progressively at the national level over a number of decades. We think that is a central idea of great importance. She says:

> Canada [and Australia!] could show leadership internationally by not simply supporting the needs of only international business, but the needs of the people of the world as well.

We think that is a phrase that ought to resonate and one of some considerable importance. In our materials we have brought the material from Cohen and Starke together by saying:

> Raising world living standards, ensuring full employment, contributing to the maintenance of international order . . . these are common threads linking Starke and Cohen although they wrote on different sides of the world and nearly five decades apart . . .

Starke has, as we indicated in that submission, indicated the frame of approach that Australia five decades ago had and we think that is an important way of gathering perspective for the exercise as a whole.

The three issues that we have addressed in our submission that I would like to refer to at the moment are: firstly, the question of the forum in which negotiations should take place. We think that the OECD really has, if I may say so, disqualified itself from being a suitable forum for negotiations to continue. We contemplated the WTO. The view we came to was that, although on the advice given to us there is not yet a precedent for it so far as we can establish, there is nevertheless no reason why the recommendation we made should not be adopted.

We think in the character of the matter, further work on the MAI should be under the auspices of ECOSOC itself, the Economic and Social Council, because the Economic and Social Council is in a position to bring together a range of specialist inputs at the international level including IMF, ILO, UNEP, UNESCO and UNCITRAL, the UN Commission on International Trade Law. We think that ECOSOC would be a very suitable auspicing body and it has the status, the standing and the central role for it to be legitimate to bring those specialised agencies together in that way. It is also a body that has accredited NGOs at the international level, so that is a further reason why it should be suitable.

We do believe that the matter should not be continued under OECD auspices. Having it developed under the auspices of ECOSOC will also widen automatically the range of parties participating internationally and, given the importance of the instrument, to have a wider range of parties participating internationally in a more open situation is very important.

In our existing submission on page 12 we list the matters the proposed treaty should deal with as we see it. I think they have a lot in common with the other evidence that you have received. We are not claiming uniqueness for these, but we are reinforcing what has been said and from your questioning the conclusions I think you may well have arrived at anyway. We would press for general recognition in the proposed treaty of the common human experience—that rights, obligations and responsibilities normally go hand in hand. As well as that general principle we would press for specific identification of the obligations and responsibilities of international investors in order to set them out in the proposed instrument alongside the statements of their intended rights. We think that the treaty should address both.

We think that there needs to be a recognition that social justice and intergenerational equity are values of civilisation itself and not just matters of passing convenience and that they need to be protected as such. We believe that recognition is needed that it is appropriate for domestic laws about such matters to apply to all, including local and cross-border, investors without discrimination. We see as the central underlying idea of the MAI that, with the exception of certain nominated circumstances, laws should apply in common to local and overseas investors. We see that as a valid idea. If wage levels or the environment need to be protected, it needs to be protected from both local and international investors equally. That is a principle underlying a good MAI. That is a good principle.

There also need to be criteria for distinguishing between the protection of the pecuniary interests of locally owned domestic firms at a particular point in time and protections of the wider values such as biodiversity, sociodiversity and cultural diversity. What is done in the name of the latter can too easily, particularly in some countries, be a way of simply achieving the former. The latter can be a guise for achieving the situation of favouritism and we would not welcome that. We have summed up our

recommendations at pages 13 and 14, and we commend them to your attention.

I would like to raise some additional matters at this point. I think we would have to say fairly bluntly—but I hope not too ungently—that we have serious doubts about the suitability of Treasury as the department to continue with the prime running of this matter. Somebody this morning suggested that PM&C might do the job better, and that might well be the case. Given the range of threads to be drawn together and the range of international bodies, for Foreign Affairs and Trade to have a coordinating role somewhat similar to the role we are proposing for ECOSOC might well be appropriate. Whether it is DFAT or whether it is PM&C, we certainly think Treasury has not qualified themselves for continuing to have the lead role.

We would also propose that there should be an Australian advisory group formed—perhaps from people who have lodged submissions to your inquiry—so that there can be, on a more formal basis, NGO and community involvement in the development of the Australian position in this instance. That would be somewhat parallel to the role we see NGOs playing at the international level in conjunction with ECOSOC.

On the question of rollback, standstill and withdrawal provisions, much of the wording that is proposed and much of the energy that is going into these provisions implies that it is possible to achieve full wisdom and to exercise totally reliable judgment before trying out in practice. We would again urge that it is common human experience that no matter how much work you do beforehand, once you are applying it in practice you will find the need to make changes and improvements. Rollback, standstill and withdrawal, as they are currently presented, concern us from that point of view, and that is another important part of the central essence of what we want to say. Thank you very much.

CHAIRMAN—We thank ACOSS for a comprehensive document. Of course you want to continue to be involved, and we welcome that. In relation to the seven recommendations, as you would already know, some of those are picked up to varying degrees in the interim report, and we will take on board your further suggestions. Are you saying that you feel, in terms of the multilateral body—more appropriate to an MAI—that WTO is in itself a little limited?

Mr G. Evans—Yes. We think that a proper MAI would explore areas and fields that are currently relatively uncharted and, more particularly, it would bring together a range of experiences that are currently dispersed over a number of organisations. WTO has a certain operating philosophy and I think that WTO in itself would not properly encompass the range of interests. We think that those organisations we have mentioned—IMF, ILO, UNEP, UNESCO and UNCITRAL—all have an expertise and a range of operational experience to contribute. We think it would be wrong for any one of those to have primacy over the others and to have the central running role, so we looked at the structure of the international organisations to see, without there being offence to any one

organisation: where could there be an auspicing body that would make it appropriate to bring together that range of experience and expertise? ECOSOC seemed to us to be the body to do it.

Mr LAURIE FERGUSON—You referred to the web site and intimated that the committee should possibly look at the degree to which DFAT has abided by requirements of openness. Are you aware of any other specifics besides the question of this particular report? Are you saying that you know of other problems?

Mr G. Evans—No. I was asked before whether or not there was anything I wanted to adjust, and I guess that is something that I might have adjusted. The impression I have increasingly formed is that DFAT's record is a fairly good and honourable one in this area, and if time is to be spent on historical investigations it really is the role of Treasury, including the selectivity with which Treasury chose organisations to consult with over the past four years or so. If there is an implication that DFAT have not adequately performed their task—and I guess there is—then I would wish to withdraw that and say that the body that has not had the appropriate openness has been Treasury. Of course, they were reflecting an absence of openness and a selectivity at the international level.

Mr LAURIE FERGUSON—Could you give us a bit more background on UNCITRAL and its operations? You are putting it forward as a possibility, and I am not too aware of its functioning.

Mr G. Evans—I cannot give you a great deal of chapter and verse on it. It is a body that has existed for some decades, and it is perhaps a bit of a boffin organisation from some viewpoints. It is a sort of calm, level-headed unit of the United Nations that does deal in a technical way with international trade issues, and I think that its range of experience, its calmness and its accumulated wisdom would make it an appropriate part of the wider group of organisations.

Mr HARDGRAVE—I appreciate ACOSS's vote of support for the committee's work. I think it is important that we have organisations stating their approval of the process and, like Mr Ferguson, I am interested in the question of just how open Treasury was, more in particular than DFAT because it is my recollection of evidence that DFAT, whilst they knew that there were some vague negotiations going on, had no other construct at all on this proposed MAI.

You are right in your submission that it has been more than two years since the present government set in train this treaty-making review process. You are also right to suggest that there is something awfully wrong if a government department is conducting matters, albeit in somewhat secret ways. Would you suggest that we should be pursuing the matter? Based on what we have seen to date, I would wonder if, for instance, Treasurer Willis in the previous government knew that the department were doing what they were doing.

Mr G. Evans—It is really a simple question of the resources available. I think that there would be great value to the community in having some case studies done, and this seems to be a classic situation that would be worthy of a case study of the difference between openness and covertness at both international and local levels. If you are able to make resources available for that task, I think that following through the history of that matter would be a very useful thing, not only to the committee but also to the wider community.

Mr HARDGRAVE—I suspect that the wider community thinks there is some conspiracy afoot, whereas in fact it is simply being done in a secret way even from the minister responsible for a particular department.

Mr G. Evans—I think that may well be the case. The Public Service, from my personal experience, has been somewhat proud of the fact that the treaty-making process is a role of the executive arm of government, to which it belongs. That has been something of a source of Sir Humphrey type satisfaction on occasions. I think that would be a fair thing to say.

Mr HARDGRAVE—I will say it again on the record. I have had suspicions more about a frequent flyer point acquisition program for Treasury than anything else. Nevertheless, just moving on to ACOSS's motivation in being involved in this, I guess you are looking for wider party participation because you see Australia as a leader of standards in areas of social services extended to people. So you are saying that we should be involved in these sorts of negotiations for perhaps a number of reasons, but certainly for one reason, and that is to make sure that we are monitoring and applying our standards to make sure other countries do the right thing by their people as well.

Mr G. Evans—That would be one element in it, yes. I think it would also be true to say we have a very strong sense of pride in Australia's achievements and role in areas of this character over many decades. I think a sense of pride in our country is a component part. I would not wish to downplay the other component that you mentioned.

Mr HARDGRAVE—On the question of foreign investment, we have heard evidence this morning that 30-odd per cent has been about the figure for foreign investment in Australia for a decade or more. That has provided, if you like, a premium level of industry and productivity in this country that our local investment in itself could not provide. Would you agree that investment is important, particularly as we are going through one of those economic shifts, the displacement of people back out of the work force, as we move from one form of industry through to the technology age? So foreign investment is an important thing to encourage into a country?

Mr G. Evans—We think that investment generally is a critical element in economic health, and the economic health of a country is directly relevant to the social justice that is feasible within that country. So we have no problems with investment as

such. As we say, the matters of concern to us are the character of the investment and the distribution of its benefits, not whether or not it happens as such. I guess we do have a concern that it happen responsibly and subject to sensible frameworks.

Mr HARDGRAVE—And making sure those who are investing in our country are reputable people to deal with, and that sort of thing?

Mr G. Evans—Yes. They ought not to be fly-by-nighters. Also it applies to Australians investing overseas. They should follow proper humanitarian and civilised standards. We do see the sorts of things that the treaty ought to deal with as being signifiers of civilisation as such. A treaty that did that would be a very valuable treaty to have.

Senator COONEY—Just following on from what Mr Hardgrave is saying, in your recommendation 6 you say that the proposed treaty should inter alia deal with a lot of other matters which, I suppose, to sum up—correct me if I am wrong—is to make corporate bodies proper citizens, or decent citizens, of the country that they are in. It is being said that sort of thing does not fit in with a treaty that is dealing with investments and that that sort of thing should be held over to some time in the future. What would ACOSS's position be regarding a proposition which said: 'Look, let's go ahead with this agreement, and the responsibilities that international corporations should bear should be left to a later date to decide?' Or is it your position that everything should be decided at the same time?

Mr G. Evans—It is not a matter of everything being decided at the same time, but it is certainly a matter of including those things that you have mentioned at the same time.

Senator COONEY—As a minimum?

Mr G. Evans—Yes. We think that there are obligations of citizenship at both the level of the individual and at the level of corporations. You cannot separate rights of either individuals or corporations from their responsibilities. An attempt to do that, I think it is fair to say, has been underlying the proposed MAI to this point. It has been something that the drafters and a number of the negotiators have been striving for, and we think is wrongly conceived. We think that obligations, responsibilities, do run hand-in-hand with rights. We think that to say that either human persons or corporate persons can be excused from the responsibilities of citizenship and the normal rules of decency in human relations is quite faulty.

CHAIRMAN—Thank you. We look forward to further discussions with you.

Mr G. Evans—Thank you very much.

[2.01 p.m.]

FLINT, Professor David, Chairman, Australian Broadcasting Authority, Level 15, 201 Sussex Street, Sydney

GRAINGER, Mr Gareth Simon, Deputy Chairman, Australian Broadcasting Authority, Level 15, 201 Sussex Street, Sydney

CHAIRMAN—Welcome. We have received the ABA's submission, which has been numbered 79. Do you have any amendments to make to that submission?

Mr Grainger—I have no amendments to make and I have no major introductory remarks. Our submission was very full, as you are aware. We felt that the best assistance we could give you was to make ourselves available for any questions that you have.

CHAIRMAN—For which we thank you. Mr Hardgrave will start.

Mr HARDGRAVE—Mr Grainger, the committee has had a deal of focus on the ABA's recent unfortunate experience—I suspect it is unfortunate from your viewpoint and from the viewpoint of most Australians—when the High Court decided New Zealand television content is Australian television content as a result of the CER—the closer economic relations agreement with New Zealand. I would like to backtrack just a little to get a feel for what role the ABA may have had in the drafting of that and to see if we can get a feel for what you are doing differently now with this MAI.

Mr Grainger—Right. The Australian Broadcasting Authority came into existence under the Broadcasting Services Act on 5 October 1992, quite some time after Australia had entered into the particular part of the Closer Economic Relations agreement with New Zealand, and so it had no part in that. It was made absolutely clear to the ABA at its inception that the Broadcasting Services Act had been very definitely drafted with the intention that the ABA's Australian content standard role, together with all its other functions, would be subject to all of Australia's international agreements and obligations. That was inserted under section 160(d) of the Broadcasting Services Act.

Mr HARDGRAVE—But was it also made clear that there was not anything likely to pervert the ABA's stated intention? The High Court has ruled correctly—

Mr Grainger—Indeed.

Mr HARDGRAVE—though far be it for me to question how it has ruled, but what has occurred there is an unintended consequence, I would have thought, of CER.

Mr Grainger—No, it is not. It is very clear and definite. There was never any doubt that this was the intention of the Australian government. Senator Bob Collins, the

then Minister for Transport and Communications, wrote to the then Chairman of the Australian Broadcasting Authority, on, I think, 5 December 1992, specifically drawing the attention of the then Chairman, Mr Johns, to section 160(d) and the fact that the then Australian content standard was not consistent with that obligation, and saying that the ABA should act to bring it into consistency with that obligation in respect of CER.

Mr HARDGRAVE—So you are saying the minister at the time in 1992 was happy with the concept of New Zealand television content counting as Australian television content?

Mr Grainger—Absolutely.

Mr HARDGRAVE—That is an interesting revelation in itself. All right. On to the question of foreign investment, if I may, because that is really what is at the heart of the MAI. Foreign investment in Australia's media: is that such a bad thing from the ABA's viewpoint?

Mr Grainger—As you know, those sorts of things are matters for government policy generally, and the ABA is not really charged with giving policy advice or making policy statements on that subject. If I could put it this way: the ABA is very interested in the obligation to protect and enhance Australia's character and cultural identity, which is a major obligation and objective of the Broadcasting Services Act.

I offer the view that who owns businesses is perhaps not so important to the achievement of that objective as what is produced under audiovisual content rules; what is shown on Australian television or in Australian film or theatres. I would not want to get drawn much further into that.

Mr HARDGRAVE—I understand what you are saying. It is in the submission and it is a statement of fact that the three areas of ABA responsibility that are specifically relevant to consideration of any trade and investment treaty are Australian content, children's television programs and ownership and control of broadcasting services, hence the reason for me asking an opinion on whether foreign investment in Australia's media is such a bad thing as some might presume it to be. You have told me it is more about content than ownership.

Mr Grainger—In terms of that objective of the Broadcasting Services Act, as I say, I think it is what is produced and what goes to air that is more important than who owns it. That great Australian company Grundy's was bought by the British company Pearson's, but they still continue to produce Australian dramas.

Mr HARDGRAVE—I guess it is crossing more into the area of government policy and you are interested more in the business of enforcing government policy, so I will not ask questions about the different types of rules in different media, but would it be

fair to say that television or radio, rather than newspapers, is the most powerful medium operating in Australia? Which one is the most powerful?

Mr Grainger—Perhaps I can start to answer that and then Professor Flint, who is amply able to deal with this one with his experience in relation to the print media, can join in. The Broadcasting Services Act certainly was predicated on the interesting assumption that television was the most influential part of the broadcast media. I guess I have always had a view that that was not necessarily right and that in fact radio is in some ways more influential in opinion shaping than television. Certainly some sectors of radio are more important in public opinion shaping then television.

Mr HARDGRAVE—What are the foreign investment rules regarding radio?

Mr Grainger—They are much less onerous.

Mr HARDGRAVE—What maximum amount could someone from overseas own in the radio sector in Australia? It is basically 100 per cent, isn't it?

Mr Grainger—Basically 100 per cent, yes. I am happy to provide you with the full breakdown of the comparison of the rules, because they are rather fiddly. Basically, so long as you do not offend certain cross-media rules, foreign investment has much greater latitude in radio than in television.

Mr HARDGRAVE—And in television what is the maximum amount a foreign investor can own?

Mr Grainger—I think it is into the vicinity of 20 per cent.

Mr HARDGRAVE—What we have basically got there is that radio is—I think you are right—arguably far more powerful as an influence on individuals then television. We have got one rule which says that 100 per cent of a particular radio station, providing it satisfies certain cross-media laws, could be owned by a foreign entity, whilst in television we have got 20 per cent as the maximum figure. If we want to get to the heart of the discussion about investment in Australia's media, what we have got is a whole bunch of uncertainty and a clash of rules that are inconsistent and difficult to deal with. They are rules which, I submit to you, could be easily put under challenge under this MAI.

Prof. Flint—That would be so if we did not place them in the appropriate annexure. You asked about the influence of the different media, and I have seen research which indicates that people spend more time with radio, a few hours more a week, than with television and that newspaper readership is relatively small compared to television. There are some people who argue that only one in four Australians regularly read newspapers and that they tend to be the older Australians, so one would assume that radio

has the greatest impact. However, there are others who argue that the newspapers set the agenda, that the detailed analysis is in the newspapers and that radio and television rely heavily on the newspapers for the preparation of the agenda, as it were, in terms of current affairs and news.

Mr HARDGRAVE—On the question of the MAI, in the ABA's view, are there enough reservations within the draft as it stands to prevent any unforeseen, unpleasant circumstances, like Project Blue Sky? I think it is unforeseen and unpleasant as far as Australians are concerned, even though Minister Collins might have been happy with it.

CHAIRMAN—Could I add to that. Bearing in mind the extensive reservations that are already in this particular draft, is it appropriate that there does not seem to be anything in there in terms of children's TV restrictions and pay TV content restrictions?

Prof. Flint—Our view was that at least the government ought to be advised that, if they wished to reserve their ability to regulate in those areas to preserve local content, these should be put into annexure B—that was our advice—because it would be for the government of the day to decide what to do with it. That is what we think should be done.

Mr Grainger—It is also open to say that audio-visual content rules, as opposed to ownership and control rules, could be excluded from the provisions of MAI altogether, as the French have advocated, for example, and there is a lot of merit in that position.

Mr HARDGRAVE—There is. Are saying it is important to keep media assets more in Australian hands?

Mr Grainger—No, sorry, I am talking about the content generating rules—the rules about children's television content, Australian drama production, screening of Australian documentaries. The ownership and control rules, for example, as the Chairman has said, are very adequately dealt with by the scheduled reservation process.

CHAIRMAN—Professor Flint raises a fundamental question about consultation. As we indicated earlier this morning, that is an area that worries this committee. It is an area that should worry ordinary Australians. To what extent has the ABA been consulted prior to this second draft? Was there any involvement with the ABA in the lead-up to the first draft that was on the Net, and to the second draft?

Prof. Flint—We understand that we were not always there; we have only been there recently. We understand that there probably was not. That is not meant as a criticism of those in Treasury; I suppose they have to look at a lot of people.

CHAIRMAN—We heard a lot of comment this morning about people meeting with Treasury. It is not a flippant comment, but it is a critical observation from the committee, that seemingly a lot of this consultation is now taking place as a result of our

interim report. Would it be fair to say that the substantive consultation with Treasury has only taken place very recently?

Mr Grainger—That is right, because we have been expressing strong views on this issue. There can be no other part of the executive arm of government that has been more closely involved in the problems that come from this issue than we have been for six years—I might have expected us to be a fairly obvious port of call and we have not been—and we have found this process very helpful in being able to present a clearly articulated view.

CHAIRMAN—Would you expect those views to be articulated through DoCA or through you as individual evidence givers?

Mr Grainger—It is primarily the responsibility of the department because it is the policy department, but because of our very particular experience, we have acquired a lot of expertise about living with the reality of international treaty obligations.

CHAIRMAN—Perhaps the department should listen to some of this advice. I was not at the hearing last Friday in Canberra but my colleagues tell me that it was less than satisfactory, to put it mildly. One would hope that some of the views like the ABA's are being injected. At this point in time it does not appear to have been happening.

Prof. Flint—In relation to Treasury, we have invited more briefings in recent times because we think that perhaps we should draw ourselves to their attention in relation to this and other relevant matters, not only because the department should have a role but because of our statutory independence, which puts us a little outside of the department's umbrella.

CHAIRMAN—More importantly, has Treasury asked ABA? You are raising issues with which you have technical competence and all the rest of it, but the Treasury is the lead department and should therefore be seeking views. Has the Treasury come out and sought more views?

Prof. Flint—I am told they have not.

Mr HARDGRAVE—Professor Flint, your organisation was more than a little bit bitten by a failure years ago before the ABA came into existence. Its predecessor's functions and organisation were not well consulted. I find it extraordinary that Minister Collins at the time should suggest that the CER was far more important than maintaining what most Australians thought was a real Australian content rule, not a New Zealand counting as Australian content rule. There must be a lot of anger within the ABA—'frustration' might be a more polite term—about being put in this position and then finding that you are not actually involved in the process of what could end up being a worst scenario if you are not considered. Are you trying to get Treasury to talk to you and

they are not responding, or what?

Prof. Flint—Rather than being emotional, we are trying to make sure that we have established a good line of communication with Treasury though regular briefings, so that when and if this takes off again our advice can be given to Treasury; that is our first action. In relation to the High Court's decision in relation to Blue Skies, we are now in the process of attempting to consult with every relevant party and to make that decision lawful. In fact we have issued a discussion paper, which my colleague is presenting to me, which could be tabled and which is our discussion paper on the review of the contents standard.

CHAIRMAN—Thank you, we will receive it. Before we go any further, for the *Hansard* record, this is a discussion paper, *Review of the Australian content standard by the Australian Broadcasting Authority*, of July 1998.

Mr HARDGRAVE—What do you think is likely to happen, even though the High Court said New Zealand content counts as Australian content? From your experience of watching how the media operate, do you think anybody will even take up the opportunity to take on New Zealand produced material, or are we more likely to see Australian productions being based in New Zealand because there is a government subsidy for New Zealand television production?

Mr Grainger—I sense no enthusiasm in the Australian television industry to acquire New Zealand programming. Programming which has caused concern as being potentially New Zealand are two shows called *Xena Warrior Princess* and *Hercules*, and neither of those shows counts in New Zealand as New Zealand content, and certainly could not count under any rules that might be likely to emerge from this process. Rather than expressing a view, I will simply say there are concerns within the industry in Australia that issues such as lower wages in New Zealand might make it more attractive for some Australian production companies to set up operation in New Zealand.

Mr HARDGRAVE—Which is potentially a net loss to Australia?

Mr Grainger—Yes.

Mr LAURIE FERGUSON—I admit that I should have understood this before I read your submission but I had not really appreciated the distinction between annexes A and B. You are saying with B there is no essential long-term alteration in those once they are in there permanently.

Mr Grainger—I think A is the standstill and B is the rollback. Our advice was that consideration should be given to putting these broadcast matters into B because it would allow government the option of changing its policy if legislation changed in the future, rather than having it frozen forever under A.

CHAIRMAN—Let me go back to square one: we have heard a lot of criticism this morning and in previous hearings that the MAI concept may be best served by going back to square one and starting again. Would the ABA have a point of view?

Prof. Flint—No, the ABA would not have a view on that. The ABA is giving advice on where broadcast policy should go if the agreement goes ahead.

Mr Grainger—We have articulated a view in the last two to three years, as I have said earlier, that the content generating activity—that is, the rules about content as opposed to who owns the production of content—arguably should be excluded altogether from the scope of the agreement; and that is the position which Australia argued at the end of the Uruguay round.

CHAIRMAN—ACOSS has given evidence—and it came up earlier this morning and was mentioned in our interim report—that a more multilateral group might be the optimum forum. ACOSS has suggested the UN economic and social council. Does the ABA have a view on that?

Prof. Flint—Not the ABA as such. Members will have a view.

CHAIRMAN—Let us ask whether you have a personal view.

Prof. Flint—I see an advantage in having a level playing field for investment across the world. I can see that there is a good argument that you should make reservations. For example, there is an argument that in the cultural area one might make a reservation.

CHAIRMAN—The point I am trying to get from you is whether it is more appropriate to have a more multilateral forum than a select group, which the OECD is.

Prof. Flint—Again, this is not an ABA view, it is a personal view but I would have thought the OECD is the more appropriate area because its countries are more similar to us in terms of economic development and something can grow from there rather than going to a United Nations committee where you have a number of countries with different types of regimes and vastly different levels of development. But, again, that is my personal opinion.

CHAIRMAN—Yes, but I understand what you are saying in terms of getting that sort of concept through. What I am asking is whether it is more meaningful in a global sense to have a more multilateral grouping. I agree with you it would be easier and we are more attuned to that—for obvious reasons; we are a member of the OECD—but there are a few observers involved in the MAI concept anyhow. Perhaps it would be better to do that rather than giving the perception that you have haves and have nots within the world community.

Prof. Flint—I would go to the World Trade Organisation for that sort of agreement rather than to a strictly internal United Nations body. We raised that in our interim report.

Mr Grainger—I would like to add to that because I, like Professor Flint, have an academic interest outside the ABA in these issues. I strongly concur with Professor Flint's view. I think the WTO is the right organisation to be dealing with this in a big picture way but I think the OECD is a very useful forum for dealing with investment issues, for precisely the reasons Professor Flint has given. But I think it is not the right organisation to be dealing with audiovisual content issues. It is not its field of expertise or interest and it is likely in its enthusiasm for achieving certain outcomes on the investment side to almost steamroll some of these issues because the people who work in the OECD are not necessarily interested in those issues. It is not that kind of organisation.

CHAIRMAN—Do you agree that perhaps the basic problem is in the definition of 'investment'? What do you mean by 'investment'? Is it investment in straight financial services or investment in services? Is that the point you are making?

Mr Grainger—As I keep saying, who owns a business is not so important in terms of the ABA's interest as that in Australia Australian content is able to go on being generated and shown in appropriate outlets to the Australian people. I do not think the OECD has an interest in that latter issue at all.

Senator COONEY—Can I ask you about the relationship between ownership and content? I notice on page 10 of your submission in the second paragraph you say:

> Australia and other nations will be asked by the USA to remove or reduce their local content rule for television.

If the United States took ownership of local media, if you had the Multilateral Agreement on Investment in operation, there is nothing to stop the government under that agreement requiring the local ownership to produce Australian content, but excusing an American owned company from doing so, is there?

Prof. Flint—That would be possible under the legislation, if that is what the parliament wanted to do.

Senator COONEY—There is nothing in the Multilateral Agreement on Investment to protect local industry as distinct from protecting industry from overseas?

Prof. Flint—Not unless you sought to preserve it by putting it into one of the annexures. You would have to consciously preserve it.

Senator COONEY—I follow that. You have seen it appropriate in your

submission to talk about the USA wanting to remove rules about local content. How strong is that movement? Do you know?

Prof. Flint—The American cultural export industry is their second biggest export industry. It is a very powerful industry and it is making an impact across the world. In some respects it seems almost irresistible. Hence, there is a wish on the part of a number of countries—France and Canada in particular—to defend local culture. Whether you do that through ownership laws or through local content laws is a matter for the parliament.

Senator COONEY—If parliament passed a content law, I suppose it is still subject to pressure from the media industry in the United States to make exceptions for the United States. The question arises as to whether Australia is in a stronger position to resist that if the ownership of the local media does not reside too much—whatever 'too much' means, but I use that phrase—in the United States.

Prof. Flint—I think I can see what you are saying, that is, there would be stronger allies for that if you had stronger proprietors in Australia.

Mr Grainger—In the wake of the finalisation of the Uruguay Round there was a recognition within the United States—both within government circles and within industry circles, including Mr Jack Valenti—that perhaps the United States had tried to engage in overkill. The United States toned down the position that it was taking and has been keener to become a local investor with local partners and to participate in the production of material which would be seen as local content.

I suspect that America would be more interested in being able to invest, if you like, on equal terms in countries and to be able to participate in generating local content in those countries that might have some wider market opportunity overseas. I reiterate—it is important that Australia not enter into agreements that do not in some way either exclude or reserve audiovisual content generation rules.

CHAIRMAN—In terms of the film financing already in annex B, firstly, could you give us an outline of the impact that that might have? Secondly—bearing in mind that our TV foreign control limitations and Australian content commercial TV is listed in annex A—can you talk a little bit about the roll-back and standstill provisions as they affect the cultural arena?

Mr Grainger—I would like to take that on notice, because it is actually quite a complicated issue and we will get a response back to you very quickly.

CHAIRMAN—That is fine.

Senator COONEY—On page 9 in your second last dot point you say:

New forms of communication and broadcasting which are developed in the future may not be protected, eg digital television.

That seems to me to be a very vital and fundamental point, because it is in this area that you operate where the great changes will take place. From evidence we have had in the past there are some difficulties about what government can do if the standstill and roll-back operates. I was wondering whether you could develop that dot point a bit more in terms of where you think technology may take us and what could be done about it at a government level where an MAI is in operation.

Prof. Flint—A good example of this sort of thing is the case of India, which had a state owned television industry. They suddenly found that satellite television was coming into the country. It was something over which it had no local control. The government was loath to apply draconian laws against that, particularly against the use of cable to transmit from receivers.

In fact, I understand that in distant parts of India there is a receiver, a dish and cables off that to television sets. People are charged a small amount of money and they see programs like *Dynasty* and so on, which immediately project, among people who have never seen anything like this, a vision of the West. This must make suggestions to them which must have an impact on them, both as to how they see our culture and how they see their own. The Indian government has been very concerned about that.

In some ways that may be the sort of thing that we are confronted with. Already I understand that through the Internet we can receive many, if not most, major radio stations around the world. Apparently it is likely in the near future that television reception will be of an acceptable standard via the Internet. In other words, we will be able to receive television programs from anywhere, all of which are beyond the control of the government.

This to an extent is being faced in the proposals to give some authority to the ABA in relation to the Internet to establish codes of conduct. Also to establish, in cooperation with other agencies internationally, ways in which one can deal with objectionable material on the Internet through help lines and so on. When it comes to trying to protect our culture if we wish to do that, it will obviously become more difficult if foreign based broadcasting, or something akin to broadcasting, is available to Australians generally. I do not suppose governments will try to stop Australians from doing that, because we are not like Iran or countries which have authoritarian regimes which try to do that.

This is a problem which we will face in terms of local content, and it may well be that at that time governments will take the view that, if we cannot assist local content, not being able to do it as much as we could in the past through quotas and so on, we may have to do it affirmatively by direct assistance, as already exists, to promote local culture.

Senator COONEY—To follow on from the question asked before, has Treasury sought advice from you about these issues?

Prof. Flint—No.

Mr HARDGRAVE—This is an area on which we could detain the committee and the gallery for a whole afternoon, I guess, but we won't. It would be a fair thing to say, as you have already indicated with regards the role of the Internet, that, no matter what we might try to do as far as legislation is concerned, the natural game being played by media in the world is control of content or content itself and the means of distribution. They seem to be the two games in town that people are trying to acquire both of. There is not much we are going to be able to do as a nation to stop it as technology constantly becomes far more accessible. So in one sense this Multilateral Agreement on Investment may open the door to a fast-tracking of what is eventually going to happen anyway. Is that a reasonable line of thinking as far as the world ultimately continuing to become a smaller place, that interruption of media ownership is not going to be possible at national borders?

Prof. Flint—To draw an analogy, we used to take a view that the way to protect the currency was through foreign exchange controls and by fixing the rate of the dollar, and every so often you would have this major crisis where you would either have to devalue or revalue, and most countries went through that. Now we allow it to happen through the market. I suspect this is going to happen in other fields: in fields of investment, fields of broadcasting and so on. Governments, parliaments and statutory agencies will have to be more innovative in trying to achieve the same outcomes. As they cannot, for example, in relation to the currency, they will not be able to achieve it directly through rigorous controls; they will have to achieve it indirectly. For example, if they wish to promote Australian culture, they will have to do that directly by going to the culture and giving the culture direct assistance to make it strong enough to stand on its own feet rather than seeking to protect it by some other more external measure.

Mr HARDGRAVE—It is my understanding that the Star Television operation based in Hong Kong which Rupert Murdoch owns these days has a potential reach of two-thirds of the world's population. You have talked about India. I understand that 50,000 cable television companies exist in India as people train a dish towards a satellite and sell access to 10 mates or whatever. That in itself is now becoming a commercial problem for them. Perhaps the answer is ultimately more in the hands of the commercial operators than government's. As I say, News Ltd, through Star Television, are trying to value add a product if you sign up and officially join the network rather than simply doing what they are currently doing.

Prof. Flint—The interesting thing about Star was that they seemed to be a monopoly intruder into India but what they have actually done is stirred up a vast number of competitors who are able to reach a wider range of consumers than Star did because they are producing in the languages and with the sort of programs that the Indians want.

So the effect of Star going in with English language programs has been to perhaps impact more on the elite and to a lesser extent in the villages when they have seen style programs that interest them. This has also equally stimulated a number of Indian programs and Indian producers who broadcast in Indian languages, which are much more attractive. So it has stimulated competition.

Mr Grainger—That is true, and that analogy highlights the vulnerability of Australia, because it is an English language market, for program content. It is said that content is king in all of these industries but when you have the world's strongest market economy producing content for its own local market and it is able to off-load that content far more cheaply in other English language markets, then those markets are very vulnerable. That is one of the reasons why these content rules are important. As Professor Flint has said, with the emerging area of, for example, online services, governments are going to have to look at new and evolving ways of helping to encourage Australian content if we are not simply to disappear into a sort of AmerEnglish.

Mr HARDGRAVE—It is a bit like being a cork in a tidal wave.

Mr Grainger—I never feel frightened that one cannot tackle this.

CHAIRMAN—The Indians have an overseas capability; it is not just Indians domestically. From personal observation in Cambodia in the last few weeks, ATV and Star might be on the screen, but so too are the Indian programs.

Prof. Flint—They have themselves come up against the problem. In fact, there was recently a strike in Bombay of all movie owners against the pirating of videos, which is stopping people from going to the cinemas in India and also stopping the people who make the films being properly paid. There is a major pirating problem in India.

Senator COONEY—The start of the first full paragraph on page 6 says:

Free trade agreements such as the General Agreement on Trade in Services (GATS) have been used to attack the cultural safeguards set up by many countries including Australia, Canada, France and other European states, both inside and the EU.

Could you expand on that? What were the mechanisms used under GATS? What were the results?

Prof. Flint—What we are seeing there is that the United States particularly has argued by analogy from that that all services should be free and included. They have used the negotiations for this as the battleground in which to insist that there be no cultural exemption.

Mr Grainger—I can add to that. This is an accident waiting to happen in relation

to the General Agreement on Trade in Services because the phase for discussion on audiovisual trade is yet to come. It is due to come in the next year or two.

Senator COONEY—The argument we surmise the United States will put forward is that this sort of material is not different from any other services in which you may trade.

Mr Grainger—Yes, that is right. The United States does not recognise, if you like, the significance of local cultural support regimes.

CHAIRMAN—Thank you.

[2.44 p.m.]

FEWIN, Ms Janice Margaret, Administrator, Australian Publishers Association, Suite 60, 89 Jones Street, Ultimo, New South Wales 2007

McDONALD, Mr Jon Hamish, Business Manager, Australian Society of Authors, 98 Pitt Street, Redfern, New South Wales 2016

WOOLLEY, Ms Patricia Miriam, Honorary Executive Chair, National Book Council Inc., 16 Darghan Street, Glebe, New South Wales 2037

CHAIRMAN—Welcome. We have received submissions from two of you. We have not received one from the Publishers Association.

Ms Fewin—We did not make a written submission.

CHAIRMAN—Okay. We have received submissions from both the Society of Authors and the National Book Council. Are there any amendments to those written submissions?

Mr McDonald—I have a statement which goes into a little more detail.

CHAIRMAN—We will hear that in a second. Do you have amendments to the submissions?

Mr McDonald—No.

CHAIRMAN—Would you, collectively or individually, now like to make a short statement?

Mr McDonald—I have a statement.

Ms Woolley—I think it is an individual matter at this point.

CHAIRMAN—Please keep it as short as possible.

Mr McDonald—Firstly, our comments are necessarily limited by the fact that the MAI is very complex. To understand it fully, you would need a lot of expertise in international law, intellectual property law from our point of view, and an in-depth knowledge of a whole raft of agreements—expertise and knowledge which we do not have. I would like to suggest at the outset that some sort of process could be set up whereby organisations such as ours which are not large and do not have large resources get access to either advice or expertise from Treasury or Attorney-General's so that we can make more sense of and make more detailed and relevant comments on the provisions

in the MAI.

Secondly, we are talking about a draft text. Not only is it a draft, but potentially lots of country specific exclusions will be made, and it is difficult to make comments when we have no idea what the other countries' exclusions are going to be. We note that the definition of investment in the MAI includes 'intellectual property rights and rights conferred pursuant to law or contracts such as concessions, licences, authorisations and permits', although we also note that there is some disagreement as to how far these should go.

Our interpretation of this is that any writer who was a citizen of a signatory to the MAI and whose work in which they still controlled the copyright was either exported to, published or reprinted in Australia, would be considered an investor. The converse would also hold true for Australian writers in the territories of other signatories. We would thus conclude that without any general or country specific exceptions limiting this definition, all writers would be able to take advantage of the national treatment and most favoured nation treatment provisions, the performance requirements and the dispute resolution procedures of the MAI.

We are concerned at this stage that Treasury's list of country specific exceptions does not include culture for Australia. While there are specific exceptions dealing with broadcasting, newspapers and television, these leave out other art forms such as literature, music and the visual arts. These art forms could be exposed to the national treatment and most favoured nation stipulations et cetera, the consequences of which could be detrimental to the practice and development of those art forms in Australia.

There is general agreement that the promotion and protection of Australian culture undertaken by both federal and state governments has led to a flowering of the arts in Australia. In 1972, 19 first editions were published by Australian authors; in 1992, 200 were published. That is an increase of roughly 1,000 per cent. This is largely due to grants to writers and subsidies to publishers, mostly coming out of the Australia Council.

Australian literature now has world critical recognition for its quality, scope and depth. Significantly, this promotion and protection of Australian culture has been carried out without any significant limitation on overseas access to the Australian cultural sector. We are currently able to enjoy the best of both worlds, with new influences and standards from the best of world culture and a flourishing Australian culture. The lack of a general cultural exception for the MAI could put all this good work at risk and upset the balance in favour of imported culture.

We note that Treasury has excluded government grants from the MAI provisions, and we support this. We expressed some concern that grants are included in the annex B exceptions and are thus potentially subject to the roll-back provisions of the agreement. Broadcasting, newspapers and television have been included in annex A. They are only

subject to standstill provisions.

While we are not clear at this stage as to how the MAI will affect the state governments, we would express concern that state government grants and, in particular, the various Premiers' prizes for literature might become subject to the national treatment and most favoured nation treatment provisions and the performance requirements of the MAI. In other words, they would have to be open to writers from overseas.

We have particular concerns about 'public lending right'. The definition of 'investor', including intellectual property rights, may have serious consequences for this. Public lending right is a scheme whereby Australian authors and their publishers are compensated for the free availability of their books in public libraries in Australia. We are in the process of lobbying to try to extend this to educational libraries as well. This would be a world first.

At the moment the scheme is limited to Australian authors and their publishers. Other countries which have public lending rights schemes also limit the payments to their own citizens. Under the current definition of 'investor' in the MAI and without either a specific exception for public lending right or a general cultural exception, it appears to us that Australia would be obliged to make PLR payments to overseas authors for use of their books in Australian libraries. In other words, we would have to offer them the same treatment that we offer Australian authors. This would, to put it mildly, destroy the PLR scheme. At the least its budget would probably have to be quadrupled or the payments to authors would have to be scaled back to a ridiculously low amount.

Most of the payments would go to American and British authors. In the case of Britain, Australian authors might get something back if the British PLR scheme were subject to the same provisions of the MAI. But, in the case of America, we would get nothing back because America does not have a public lending rights scheme.

In terms of culture, the MAI favours those nations whose governments are very little involved in the promotion and protection of their cultures. The most obvious example of this is the US. Without either specific or general cultural exceptions under the terms of the MAI, US investors in the Australian cultural sector would be eligible for the same measures of support that the Australian government now limits to Australian companies and individuals. However, for Australian investors in the US cultural sector, there will not be an equivalent reciprocity because the involvement of the US government in the cultural sector is minimal in comparison to Australia.

A large proportion of cultural grants in the US are given by private foundations and charities which, as private entities, would not be bound by the national treatment and most favoured nation provisions or performance requirements of the MAI. For instance, they could continue to discriminate in favour of American citizens and Australian investors would have no recourse. In general, private cultural philanthropy is not as well

developed in Australia as it is in other Western countries, and this would put us at a comparative disadvantage.

The scale of other countries' economies and cultural sectors is also a problem because the success of cultural investment is not measured merely in terms of return on money invested but the extent to which that investment affects the consciousness of its consumers. As an example, the UK last year ran a quite successful cultural program in Australia called 'New Images', and Australia, through the Department of Foreign Affairs and Trade, reciprocated in the UK. As a country roughly three times the size of Australia in population, we will assume that its art budget is three times the size of Australia's—say, $300 million compared with Australia's $100 million. Let us say the British spend one per cent of that amount on the New Images program—$3 million. To make an equivalent impact in Britain, Australia would have to spend three times this amount, that is, $9 million. This would be nine per cent of our arts budget compared with one per cent of the British arts budget. Australia would have to spend proportionately nine times as much to have the same impact in the UK as the UK has to spend to create an equivalent impact in Australia.

These are the facts of life of the economic and investment hierarchy that make it difficult for small countries to have a significant cultural impact both overseas and within their own shores, and the MAI will overwhelmingly favour the big players.

There has been much rhetoric about level playing fields in trade and investment; but even in sport the under-16s are not required to take on the A grade players. We also have some concerns about education. At the moment, there are no specific reservations in the MAI concerning education. This should be of general concern to the Australian community, but it is of particular concern to us as many of our members provide Australian content for the courses taught at all levels of Australian education.

Concern is being expressed in some quarters that the level of Australian educational content in the new digital technologies, particularly CD-ROM, is very low and that what is reaching our children is overwhelmingly American in content. We understand that currently there are no Australian content regulations governing CD-ROMs and the digital area. While this is of some concern in itself, if the MAI is signed by Australia, Australia will not in the future be able to make any regulations governing content in these new media.

Ms Woolley—The National Book Council is the peak umbrella body for the book in Australia. It is said that strong investment, both local and foreign, appears to play a critical role in every one of the countries with strong growth. When it comes to winning foreign investment—which helps build linkages to technologies and global markets—Australia appears to be developing a reputation with overseas headquarters of being a difficult and low opportunity market. That is taken from Jennifer Green's new book and it is an MTIA study—*Australia: Make or break: Seven steps to make Australia rich again*.

Let us look at the current situation concerning the range and amounts of local and foreign investment in the Australian book industry. This industry encompasses publishing, manufacturing, book selling, distribution and wholesaling, authors and agents. In book publishing, we have significant foreign investment of over $500 million. There are many UK, US and German publishers with Australian branch offices. Most of them, however, have not built linkages to sell Australian originated titles into their global market. The British parents never take the Australian originated titles. However, in Australia book sales are growing. In 1973, 652 new Australian books were put out, amounting to just over $18 million. In 1997, there were 5,583 new Australian books, amounting to $561 million. There are significant exports—especially travel guides and kindergarten to year 12 educational publications. Some local firms have foreign investments, especially with overseas sales offices.

In book manufacturing, foreign investment is low. There are only three major book manufacturers and one of those has some significant foreign investment. There are active offshore manufacturers with local sales offices, and they take up about 50 per cent of the Australian orders for book manufacturing. In 1973, book bounty was 33⅓ per cent; in 1998, it is zero. There is fear in the industry about Indonesian money, looking to vertically integrate paper and print. In book paper manufacturing, there is only one major manufacturer. There are several foreign manufacturers with local sales offices. There is a tariff on imported paper which of course gives the local manufacturer a price parity.

In book selling, there is foreign investment of around $25 million. There are three national chain booksellers, one of which is foreign owned, there is a national education cooperative chain, and there are hundreds of single shop organisations. There is a foreign owned superstore entry coming in September and, of course, there are more overseas supplies coming in via Internet book selling.

In book distribution and wholesaling, again there is significant foreign investment of over approximately $500 million. The foreign investments are combined with book publishing activities—they distribute, market and publish. There are local medium- and smaller-sized firms. All literary agents are local with the exception of one which is foreign owned. This agent for many years has had a minuscule effect in our markets.

Local authors invest in their writing. It may take many years for them to create a book which they can earn some money out of, but very few authors have the money to invest in exporting their writing by moving to a foreign market to develop. A major exception in this is the Australian author Peter Carey, who now lives in New York.

With the MAI treaty, we have all been looking, though, at protection. We have tried to see it as protecting the Australian market from encroachment from foreign companies. However, we need to look at promotion as well. We need to be keen to exploit foreign markets for Australian manufacturers and for Australian culture.

In principle, a standard set of rules would be a good thing. However, at least now in some cultural areas it is a slash and burn. For example, there is a Singapore investment in book selling. When their markets fall, they pull out—that is what happened with Brashs. There is also a movement of money in international, global, markets, with no or little control. Perhaps this caused the Thai collapse or further Asian financial problems. So, with all this talk of a Multilateral Agreement on Investment, the National Book Council, representing so many different areas of the book industry, would like to put in some further evidence of how we can use this treaty to further our interests abroad.

Ms Fewin—I will be very brief. My association, the Australian Publishers Association, represents both foreign owned and local publishers. About 80 per cent of our members are independent Australian publishers; the other 20 per cent are foreign owned. We strongly support the Society of Authors' argument for a cultural exception in any treaty that is signed. That is all I need to say. The others have covered other points. I am happy to answer as best I can any questions you might have, but I would just like to say that I particularly support the cultural exception.

CHAIRMAN—Thank you very much. I think it would be fair to say that the major objection that is coming from France, from Canada, and, to a lesser extent, from the United States is based on cultural objections. Your point is well made. It is something that will have to be addressed if in fact this thing proceeds any further.

Mr LAURIE FERGUSON—Ms Woolley, could you further develop what you say are the possibilities of using the treaty? You suggest that certain aspects in Australia should be protected from it, and then you go on to say that we can use it as a mechanism for ourselves. Why wouldn't you get the kind of resistance of other countries putting up similar kinds of bars?

Ms Woolley—As you know, we do not have the list of the exceptions for other countries. So, without that list, how can we tell? I know in book publishing, for example, one of the members of the Australian Publishers Association—and Janice might like to comment on this—

Ms Fewin—We have found in the past, particularly in the educational area, that in particular states in America—Florida was one example—publishers are not allowed to even bid for a publishing job because they are not an American company. So they miss out on the business because of rules that have been put up in the States for buying a non-American producer's material.

Ms Woolley—For many years book publishing and book manufacturing was affected by a US copyright manufacturing clause in their US Copyright Act. There was no tariff on books. There was no duty, no restriction on imports. However, if a foreign manufacturer sent more than 1,500 copies of a foreign printed book into the Unites States and the author of the book was a US citizen, they lost their copyright. That lasted until

about 1983, when I think it fell over and finally went. So there was a barrier to entry there.

Senator COONEY—You have heard each other. Do you all agree on what each other has said, or did Ms Woolley say something that you would want to take some exception to? Let me put it this way: is everybody in favour of the treaty in a modified form, or is everybody against it?

Mr McDonald—We are saying that we feel that a cultural exception clause is necessary in our particular area.

Senator COONEY—So, as far as your own interests are concerned, you would say that the MAI should not apply? That is the position of everybody?

Ms Fewin—That is a minimum position.

CHAIRMAN—That it is unacceptable without the cultural exception being inserted?

Mr McDonald—Yes.

Senator COONEY—In effect that means that, as far as your interests are concerned, the book industry should be taken right outside the MAI? Is that right?

Ms Woolley—The MAI was not heard about for so much of its development. It is only recently that people are starting to come to grips with it. Although the documents are available on the Internet, it has taken quite a while for different organisations to get their hands on it and to be able to discuss it.

Senator COONEY—I am not criticising you. In so far as you understand it, you would say that its application should not cover publishing or writing? Am I right in saying that?

Mr McDonald—I think what we are saying is that there need to be some exceptions which will allow the Australian government to promote and protect Australian culture, as it has done in the past. I cannot speak for the book publishing industry, but writers are concerned that some forms of their income, such as public lending rights and certain grant systems which, at the moment, are open only to Australian writers, would become open to writers from overseas under the terms of the MAI.

Senator COONEY—As I understand it, you would prefer that not to happen?

Mr McDonald—Yes. We would prefer that not to happen, because the size of the overseas countries and the size of their cultural sectors means that investing in Australia is

a very small amount of money for them in comparison with the size of their cultural sectors. But for us, it is a huge thing. We cannot have the same impact overseas as overseas countries can have here in terms of cultural investment. That institutes a lack of reciprocity. At the moment, in terms of trade, there do not seem to be many restrictions on books, films and art from overseas coming into Australia. I think that most people feel that that is a good thing, that it opens up Australia to foreign influences, overseas trends and so on, and that is good for the arts in Australia. But we have to be very careful that we do not allow a situation to happen where we cannot protect and promote our own culture in the face of these very powerful waves coming from overseas.

Senator COONEY—You would like things to remain as they are now?

Mr McDonald—Pretty much, yes.

Senator COONEY—Ms Woolley, what is the position of your organisation?

Ms Fewin—I represent the book publishers. Currently, there is healthy investment from overseas in the Australian book industry. Anyone can come into Australia and start a publishing company, and anyone in Australia can set one up. In terms of what is happening now, we are pretty happy. I would like to reserve my association's opinion on the MAI as a global thing.

Senator COONEY—Until you have a proper look at it?

Ms Fewin—Yes, that is right. It is new to us in the sense that, as Pat was saying—

CHAIRMAN—Has there been any consultation with any of your organisations from government departments in Canberra?

Ms Fewin—Not to my knowledge.

Ms Woolley—No, none at all.

Mr McDonald—I have been in touch with Treasury, and I have looked at their list of annex A and annex B exceptions to the MAI.

CHAIRMAN—But were they in touch with you first, or did you have to be proactive?

Mr McDonald—No, we had to get in touch with them.

Ms Fewin—No. We got material about it from the Internet. So we have not had any formal contact.

CHAIRMAN—Thank you. Ladies and gentlemen, we must finish shortly, but one or two of you have asked whether you might, in very short order, give a view or ask questions. The committee will be happy to do that, but we would want you to go on the public record before you do so.

[3.10 p.m.]

BARNETT, Mr Ron Henry, 46 Dennis Street, Lakemba, New South Wales

BROOKS, Malcolm, Councillor, Gosford City Council, and President, Gosford Branch, Liberal Party of Australia, c/- 38 Albany Street, Gosford, New South Wales

LANDERS, Mr Francis Gerald, 15 Reservoir Road, Pymble, New South Wales

RIVER, Dhanu, Director, AID/WATCH, PO Box 652, Woollahra, New South Wales

CHAIRMAN—Welcome. In what capacity do you appear?

Dhanu River—I appear for AID/WATCH.

Mr Barnett—I have come here as a private citizen.

Mr Landers—I have come here as a private citizen. I have made a submission to the committee.

Councillor Brooks—I am representing Gosford City Council, which has made a submission. I am also President of the Gosford branch of the Liberal Party, which has made a submission to you.

CHAIRMAN—Has AID/WATCH made a submission?

Dhanu River—Yes.

CHAIRMAN—So three of the four witnesses have made submissions. If the submissions have been received, they will be considered. We plan to have further hearings so it is not as if today is your last opportunity to make a comment. Could you keep your comments very short. Perhaps we could have a couple of minutes from each of you and then we will have a little dialogue for about 25 to 30 minutes.

Mr Barnett—I did put a submission in. My very short submission was that—and this may sound a little strange because people will say that the Australian people do not understand the issue—we hold a general referendum for a plain yes or no to the treaty. Before people say to me, 'The average Australian is not interested and couldn't care less,' I would put the suggestion to the committee that they would feel the same about the goods and services tax, the GST, and that they would probably feel the same about the issue of the monarchy and the republic. A campaign would probably take a lot of explanation and they would probably feel the same when they went to vote but there would be the same lot of other issues. I think that it is important for the people of Australia to be given a say in a referendum.

The only other thing that I have to say is that I have listened to the various people here. They were all very interesting although probably a lot of them could have said what they said in a shorter period of time. Nevertheless, that was their way of saying it. To be quite honest—and this might sound a little brutal—it seems to me that with exports in, exports out, book publishing and all those sorts of thing it is a dog-eat-dog situation. It is almost cut-throat.

I think we have got to go back to the situation where we produce as much of our own books and whatever it is—newspapers, for instance—as we can for ourselves—although this applies to each country—and if we want to export after that that is up to us. I am not saying Australia has to go back to an isolationist position. I do not mean that. You cannot go back to the fifties or the sixties.

It seems to me that the Americans want to come here, the British want to go there and we are all fighting each other like cats and dogs for markets. But we have a market here for ourselves. Of what we are producing and reading here, perhaps half or 90 per cent or 20 per cent is coming from overseas. What about having our own stuff here? If we still wanted American or British newspapers, they would still be on the newsstand and we could have them. It seems to me that it is a dog-eat-dog situation and I wonder where it is all going to end.

It is like the wheat market. The Americans are saying they are going to send wheat to some of our traditional markets. Where is it going to end? I know where it is going to end. You will get a most powerful country like America saying, 'Damn you, Australia and New Zealand, you're only little countries. We'll take the market anyway. That is what our own people want.' It comes down to vote-buying, I suppose. That is all that I have to say. Thank you.

CHAIRMAN—Thank you very much. Mr Landers, would you like to make some comments.

Mr Landers—I made a submission in which I was very opposed to the MAI. I will not go over all that again except to mention rights and no responsibilities, the rollback provisions, the standstill provisions and the dispute resolution provisions, which are all unacceptable. And the proposal for having exceptions is quite unrealistic. You can never make exceptions at this stage, just look into the future. You cannot envisage what exceptions you would need in any particular area in detail. In any case, when the exceptions in quantity and in principle deny both the bulk of the provisions of the proposed agreement and the general trend of the agreement, there is something quite wrong about that and it is hardly appropriate to go into such an agreement.

However, I want to mention the association of the MAI with the global economy. In my way of thinking the MAI is simply a support, a legalisation, of the global economy, which we already have with us to a large degree. I do not think that there will ever be any

opportunity for full employment in this country or in any other country when the management of their affairs is virtually in the hands of transnational people and overseas financial forces. When it is taken out of the country's hands and when there is control by corporations instead of by governments, and the control of the international management of affairs is by corporations, then there will never be any possibility of full employment again or secure employment.

We can get those conditions again, but it will have to be by running our own affairs. They will have to be based on certain moral and social principles of what is suitable for human beings. We can do that; we can finance it. We can get that from various sources. I am not going to go into all the detail now, but I did say in my submission that I would be quite happy to make a further one. I do have a copy in my bag of a talk which I gave recently which was headed 'MAI: The Global Economy and Employment' in which I have dealt with those things, with the intervention of the IMF—an unfortunate intervention, I think—with the principles that should be adopted in running our affairs and with specific proposals where we can run our affairs in Australia, and in other countries as well, by looking after our own affairs.

We can only look after the human needs of employment and other things by doing it at a local level and a regional level. We cannot have a world government of corporations which are looking after their own particular profits and nothing else. We cannot have that type of thing and still look after human needs in our various areas. People must be able to look after them themselves. I would suggest that the principle of subsidiarity must be a rule and a guide for our social structures. That is the type of thing I want to emphasise: while we persist with this global economy, which has been the mirage that two governments and two oppositions have lived with for a couple of decades almost, there will never be the opportunity for full employment again.

Of course, when we have this large degree of unemployment, we are giving the 'okay' to some very serious social evils. Unemployment of youth is about 27 to 30 per cent and in some areas 50 per cent or more. The questions of crime, of loss of self-respect, of bringing up a population that does not know how to work and has never been given the opportunity to work—these are dreadful evils. These are the fundamentals, not some of the fundamentals that have been mentioned recently about balancing budgets; these are the fundamentals: overcoming our huge foreign debt and getting employment for our people.

There has got to be a change of direction. There has got to be a New Deal, such as Roosevelt pulled off after the First World War. These are the things that have got to be looked at. I would like to make, if the committee is prepared to accept it, a copy of the talk which I have here. If I could have—

CHAIRMAN—Absolutely. By all means do. As a supplementary submission, we will have a look at it.

Mr Landers—Would you be prepared to accept that now or would you rather I sent it in with a covering letter?

CHAIRMAN—We might as well take it now.

Mr Landers—I will get it out of my bag in a moment. That is the type of thing I want to say: unless these things are done, and while we continue with the global economy as such and say that is the be-all and the end-all, we can forget full employment. It will never occur again.

CHAIRMAN—Maybe my speech will elucidate it a little more. I am not sure whether you are saying that all these things are happening as a result of foreign investment. I agree with the trends that you are outlining, but they are not all necessarily being generated by external factors.

Mr Landers—I do not propose that there should be no foreign investment or a ban, but I do think that there should be a ban on foreign investment in certain things. I do not think that a viable Australian owned productive asset should be subject to foreign investment. I think we should retain the ownership. What we are doing is giving away our earning capacity and reducing our tax base. As you know, the Taxation Commissioner has said that 60 per cent of transnationals pay no tax and the balance pay very little.

CHAIRMAN—He did not quite say that. That is a bit of a furphy. In fact, a lot of measures have been taken, as was indicated earlier today. Listening to something that was on the *Today* show this morning, that is the impression that you would get, and let me say that some of those comments were very uninformed. As was indicated in this hearing today, if you are an Australian registered company, you will pay exactly the same as you would as a national company.

Mr Landers—I accept your advice. I do not propose that we should be a closed shop, but I think there must be regulation. For example, we do not need a huge aggregation of capital that can flash across the world in a microsecond and disturb economies and people and break up their lives and their culture. We do not need that type of thing. I think we do need control by individual countries of the inflow and outflow of capital. They must have that right. We should get that back again.

I would like to draw attention briefly to the operations of the Commonwealth Development Bank. In my way of thinking, banking in recent times has been disastrous. The Commonwealth Bank has, of course, been sold off. I do not think it ever should have been. The Commonwealth Development Bank was a wonderful bank which offered support with long-term loans and smaller loans for little people to keep their businesses going. That was a wonderful success and yet that has been done away with. Now we do not have that type of thing. That type of banking has operated in other countries, such as Germany for example.

CHAIRMAN—I hope you are not suggesting—as was suggested some months ago—a people's bank with two per cent interest rates, are you?

Mr Landers—I will not set the figure, but I think they should be low interest rates.

Mr HARDGRAVE—I think it was first suggested about 70-something years ago.

Mr Landers—Let us say it should operate in the same way as the Commonwealth Development Bank did successfully for so many years.

CHAIRMAN—We will read your supplementary submission with a lot of interest. Thank you. We will now hear from AID/WATCH.

Dhanu River—AID/WATCH has already put in a fairly large submission. It is an organisation which monitors development and development projects mainly in developing countries for the purpose of poverty alleviation. Most of our initial submission was based on that and the impact of the MAI on that kind of a process. I want to make some additional comments in relation to some of the suggestions that were made about regulation of social justice issues and alternate venues for dealing with investment, particularly the WTO and ECOSOC.

I think the primary issue for us is that there has been a process of deregulation of the global economy and a globalisation of the economy over the last 18 or 19 years, and there has not been any similar situation for a regulation of the social impacts of economic forces and the economy. It is basically left with nations. So nations are in the position where they unilaterally try to regulate the consequences of economic activity in a globalised environment.

A number of bodies like the WTO have acted actively against such regulation with, for example, the WTO's measures which say that products should not be discriminated against on the basis of process. In other words, you should not, except with a very few exceptions, discriminate against products made by exploitative labour, or where there are environmental impacts and so on. With things like sustainable forest products, under the WTO you should not be able to discriminate against unsustainable practices or against unsustainable fishing and so on. Those cases have been before the WTO.

The WTO is not fundamentally an organisation which favours social regulation. As such, it is probably inappropriate for dealing with the social regulation of investment. Its work with the trade related investment measures, TRIMs, has fundamentally been for deregulation rather than any kind of social regulation. I think that is an important context in talking about where this sort of thing should go.

The issue that we see in the lack of social regulation or the leaving of nations with

the task of social regulation is particularly where they are not allowed to discriminate against either products or companies because the MAI would clearly prohibit the regulation of companies which are engaged in exploitative processes. You could not say, 'You have a very poor environmental record in India or Brazil and we do not want your investment in forestry here,' or, 'You've had a very poor record of compliance.'

Currently, my understanding is that that would be possible under the Foreign Investment Review Board. FIRB is another institution that is under attack through the WTO, mainly by the United States. You have these situations where there are interlocking organisations which also work to circumvent the efforts made through the UN—ECOSOC and UNCTAD and those kinds of international organisations. They are basically taking the actual power of dealing with those economic things away from the UN and putting it into the WTO.

Going back to the problem of lack of regulation, it leaves nations in a situation where, if they are only able on an equitable basis to let both foreign and domestic companies regulate their own economies in a situation where the investment decisions, the decisions about development and industry policy and so on, are taken away from government and left in the hands of corporate headquarters, then you are in a situation where the only option for nations to manage the economy is to try to attract these companies through changes in structural factors like wages.

You see that through things like the workplace relations bill. The argument is certainly raised again and again that you cannot do this environmental measure or that social measure because it would not be internationally competitive and it would harm our investment. This works to really push all of those standards downwards.

There is also the issue of the interlocking of other laws like the Trans-Tasman Mutual Recognition Act. That allows recognition of anything that can be imported into New Zealand as importable directly into Australia on the same basis. If it can be sold in New Zealand, it can be sold here. There were changes that the Senate made to bring in issues of things like labelling and safety standards and so on, but they were very much last-minute standards.

The Trans-Tasman Mutual Recognition Act had provisions in it for the recognition of further such mutual recognition acts with other countries. So if New Zealand made such a pact with the Philippines, then suddenly Australia is bound to accept anything that is all right in the Philippine market within the provisions and safeguards that are in the Trans-Tasman Mutual Recognition Act. But these sorts of acts can be argued against by corporations under the MAI as impediments to investment.

You have an issue like the competition policy which talks about the deregulation and privatisation of a number of public entities—whether they are public services or public utilities and so on—and the issue of not being able to discriminate against

companies when you are talking about the sale of a monopoly and who is bidding on a public monopoly like the water or electricity system of a region. I think that represents real problems that have not been examined in the context of the MAI.

CHAIRMAN—The mutual recognition agreement area is being covered by this committee in terms of an MRA with the European Union. That gets into the sorts of things that you are raising. As far as the committee is concerned, at the moment it is sub judice but it is relevant to the MAI so I take your point. In terms of the ideal forum, are you agreeing with ACOSS that that is the appropriate forum?

Dhanu River—I would agree that either ECOSOC or UNCTAD would be the appropriate group and I think that is something Australia should be pushing for. It is unlikely to happen because there are quite a lot of forces arrayed against that. In the absence of that, we should pursue bilateral or multilateral agreements with other countries for social regulation of things and some management of trade. I am thinking particularly of things like the fact that the UN General Assembly endorsed the new international economic order, which was a policy for managing trade so that it was fair, rather than the WTO agenda of pushing for free trade. With the issue of fair trade as opposed to free trade, they are not saying, 'Don't trade.' They are saying that there needs to be some recognition of the inequities of power and some of the consequences of that.

CHAIRMAN—Thank you very much. I now invite Councillor Brooks to make some comments.

Councillor Brooks—To sum up, the concern of most people, and the concern expressed in most of the submissions, in my opinion, relates to the loss of sovereignty. I do not think that is new, and I do not think it is new to the Australian community. I have just come back from two months in Europe. The Germans to whom I spoke were very concerned about the Euro, and the loss of deutschmarks. The community in England is more concerned now than it was when I was there years ago about the power of Brussels over the sovereignty of the UK. So I do not think what has been expressed in the submissions is unique to the Australian public in regard to the loss of sovereignty. I think it is a worldwide trend.

The Gosford City Council, in its submission to you, accepts the need for overseas investment. But the MAI has the capacity, in its opinion, to override the authority of local regulatory authorities to impose special conditions on any development which the local authority deems to be unsatisfactory to the health and wellbeing of the people, the environment and the amenity of the whole area. That is totally unacceptable to the Gosford City Council.

I did say that I also represented the Gosford branch of the Liberal Party. Members were of the view that even if the MAI supposedly allows for exemptions from the treaty—and we have heard that here today—for certain fields of investment, such exemptions are

open to challenge in our courts.

I agree with what I heard from Mr Hardgrave today about where such exemptions would disadvantage a foreign investor. We have seen cases in the past where the court has ruled in favour of special interest groups. That concerns me because I believe our Australian constitution—and I think he, or somebody, today used the words 'unique in the world'—is one of the unique constitutions. I think that has not been considered enough—certainly not by Treasury.

In our opinion, the treaty is designed to promote global investment. The way we see it, it would impinge upon a government's right to enact laws on industrial relations, immigration, the environment and foreign investment which might be contrary to the terms and principles of the MAI. That, in simple terms, means our sovereignty may be diminished. As we read it, the treaty is designed to protect foreign investors and multinationals. We believe we need a treaty and laws to protect our interests and our culture, and to protect us from the downside of globalisation, which have all been mentioned today.

In public floats like Qantas, Telstra and the AMP, the Australian government would be prohibited from limiting foreign ownership. That is something that we cannot agree with. Similarly, if foreign owned mining companies were found to be polluting the environment and strict environmental policies were implemented, these policies, which of course would disadvantage the foreign owners, would thereupon become unenforceable.

In summary, we have seen enough absurd decisions from previously secretly negotiated international treaties. It is a pleasure to be here today to speak about an international treaty that has been openly discussed within the community—which has not, to my knowledge, been done before in the last 10 or 15 years. We are pleased to see the formation of this committee, of which you are the chairman. We hope that we will see more of this examination of treaties within the Australian community in the future. In regard to this treaty, we believe that, if such actions go to court, they would be initiated by foreign millionaires, foreign investors, foreign companies, multinationals. The losers of course would be us, the ordinary people of Australia—the ones who still call Australia home.

CHAIRMAN—Specifically, in the interim report we said that local government has not in fact been consulted to the level that it should be. So we have already taken that on board. We will reiterate that as the result of these most recent hearings, and I can assure you that we will pass on the message to government. Thank you very much to the four of you. Ladies and gentlemen, collectively, thank you very much for being here today.

I do not want to get too party political but, just to follow up on Mr Brooks's comment about the treaty scrutiny process, I should say that I think—and I am sure that

the opposition would agree with me; Barney Cooney is here—that, irrespective of the party political dimension of the membership of this committee, there is a unanimous view that the country is the better for what has been put in train. Whilst it may not be the optimum yet, at least it is better than what we have had before—and that of course was nothing.

We will be tabling a very substantial report on 7 September on the Convention on the Rights of the Child, which, as many of you would know, bounced around in 1988-89 and was finally ratified, without any parliamentary debate and very little consultation, in December 1990. Once we have done that, I suggest that you might like to read that report. It raises a lot of issues. I cannot go into the detail because I would be in contempt of the parliament—it is about 500 pages and has taken about 18 months to complete—but it does reiterate the point that Mr Brooks is making that the treaties scrutiny process has moved in the right direction. Back in the late 1950s and the early 1960s there was a process. It died. It came back in a modified format through the Hawke-Keating governments, but it did not really get the input of ordinary people like we have here today—that is the difference. So I thank you for that comment.

I thank you all for being here today. It has been a pleasure to have you. I hope you can see that it is a two-way process. It is flexible. That has been our experience right around this country over the last two years.

Senator COONEY—I would like to endorse what the chairman said, and to say that the committee—which I hope will now extend into the future for as long as parliament keeps going—has started well with the chairman it has. I think the success of the committee has had much to do with the chairman, Mr Taylor, on this occasion.

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

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

Subcommittee adjourned at 3.41 p.m.