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Submission 7
TT 13 June 2007

FAXED
13-7-07

Dr A Southcott MP
Chair
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

Dear Dr Southcott

Thank you for your letter of 13 June 2007 in which you invite comments on the following treaties tabled on that day:

- *Agreement on Health Care Insurance between Australia and the Kingdom of Belgium, Canberra, 10 August 2006;*
- *Agreement between the Government of Australia and the Government of Antigua and Barbuda on the Exchange of Information with Respect to Taxes, Saint John's, Antigua 30 January 2007;*
- *Agreement between the Government of Australia and the Government of the Kingdom of the Netherlands in Respect of the Netherlands Antilles for the Exchange of Information with Respect to Taxes, Canberra, 1 March 2007;*
- *Extension of the Agreement of 4 December 1997 between the Government of Australia and the International Bureau of the World Intellectual Property Organization in relation to the functioning of the Australian Patent Office as an International Searching Authority and International Preliminary Examining Authority under the Patent Cooperation Treaty; and*
- *International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004, London, 13 February 2004.*

The Tasmanian Government supports the agreements outlined in the proposed treaties listed above. While the Government also supports the agreements listed below, I have attached some comments on the content of those agreements for your consideration.

- *Treaty between Australia and the Kingdom of Thailand on Mutual Assistance in Criminal Matters, Kuala Lumpur, 27 July 2006;*
- *Agreement on Operational and Strategic Cooperation between Australia and the European Police Office (Europol) (The Hague, 20 February 2007); and*
- *Protocol between the Government of Australia and the Government of the Hong Kong Special Administrative Region of the People's Republic of China Amending the Agreement for the Surrender of Accused and Convicted Persons of 15 November 1993, Hong Kong, 19 March 2007.*

Thank you for the opportunity to comment.

Yours sincerely

A handwritten signature in black ink, appearing to read 'PA Lennon', with a stylized, cursive flourish extending from the end.

Paul Lennon
Premier

COMMENTS ON THREE INTERNATIONAL TREATIES TABLED IN COMMONWEALTH PARLIAMENT ON 13 JUNE 2007

Treaty between Australia and the Kingdom of Thailand on Mutual Assistance in Criminal Matters

In Article 1 (Obligation to Grant Mutual Assistance) clause 3, it is recommended that the requirement to give assistance should only apply if the required assistance is not inconsistent with the laws of the requested state. This is particularly important for assistance involving search and seizure powers.

In Article 5 (Contents of Requests for Mutual Assistance) clause 2(b), it is recommended that the requirement to include a description of the nature of the investigation, prosecution or proceeding, including a summary of the relevant facts and laws, be extended to include advice as to the penalty, more particularly as to whether or not the penalty for the crime concerned includes the death penalty.

Pursuant to clause 3(a) of Article 5, where possible, a request relating to a person shall include the identity, nationality and location of the person. It is recommended that the following relevant personal information also be included: a description of the person and any history of violence.

In Article 7 (Costs and Representation), clause 2 refers to expenses of an extraordinary nature. It may be prudent to limit the costs associated with the execution of the request to a monetary figure in order to avoid uncertainty. It is also recommended that a provision be included to ensure that contracting states are required to consult with each other to determine terms and conditions, before expending large sums of money on the execution of the request.

Article 12 (Service of Documents) clause 3 states that the requested State shall return proof of service of documents, specifying the persons served, the form and date of service. The information should also include details of the person serving the document.

In Article 13 (Search and Seizure) clause 2 requires information to be provided for search requests. It is recommended that the required information be extended to include any intelligence relating to the safety of the place and/or person/s to be searched.

Article 14 (Temporary Transfer of Persons in Custody) clause 1 states that a person in custody in the requested State shall at the request of the requesting State, be temporarily transferred to the requesting State for testimonial purposes. It is recommended that this requirement only apply if the transfer is permitted by the laws of the requested State.

Under clause 3 of Article 14, the request to transfer a person is to include the name of the person and other details. It is recommended that it also include their date of birth and information as to how long they will be temporarily transferred to the requesting State.

In Article 16 (Instruments and Proceeds of Crime), it is recommended that the references in clauses 7 and 8 be limited to 'criminal offences', rather than 'offences' generally.

Agreement on Operational and Strategic Cooperation between Australia and the European Police Office (Europol)

It is concerning that the forms of crime to which the agreement applies are quite narrow. Annex 1 of the agreement lists the forms of crime as unlawful drug trafficking, crimes connected with nuclear and radioactive substances, illegal immigrant smuggling, trade in human beings, motor vehicle crime, forgery of money and means of payment, and illegal money-laundering activities. It is recommended that the forms of crime in Annex 1 be expanded to include terrorism and related offences, identity crime and serious criminal offences such as murder, kidnapping and the like.

In Article 9 clause (Supply of personal data by Europol), It is recommended that clause 2.4 be extended by allowing for information to be supplied for the purposes of prosecuting and investigating the crimes detailed, in addition to preventing or combating those crimes.

Article 22 (Entry into force and validity) states that the Agreement shall enter into force on the date on which Australia notifies Europol in writing through diplomatic channels that it has completed its domestic procedures and intends to be bound by this Agreement. There appears to be no similar requirement for Europol to notify its acceptance of the Agreement in writing.

Protocol between the Government of Australia and the Government of Hong Kong Special Administrative Region of the People's Republic of China Amending the Agreement for the Surrender of Accused and Convicted Persons of 15 November 1993

It is noted that this protocol makes minor amendments to the existing Agreement for the Surrender of Accused and Convicted Persons of 15 November 1991 between Australia and Hong Kong (the Agreement). Further, Article 3 of the proposed protocol reduces the burden on Hong Kong in that Hong Kong is no longer required to provide evidence to Australian courts that would justify the committal of the accused person.

However, the reduced burden is not reciprocated where Australia is seeking the surrender of an accused person in Hong Kong. This may be cause for concern if China seeks the surrender of political activists in Australia, although it is noted that the existing agreement appears to provide some protection against this under Article 6 (Refusal to Surrender) of the existing Agreement.