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The Parliament of the Commonwealth of Australia

# **REPORT 26**

**An Agreement to extend the period of operation of the Joint  
Defence Facility at Pine Gap**

Joint Standing Committee on Treaties

October 1999

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# Contents

Membership of the Committee .....	v
Recommendations and conclusion .....	vii
<b>1 Introduction .....</b>	<b>1</b>
Purpose of this report .....	1
The Pine Gap agreements.....	1
The Committee's review task.....	3
<b>2 Seeking information from the Department of Defence .....</b>	<b>5</b>
The National Interest Analysis.....	5
Requests for an inspection.....	6
Private briefings from the Department of Defence .....	7
Different levels of access to the Joint Defence Facility – Australian and American elected representatives.....	8
<b>3 Seeking information from other sources .....</b>	<b>11</b>
Introduction.....	11
Purpose of the Facility .....	12
Telemetry signals.....	12
Signals from large radars.....	12
Signals from other satellites.....	12
Microwave emissions.....	13
Importance of the Facility .....	13
Continuing importance of the Facility .....	14

Australian involvement in the operation of the Joint Defence Facility.....	15
Transparency vs secrecy .....	16
The classified agreement .....	18
Observations on the evidence.....	19
<b>4 Conclusions and recommendations .....</b>	<b>21</b>
Introduction.....	21
The problem exposed by our review.....	21
Our duty .....	22
Resolving this issue .....	23
Concluding comments .....	24
<b>Appendix A – Extract from Resolution of Appointment.....</b>	<b>27</b>
<b>Appendix B – Witnesses at the public hearing .....</b>	<b>29</b>
<b>Appendix C – National Interest Analysis .....</b>	<b>31</b>
<b>Dissenting Report – Senator the Hon Chris Schacht, Hon Dick Adams MP, Hon Janice Crosio MP and Kim Wilkie MP .....</b>	<b>35</b>



## Membership of the Committee

Chair            The Hon Andrew Thomson MP

Deputy Chair   Senator Barney Cooney

Members	The Hon Dick Adams MP	Senator Vicki Bourne
	The Hon Bruce Baird MP	Senator the Hon David Brownhill*
	Kerry Bartlett MP	Senator Helen Coonan
	The Hon Janice Crosio MP	Senator Joe Ludwig****
	Kay Elson MP	Senator Brett Mason**
	Laurie Ferguson***	Senator Bill O'Chee*
	Gary Hardgrave MP	Senator the Hon Margaret Reynolds*
	De-Anne Kelly MP	Senator the Hon Chris Schacht
	Kim Wilkie MP****	Senator Tsebin Tchen**

\*        Until June 1999

\*\*       From July 1999

\*\*\*     Until August 1999

\*\*\*\*    From August 1999

## Secretariat

Secretary            Grant Harrison

Inquiry Secretary   Cheryl Scarlett



## Recommendations and conclusion

### Recommendation 1

That the Minister for Defence authorise his departmental officials to provide the Joint Standing Committee on Treaties with:

- a classified briefing on the purpose and operation of the Joint Defence Facility;
- a copy of the classified agreement that gives operational effect to the *Agreement between the Australian Government and the United States Government relating to the Establishment of a Joint Defence Space Research Facility* (1966);
- on-site access to the Joint Defence Facility at Pine Gap; and
- such other information as may be required to enable the Committee to determine if the treaty action is in Australia's national interest (paragraph 4.21).

### Recommendation 2

That the Minister for Defence, in conjunction with the Minister for Foreign Affairs and the Joint Standing Committee on Treaties, develop a protocol for ensuring constructive parliamentary consideration of sensitive security-related treaties. The protocol should:

- identify the full range of sensitive security-related treaties and subsidiary agreements to which Australia is a party;
- recognise the legitimacy and importance of the reformed treaty making process;
- require that briefings provided to the Committee be comprehensive and at least the equivalent in terms of detail and depth as briefings provided to the ASIO and NCA Committees of the Parliament, provided that such briefings be held *in camera*; and

- empower the Committee to request the relevant Ministers to be present during such briefings to assist the Committee (paragraph 4.22).

### **Conclusion**

The Joint Standing Committee on Treaties:

- supports, in principle, the *Exchange of Notes constituting an Agreement between Australia and the United States of America to further extend the Agreement relating to the Establishment of the Joint Defence Facility at Pine Gap*; and
- with the limited evidence made available, finds no reason to object to the continuation of the Joint Defence Facility (paragraph 4.24).

## Introduction

### Purpose of this report

- 1.1 This Report contains the results of the consideration by the Joint Standing Committee on Treaties of an *Exchange of Notes constituting an Agreement between Australia and the United States of America to further extend the Agreement relating to the Establishment of a Joint Defence Facility at Pine Gap*. The Exchange of Notes (which we will refer to as the 1998 Amendment) was tabled in Parliament on 30 June 1998.

### The Pine Gap agreements

- 1.2 The Joint Defence Facility at Pine Gap was established in 1966, pursuant to an agreement providing for a 'joint defence space research facility'. This agreement (hereafter the Head Agreement) came into force on 9 December 1966 and has been amended twice by exchanges of notes: first in 1977, and again in 1988.
- 1.3 The Head Agreement requires that:
- the two Governments 'shall establish, maintain and operate in Australia a facility for general defence research in the space field';
  - the Australian Government shall provide land for the facility which will remain vested in the Australian Government;
  - the United States Government will be accorded 'all necessary rights of access to, and joint use and occupation of, the land'; and



- the land 'shall be considered a secure area'.<sup>1</sup>

1.4 The preamble to the Head Agreement alluded to the purpose of the facility when it states the following as the context in which the agreement was negotiated:

...

NOTING [the ANZUS treaty] ... which provides that the parties thereto will separately and jointly maintain and develop their individual and collective capacity to resist armed attack;

DESIRING to cooperate further in effective defence for the preservation of peace and security;

CONSIDERING that the establishment, maintenance and operation of joint United States-Australia defence space research facility in Australia will materially contribute to that end;

...<sup>2</sup>

1.5 The purpose of the Joint Defence Facility was further amplified in the National Interest Analysis presented to Parliament in support of the 1998 Amendment. This document described the Facility as 'an intelligence gathering facility.'<sup>3</sup>

1.6 The proposal to further extend the Head Agreement was finalised in July 1996, during the Australia-United States Ministerial Consultations. The 1998 Amendment, which will give effect to this proposal will extend the non-termination period of the facility at Pine Gap for a further 10 years from 16 November 1998.

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1 *Agreement between the Government of the Commonwealth of Australia and the Government of the United States of America relating to the Establishment of a Joint Defence Space Research Facility*, Australian Treaty Series 1966, No. 17, p. 2

2 *Agreement between the Government of the Commonwealth of Australia and the Government of the United States of America relating to the Establishment of a Joint Defence Space Research Facility*, Australian Treaty Series 1966, No. 17, p. 2

3 National Interest Analysis for the *Agreement between the Government of the Commonwealth of Australia and the Government of the United States of America relating to the Establishment of a Joint Defence Space Research Facility*, p. 1. A copy of the National Interest Analysis is at Appendix C. We note that the purpose of the Joint Defence Facility has been described on the public record on many occasions: by Allan Behm (then First Assistant Secretary, Department of Defence) in a paper entitled 'The Joint Defence Facilities in ANZUS' delivered to a 1997 seminar on the ANZUS alliance run by the Joint Standing Committee on Foreign Affairs Defence and Trade; by the Hon R J Hawke MP in a ministerial statement on joint defence facilities on 22 November 1988; in the 1994 Defence White Paper *Defending Australia*; and, in some detail, by Professor Des Ball in his book *Pine Gap: Australia and the US geostationary signals intelligence satellite program*, Allen & Unwin, Sydney, 1988. Professor Ball cites public comments made by Ministers for Defence and Prime Ministers on the purpose and operation of Pine Gap as far back as 1966. He notes that the comments exhibit varying degrees of honesty and completeness.

## The Committee's review task

- 1.7 Our review of the 1998 Amendment has proved to be a difficult and time-consuming exercise.
- 1.8 From the outset we sought to apply the same test to this proposed treaty action as we apply to all treaties that come before us: that is, to ask whether the proposed treaty is in Australia's national interest. A public examination of this question is at the heart of the reformed treaty making process established by the Government in 1996.
- 1.9 We see our responsibility as being to advise Parliament, and the wider community, as to whether the benefits of a proposed treaty action outweigh any costs associated with that action.
- 1.10 We have, however, been very conscious of the national security sensitivities associated with this particular treaty action. The Joint Defence Facility at Pine Gap is a highly classified Defence establishment and we acknowledge that the disclosure of detailed information about the precise purpose, deployment and operational potential of the Joint Defence Facility might be contrary to Australia's national interests. Accordingly, we have sought to modify our review procedures and accepted the need to seek some information *in camera* rather than in public session.
- 1.11 From the outset of our review we were inclined to believe that it would be in Australia's national interest for the 1998 Amendment to proceed. But in order to draw a firm conclusion on the matter, and to fulfil our review and reporting obligations, we needed information from the relevant government officials.
- 1.12 Our review has been focused on obtaining such information.<sup>4</sup>

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4 Our review of the 1998 Amendment was advertised in *The Weekend Australian* of 4-5 July 1998. Information about the amendment and an invitation to make a submission has been posted on our web site ([www.aph.gov.au/house/committee/jsct](http://www.aph.gov.au/house/committee/jsct)) since that date. We have received only one public submission: from Robert Downey (Clayfield, Queensland). Mr Downey argues that all foreign military bases in Australia, including the Joint Defence Facility at Pine Gap, should be closed down and that Australia should be self-reliant in Defence matters.

## Seeking information from the Department of Defence

### The National Interest Analysis

- 2.1 When proposed treaty actions are tabled in Parliament, the relevant government agency submits a national interest analysis, which describes the key features of the proposed treaty action, explains why the treaty action should be taken and outlines the obligations and costs that are expected to arise from the treaty and comments on the extent of public consultation involved in the negotiation of the treaty.<sup>1</sup>
- 2.2 The national interest analysis prepared by the Department of Defence to support the 1998 Amendment presents the following as the reasons for the proposed treaty action:

The 1998 Agreement is an important indication of the continuing commitment of both the Australian and United States Governments to cooperation at the Joint Defence Facility at Pine Gap. The Pine Gap Facility is an intelligence collection facility, which serves to support our mutual security interests, and contributes to global security.

The systems supported by Pine Gap will evolve to meet the demands of the post Cold War era, and it is expected that Pine Gap will remain a central element in our cooperation with the United States well into the next century.

All activities at the Pine Gap Joint Defence Facility are managed to ensure that they are consistent with Australian interests. The

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<sup>1</sup> In this case, given the nature of the proposed treaty action, we accept that it was appropriate to curtail the community consultation processes normally associated with negotiating treaties.

activities take place with the full knowledge and concurrence of the Australian Government, and Australia benefits fully from them. Australians are fully involved in the management and operation of the Joint Defence Facility.<sup>2</sup>

- 2.3 These were the only public comments made by Defence in support of the proposed treaty action.
- 2.4 We were not satisfied that these statements alone represented a sufficient basis on which to recommend that binding treaty action be taken.
- 2.5 We decided to continue our inquiries by asking the Minister for Defence for permission to travel to Pine Gap and conduct an inspection of the Joint Defence Facility. We envisaged that the inspection would be supplemented by a private briefing from senior Department of Defence officials on the contribution that the Facility makes to our national security interests.

## Requests for an inspection

- 2.6 On 8 July 1998, Bill Taylor MP, the Chairman of the former Committee, wrote to the Hon Ian McLachlan MP, who was then Minister for Defence, asking that the Committee be permitted to visit the Joint Defence Facility and receive an on-site, private briefing. The Minister refused the request, arguing that:

By agreement with the United States Government such access is tightly controlled for both US and Australian citizens and limited strictly to personnel with a “need to know”.

Members of Parliament and Congress whose responsibilities directly require that they be briefed on the highly classified aspects of the site are fully briefed on its roles and functions and have unrestricted access. Bipartisan convention in Australia is that only relevant Ministers, the Leader of the Opposition, and Opposition spokespersons for Defence and Foreign Affairs are fully briefed.<sup>3</sup>

- 2.7 The Minister concluded his letter by offering a ‘comprehensive briefing’ in Canberra by senior officials from his Department.

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2 National Interest Analysis for the *Agreement between the Government of the Commonwealth of Australia and the Government of the United States of America relating to the Establishment of a Joint Defence Space Research Facility*, pp. 1-2.

3 Letter from the Hon Ian McLachlan MP, then Minister for Defence to Bill Taylor MP, former Chairman of the Joint Standing Committee on Treaties, dated 19 August 1998

- 2.8 On 10 December 1998, the current Chairman, the Hon Andrew Thomson MP, wrote to the current Minister for Defence, the Hon John Moore MP, repeating the request and giving an undertaking that the information provided would remain confidential.<sup>4</sup> The Minister replied on 11 February 1999 again refusing the request for an inspection and offering in its place a 'comprehensive briefing' in Canberra.<sup>5</sup>

## Private briefings from the Department of Defence

- 2.9 We were briefed by senior Defence officials at private briefings on 22 and 29 March 1999. We were advised that there were essentially three reasons why binding treaty action should be taken in relation to the 1998 Amendments:
- the fact that the Joint Defence Facility is a significant element in our broader strategic alliance with the United States;
  - the important contribution that the Joint Defence Facility makes to the capacity of the United States to remain globally engaged; and
  - the value of the intelligence gathered by the Joint Defence Facility, to both the Australian and United States Governments.
- 2.10 This was a clear statement of the arguments in support of the proposed amendments. However, they were presented as assertions with little explanation or justification. Although we were inclined to believe that the reasons were sound, we were not provided with the range and depth of information which would enable us to report that a compelling argument had been made in favour of binding treaty action.
- 2.11 This was not an inadvertent outcome. It resulted from a conscious decision made by the most senior of the Defence officials present (an officer at the Deputy Secretary level), and apparently endorsed by the Minister, to limit the amount of information provided to the Committee.
- 2.12 We recognise that there must be limits on the level of detail disclosed publicly about the operation of highly classified Defence installations, but we cannot accept that it is reasonable for Defence to entrust us with testimony that falls well short of information about the Joint Defence Facility that is already on the public record. It was certainly far less detailed than we expected following the promises made by successive

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4 Letter from the Hon Andrew Thomson MP, Chairman of the Joint Standing Committee on Treaties, to the Hon John Moore MP, Minister for Defence, 10 December 1998

5 Letter from the Hon John Moore MP, Minister for Defence, to the Hon Andrew Thomson MP, Chairman of the Joint Standing Committee on Treaties, dated 11 February 1999

Ministers that their officials would provide us with a 'comprehensive briefing'. The limited scope of the briefing was confirmed in subsequent correspondence from Minister Moore when he stated that none of the information provided to the Committee was classified.<sup>6</sup>

- 2.13 We were also disappointed with Defence's ignorance of, or reluctance to accept, the treaty review responsibilities conferred on this Committee by the Parliament, on the initiative of the current Government. It is precisely because of excessive levels of secrecy that the parliamentary treaty review process was established.
- 2.14 One of the issues of most concern to us was Defence's admission that certain members of the United States Congress have much freer access to information about the Joint Defence Facility, indeed access to the facility itself, than Australian parliamentarians.

### **Different levels of access to the Joint Defence Facility – Australian and American elected representatives**

- 2.15 The Department of Defence acknowledged that 'quite a few US Congress members are briefed on the functions of Pine Gap' and identified various US congressional committees that receive such briefings, including the House of Representatives and Senate committees on intelligence, armed forces, national security and some budget committees. Although we sought clarification on how many Members of Congress have visited Pine Gap over the last ten years and on what sort of briefings they had received, it proved to be difficult to obtain clear and accurate information from Defence.
- 2.16 Defence provided three separate answers to questions taken on notice on this point, over a period of 9 weeks following the first briefing. The result was the following advice:

We are not in a position to provide reliable information on Congressional visits to Pine Gap prior to 1996;<sup>7</sup> and

[Since 1996,] one Congressional committee, the United States House of Representatives Committee on National Security visited [the Joint Defence Facility] twice; in January 1997 and again in

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6 Letter from the Hon John Moore MP, Minister for Defence to the Hon Andrew Thomson MP, Chairman of the Joint Standing Committee on Treaties, dated 11 August 1999, p. 1

7 Department of Defence, *Submission No. 4*, p. 1

August 1997 following significant change in the Committee's membership.<sup>8</sup>

- 2.17 We raised our concerns about this disparity both with Defence and with the Minister for Foreign Affairs, the Hon Alexander Downer MP. Both replied in similar terms, with the Minister arguing that the difference does not reflect:

... privileged access to the facility but rather the different constitutional arrangements in the US where members of the Congress are involved in the direct oversight of US Defence Department activities.<sup>9</sup>

- 2.18 Australian parliamentarians have raised these concerns in the past. In April 1992, the Joint Standing Committee on Foreign Affairs, Defence and Trade presented a report that was 'very critical of the anomalous situation in which US Senators receive classified briefings for which Australian parliamentarians are not granted clearance'.<sup>10</sup> The former Senator David MacGibbon, speaking upon the tabling of the Foreign Affairs, Defence and Trade Committee report, remarked that it was unsatisfactory that members of some US Congressional committees have full and complete access to information about the joint defence facilities, but that Australian parliamentarians are told no more than is 'available from the popular press.' He went on to argue three points in support of the proposition that more information be made available to Australian parliamentarians:

[first] as members of parliament, we are fully accountable for the expenditure of all public moneys. If no-one apart from the Minister knows what the various intelligence agencies are doing, no-one in the Parliament can truthfully account to the public for the expenditure of that money ... [second] information has to be shared so that opinions can be formed and decisions made by informed minds ... [and third] the executive government is responsible to Parliament for the exercise of its authority. It therefore follows that it is proper for the Parliament to be informed on intelligence matters.<sup>11</sup>

- 2.19 Our experience has confirmed the anomaly, perhaps highlighting it even more starkly:

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8 Department of Defence, *Submission No. 2*, p. 1

9 Letter from the Hon Alexander Downer MP, Minister for Foreign Affairs, dated 24 April 1999, p. 1

10 *Report on the Visit of the Defence Sub-committee of the Joint Committee on Foreign Affairs Defence and Trade to Nurrungar-Woomera and Northern Territory, October 1991*, April 1992, p. 2

11 Senator David MacGibbon, *Senate Hansard*, 30 April 1992, pp. 1949-50

- a congressional committee voting on an annual appropriation is able to visit the Joint Defence Facility and receive a classified briefing; while
- the Treaties Committee, seeking to advise the community on whether Australia should be bound to an international obligation for the next ten years, is denied access to the facility and entrusted with less information than can be found in a public library.



## Seeking information from other sources

### Introduction

- 3.1 In the absence of sufficient information from official sources, we sought information from some previous official statements on the public record and from two well-known and respected academics in the field:
- Professor Paul Dibb, Head of the Strategic and Defence Studies Centre at the Australian National University; and
  - Professor Des Ball, also from the Strategic and Defence Studies Centre at the Australian National University but who gave evidence in his private capacity.
- 3.2 Professor Dibb is highly regarded in the field of strategic analysis and is the author of an influential review of Australia's strategic position and outlook. He was Deputy Secretary of the Department of Defence in the period 1988 to 1991 and in this position was responsible for overseeing the operation of the Joint Defence Facility at Pine Gap.
- 3.3 Professor Ball has published many articles and books on Defence related issues, including a series of publications about Joint Defence Facilities in Australia. His writings on the Joint Defence Facility at Pine Gap are regarded as being authoritative.
- 3.4 At a public hearing on 9 August 1999, the two professors gave us an overview of the purpose of the Joint Defence Facility and of its value to Australia.
- 3.5 Some of the key elements of their evidence are summarised below. The full transcript is available from the Committee Secretariat or from the

Hansard database maintained on the Internet by the Department of the Parliamentary Reporting Staff.<sup>1</sup>

## Purpose of the Facility

- 3.6 According to Professor Ball, the Joint Defence Facility is the ground control and processing station for a series of satellites in geostationary orbits above the equator, whose purpose is to collect signals intelligence.<sup>2</sup>
- 3.7 There are four principal categories of signals monitored by the satellites controlled from the Joint Defence Facility: telemetry signals, signals from large radars, communications from other satellites, and microwave emissions from the earth's surface.

## Telemetry signals

- 3.8 Telemetry signals are those signals sent in the course of advanced weapons development. Typically, they are transmissions of data about the in-flight performance of deployed missiles.
- 3.9 Professor Ball explained that information about 'vibrations, temperature and stage separation' is important not only for those developing missile systems but for those seeking to monitor the development of such systems in other countries. Telemetry information is critical for monitoring compliance with arms control agreements.<sup>3</sup>

## Signals from large radars

- 3.10 The radar signals tracked from the Joint Defence Facility include signals associated with anti-ballistic missile fields, air defence radars and radars on ships. These emissions are analysed to obtain information about air defence capabilities – in particular, about the location, range and potential of anti-missile and anti-aircraft systems.<sup>4</sup>

## Signals from other satellites

- 3.11 The Joint Defence Facility is also able to intercept communications to and from other satellite systems: that is, 'communications which are going up

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1 See [www.aph.gov.au/hansard/joint/commtee/comjoint.htm](http://www.aph.gov.au/hansard/joint/commtee/comjoint.htm)

2 Professor Desmond Ball, *Transcript of Evidence*, 9 August 1999, pp. 1-2

3 Professor Desmond Ball, *Transcript of Evidence*, 9 August 1999, pp. 2-3

4 Professor Desmond Ball, *Transcript of Evidence*, 9 August 1999, pp. 2-3

from the ground to communication satellites which are also based in geostationary orbits.<sup>5</sup>

## Microwave emissions

- 3.12 A wide range of other microwave emissions from the earth's surface are also intercepted, including telecommunications such as long distance telephone calls. This enables the Joint Defence Facility to monitor military microwave circuits, key microwave channels used by political and government agencies, and even private communications.<sup>6</sup>

## Importance of the Facility

- 3.13 Professor Dibb noted that while Australia's military alliance with the United States has many dimensions, including shared values and common strategic interests, the Joint Defence Facility is undoubtedly a key element in the relationship.<sup>7</sup> He referred to the facility as a 'unique and enormously powerful collector' of information of increasing relevance to Australia's national interest.<sup>8</sup>
- 3.14 Professor Ball argued in a similar vein, explaining that although the Joint Defence Facility is only one part of the signals intelligence system developed by the United States and its allies, it offers a unique capability:
- Because you can actually park a satellite over the interior of a country and intercept microwave emissions coming out of that country, you are able to get a lot of intelligence which simply cannot be intercepted by any other means.<sup>9</sup>
- 3.15 The intelligence gathered at the Joint Defence Facility is, according to Professor Ball, not only of critical importance to the United States but also to the Australian Government and its defence and intelligence agencies.<sup>10</sup>
- 3.16 Professor Ball went on to say that while he had been a strong critic of other Joint Defence Facilities in Australia, he had to accept that the intelligence collected at Pine Gap was of high value and could not

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5 Professor Desmond Ball, *Transcript of Evidence*, 9 August 1999, pp. 2-3

6 Professor Desmond Ball, *Transcript of Evidence*, 9 August 1999, pp. 2-3

7 Professor Paul Dibb, *Transcript of Evidence*, 9 August 1999, pp. 18-9

8 Professor Paul Dibb, *Transcript of Evidence*, 9 August 1999, p. 18

9 Professor Desmond Ball, *Transcript of Evidence*, 9 August 1999, p. 3

10 Professor Desmond Ball, *Transcript of Evidence*, 9 August 1999, p. 8

otherwise be collected.<sup>11</sup> He concluded that to refuse to proceed with the 1998 Amendments would be 'a very unfortunate decision', adding that:

I do not see any other alternative other than to have Pine Gap here. That is whether one is concerned about monitoring, proliferation of ballistic missiles, nuclear proliferation or other advanced weapon systems in our region.<sup>12</sup>

## Continuing importance of the Facility

3.17 Both Professors Ball and Dibb argued that, despite the end of the Cold War, the Joint Defence Facility is likely to be of increasing (rather than decreasing) utility to the Australian and United States Governments.

3.18 Professor Ball expressed this view in the following terms:

With the breakdown of the bipolar system and its replacement by some as yet undetermined multipolar system, each particular country that is involved in advanced signals intelligence collection ... has found that they need to collect intelligence on a greater number of countries and from a wider variety of perspectives. They are not just collecting strategic intelligence about weapons systems: they are finding it necessary to collect more political intelligence and even more economic intelligence ...<sup>13</sup>

3.19 Professor Dibb suggested that the Australia's strategic environment has become much more complex and uncertain since the end of the Cold War and, correspondingly, much more demanding of intelligence collection and analysis.<sup>14</sup> He noted that there are more developments in the areas of ballistic missiles, nuclear weapons technology and chemical and biological weapons occurring in Asia more than elsewhere in the world. While not posing an immediate threat to our strategic interests, these developments need to be monitored.<sup>15</sup>

3.20 It has been argued in other fora that the Joint Defence Facility is of continuing importance to Australia because:

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11 Professor Desmond Ball, *Transcript of Evidence*, 9 August 1999, pp. 8-9

12 Professor Desmond Ball, *Transcript of Evidence*, 9 August 1999, p. 9

13 Professor Desmond Ball, *Transcript of Evidence*, 9 August 1999, p. 4

14 Professor Paul Dibb, *Transcript of Evidence*, 9 August 1999, p. 20

15 Professor Paul Dibb, *Transcript of Evidence*, 9 August 1999, p. 19

- like all nations, we share a strong interest in avoiding global conflict and the capabilities of the Joint Defence Facility help maintain a stable system of deterrence;<sup>16</sup> and
  - the Joint Defence Facility gives us some moral standing in taking an active role in promoting arms control and reduction.<sup>17</sup>
- 3.21 Similar arguments about the importance of accurate intelligence in maintaining an effective deterrence regime and verifying compliance with arms control measures were put by the former Prime Minister, the Hon Bob Hawke MP, in a 1984 statement to Parliament.<sup>18</sup>
- 3.22 At the inter-governmental level, the value of joint efforts to gather and share information was underscored recently by the William Cohen, the US Secretary of Defense, who commented that:

In terms of our military-to-military relations: they couldn't be stronger. We have a commonality of interests and values and commitments ... We are spending a great deal of our resources developing mechanisms to protect that information, and we intend to again share with our Australian friends and allies that effort.<sup>19</sup>

### **Australian involvement in the operation of the Joint Defence Facility**

- 3.23 One issue we were keen to explore was the extent of involvement by Australian officials in the operation of the Joint Defence Facility.
- 3.24 Professor Ball explained that there are about 850 personnel employed at Pine Gap – half of whom are Australians. Professor Dibb noted that since the late 1980s, Australia has had ‘an absolute thorough knowledge of what is going on at the Facility’.<sup>20</sup>

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16 Allan Behm, 'Role of the Joint Defence Facilities in ANZUS', *Transcript of Evidence*, Joint Committee on Foreign Affairs, Defence and Trade, ANZUS After 45 Years, *Seminar Proceedings*, 11-12 August 1997, p. 112

17 The Hon William Hayden MP (Minister for Foreign Affairs), 'Review of Anzus Ministerial Statement', *Senate Hansard*, 15 September 1983, p. 898

18 The Hon R L Hawke MP, Prime Minister, 'Arms Control and Disarmament, Ministerial Statement', *House of Representatives Hansard*, 6 June 1984, p. 2988

19 William Cohen United States Secretary of Defense, Joint Press Conference at the conclusion of the AUSMIN talks with Secretary of State Madeline K Albright, Secretary of Defense William Cohen, Australian Minister for Foreign Affairs Alexander Downer and Australian Minister for Defence Ian McLachlan, HMAS Watson, Sydney, 31 July 1998, pp. 4-5

20 Professor Paul Dibb, *Transcript of Evidence*, 9 August 1999, p. 20

- 3.25 Australian personnel are represented at all levels of management and are involved in determining the day to day operations of the surveillance satellites controlled from the Joint Defence Facility. In practical terms, this means that Australians work:
- in the Satellite Station Keeping Section (which is responsible for keeping each satellite in its designated location);
  - in the Signals Processing Section (which processes the intercepted signals sent down from the listening satellites); and
  - in the Signals Analysis Section (which extracts intelligence from the intercepted signals).
- 3.26 Perhaps most importantly of all, since 1980 Australian personnel have chaired the Joint Reconnaissance Schedule Committee, which meets every morning to determine the focus for the listening antennae for the following 24 hours.<sup>21</sup>
- 3.27 This fact of full Australian knowledge and concurrence helps guarantee the longstanding policy that the Joint Defence Facility does not gather information on either Australian or US citizens.<sup>22</sup> Professor Ball added that the enormous cost of operating the listening satellites ensures that they are used only for gathering intelligence of 'the most immense and lucrative value'.<sup>23</sup>

### **Transparency vs secrecy**

- 3.28 Professors Ball and Dibb also talked at some length about the degree of openness and transparency that the community should expect from governments in relation to signals intelligence matters.
- 3.29 Traditionally, Australian governments have said very little about signals intelligence – little more than acknowledging that Australian agencies are involved in gathering signals intelligence. The rationale for this attitude is that to say anything more would alert potential targets to the need to take counter-measures.<sup>24</sup>

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21 Professor Desmond Ball, *Transcript of Evidence*, 9 August 1999, pp. 4, 7

22 Professor Desmond Ball, *Transcript of Evidence*, 9 August 1999, p. 17. See also Professor Paul Dibb, *Transcript of Evidence*, 9 August 1999, p. 29

23 Professor Desmond Ball, *Transcript of Evidence*, 9 August 1999, p. 17

24 Professor Desmond Ball, *Transcript of Evidence*, 9 August 1999, p. 9

- 3.30 Professor Ball recognises the dilemma faced by the Defence and intelligence agencies, but believes the approach they take is unnecessarily restrictive.

... my view is that there is a large area of signals intelligence activities which it is quite proper to talk about. Indeed, from the point of view of informed democratic policy making, it is necessary to talk about it, otherwise we simply do not know what is going on.<sup>25</sup>

- 3.31 He gave the following as an example of the sort of information that governments could disclose without jeopardising their intelligence capability or damaging broader strategic or political interests.

I believe that we could have a statement that confirms that there are listening satellites in operation. ... I think you could say that Pine Gap is the ground station for those satellites and I think that one could canvass the type of signals which are interceptable by those satellites, because anyone who knows anything about signals propagation and antennae design can work out what sort of signals are interceptable by a satellite with a dish of 300 feet at an altitude of 36 000 kilometres.<sup>26</sup>

- 3.32 Professor Ball did not argue for unfettered access to information about the Joint Defence Facility. He readily accepted that access to information about the technical operation of the intercept technology, about operational targets, and about some sensitive intelligence outcomes should be restricted.<sup>27</sup>

- 3.33 Professor Dibb took a more conservative line on this issue, arguing that tight security surrounding the operation of the Joint Defence Facility is essential if the operational effectiveness of the facility is to be maintained.

- 3.34 The consequence of this position, which Professor Dibb acknowledged, is a dramatically reduced level of public accountability.

- 3.35 Another consequence, noted by the former Prime Minister, the Hon Bob Hawke MP, is an often ill-informed level of public debate.

The lack of public information until now on the purposes of the facilities has not assisted public understanding of the vital issues involved ... This has helped build up an unwarranted mystique about them and encouraged a tendency in certain sections of the

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25 Professor Desmond Ball, *Transcript of Evidence*, 9 August 1999, p. 10

26 Professor Desmond Ball, *Transcript of Evidence*, 9 August 1999, p. 10

27 Professor Desmond Ball, *Transcript of Evidence*, 9 August 1999, p. 10

media and elsewhere to discuss Nurrungar and Pine Gap in a speculative and provocative manner.<sup>28</sup>

## The classified agreement

3.36 Professor Ball described to us the purpose of the classified level agreement that underpins the Head Agreement. The agreement sets out in some detail the command and control arrangements that govern the operation of the facility, describing the:

- authority of the Australian Deputy at Pine Gap;
- rules concerning the decision making processes of the Joint Reconnaissance Schedule Committee; and
- rules for the dissemination of intelligence gathered by the listening satellites.

3.37 The classified agreement also describes the security arrangements governing access to the facility and to the information collected and produced by staff at the facility.

It sets out who in Australia is allowed to see that [ie. the intelligence collected at Pine Gap], and who at the various levels is allowed to visit the facility. And if they visit the facility it sets out whether they are allowed in the Signals Analysis Section as opposed to just the Satellite Station Keeping Section.<sup>29</sup>

## Observations on the evidence

3.38 The evidence given by Professors Ball and Dibb was frank, comprehensive and informative, without apparently disclosing material which might jeopardise our national interests. Much of this information is already available on the public record.

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28 The Hon Robert Hawke MP, 'Arms Control and Disarmament, Ministerial Statement', *House of Representatives Hansard*, 6 June 1984, p. 2989. Interestingly, we note that, on some occasions, governments have been prepared to release non-classified technical information about the operation of the Joint Defence Facility (see for example, 'Answers to Questions Joint Defence Facilities: Radomes and Antennae', *Senate Hansard*, 3 May 1989, p. 1742; 'Answers to Questions: Satellites and Tracking Stations', *Senate Hansard*, 3 May 1989, p. 1742; 'Answers to Questions Pine Gap Joint Facility', *Senate Hansard*, 21 August 1990, p. 1877).

29 Professor Desmond Ball, *Transcript of Evidence*, 9 August 1999, p. 6



- 3.39 The two professors provided substance to the assertions made by Defence. They explained:
- why the Joint Defence Facility is a significant element in our broader strategic alliance with the United States;
  - the nature of the contribution that the Joint Defence Facility makes to the capacity of the United States to remain globally engaged; and
  - the value of the intelligence gathered at the Joint Defence Facility to both Australia and the United States.
- 3.40 In principle, these are compelling points and clearly it is in the national interest to promote and facilitate arrangements conducive to achieving these outcomes.
- 3.41 The difficulty is that while Professors Ball and Dibb were credible witnesses and we have no reason to doubt the accuracy of their testimony, we cannot give unqualified support to a treaty action proposed by the Executive on the basis of testimony provided only by non-government witnesses. To do so in the absence of any confirmation from the Government that the testimony is accurate would be an abrogation of our treaty review responsibilities to the Parliament and the wider community.

## **Conclusions and recommendations**

### **Introduction**

- 4.1 From the outset of our review we have been inclined to support the proposed treaty action. It is likely that, had we received sufficient information from the Department of Defence, we would have concluded unanimously that the proposed treaty action is in Australia's national interest. However, given the failure of the Department to provide such information, we have no basis upon which to completely endorse the proposed treaty action.
- 4.2 We note that there is no particular urgency associated with this treaty action. The Head Agreement, as amended by the 1988 Amendment, provides that it will continue to remain in force indefinitely, unless terminated on three year written notice. Accordingly, the Joint Defence Facility is operating and will continue to operate despite the delayed conclusion of the 1988 Amendment.

### **The problem exposed by our review**

- 4.3 This review has presented us with a problem Parliament needs to resolve.
- 4.4 The problem arises from a conflict between the duties of the Treaties Committee, which require it to review all proposed treaty actions, and the tradition of secrecy that surrounds the operation of the Joint Defence Facility at Pine Gap.

- 4.5 Having been charged with a specific responsibility by the Parliament, to review and report on all proposed treaty actions without exception, we cannot fulfil that responsibility in the absence of evidence that would enable us to come to a concluded view.
- 4.6 In our view, the Department of Defence has sought to:
- limit unnecessarily the information provided to us about the purpose and operation of the Joint Defence Facility to less than is already available on the public record; and
  - deny the Treaties Committee access to the Joint Defence Facility while at the same time acquiescing in the right of certain members of the US Congress to visit the Facility.
- 4.7 We are concerned at the apparent attempt by the Department of Defence to hinder the Parliament from exercising its responsibilities on behalf of the Australian people.

## **Our duty**

- 4.8 The resolution of appointment for the Treaties Committee (a copy of which is at Appendix A) states that our first duty is to inquire into and report on ‘matters arising from treaties and related National Interest Analyses and proposed treaty actions presented or deemed to be presented to the Parliament.’
- 4.9 This is an unambiguous and unqualified duty. We have been asked by the Parliament to review all proposed treaty actions that are tabled in Parliament. The resolution does not limit our responsibilities to any particular category of tabled treaties. It does not, for example, limit our reviews to only those treaties without national security implications.
- 4.10 The unfettered nature of the Committee’s authority was made plain by the Minister for Foreign Affairs, the Hon Alexander Downer MP, when announcing the reformed treaty making process in May 1996. The Minister stated that:
- The new arrangements [that is, the tabling of treaties in Parliament and allowing for Treaties Committee review] will apply to all treaties, bilateral as well as multilateral. They will also apply to all

actions which amend a treaty if the amendment would alter obligations with a legally binding impact on Australia.<sup>1</sup>

- 4.11 The Minister contemplated only one exception to this rule – that the Government would reserve the right to take urgent treaty action in circumstances where it is ‘necessary to safeguard Australia’s national interests, be they commercial, strategic or foreign policy interests’. In circumstances where urgent action is deemed to be necessary the Minister stated that the treaty action would ‘be tabled as soon as possible together with an explanation’.<sup>2</sup> This exception is not relevant in this case.<sup>3</sup>
- 4.12 It is reasonable to assume that, when establishing the Treaties Committee, the Government intended to allow the Committee access to sufficient information to enable it to perform its review functions adequately, diligently and in respect of all treaties tabled in Parliament.
- 4.13 We have not been provided with sufficient information in this case.

## Resolving this issue

- 4.14 This situation is untenable and must be resolved. A resolution can be achieved in various ways:
- the Government can direct the provision of information which will enable us to make a finding about whether the proposed treaty action is in Australia’s national interest;
  - the Government can move to modify the resolution of appointment for the Treaties Committee to provide that treaties with national security implications are excluded from our review processes;
  - the Government can move to establish a special *ad hoc* parliamentary committee to review sensitive security related treaty actions (the form and function of this committee could be described in a manner that ensures Australia’s security interests are not jeopardised); or
  - the Government can move to establish a joint National Security Committee of Parliament to oversee the operation of defence facilities, including the Joint Defence Facility, and other defence-related security

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1 Hon Alexander Downer MP, *House of Representatives Hansard*, 2 May 1996, p. 232

2 Hon Alexander Downer MP, *House of Representatives Hansard*, 2 May 1996, pp. 232-3

3 It is notable that while this exception allows the Government to take binding treaty action in advance of tabling, or before the Treaties Committee has completed its review, it does not allow the Government to withhold the tabling of a treaty.

and intelligence agencies (the first task of this committee could be to determine whether the continuation of the Joint Defence Facility is in Australia's national interest).

- 4.15 We strongly favour the first option. It is the only way the Treaties Committee can fulfil its charter.

## **Concluding comments**

- 4.16 We acknowledge that, from the Executive's point of view, there are reasons to limit the extent to which classified defence and intelligence information is divulged and to whom. Wide disclosure of some such information may well damage Australia's political, strategic or commercial interests. But in a changing world environment, expectations about community influence over government decision-making have grown. Transparency, not secrecy, is being demanded of the Parliament as well as the Executive. Likewise, a better balance is being sought between Executive decision-making and parliamentary oversight. It is precisely these sentiments which led to the development of the reformed treaty making process.
- 4.17 We are concerned by the fact that, at the same time as Australian parliamentarians are denied access to information about the Joint Defence Facility, members of a good many US congressional committees are routinely allowed access to such information. Such access is allowed without apparent jeopardy to US national interests.
- 4.18 We acknowledge that the Joint Defence Facility is subject to some political oversight in Australia. All members of the National Security Committee of Cabinet are fully briefed on the Facility and are entitled to full access to the Facility and its operations.<sup>4</sup> In addition, the Leader of the Opposition and the Opposition spokesman on defence are entitled to full briefings and access.
- 4.19 It is not within our charter to speculate upon whether these arrangements provide an adequate level of operational oversight of the Joint Defence Facility. Our point is simply that these oversight arrangements are quite different from, and should not be substituted for, the treaty review responsibilities that Parliament has conferred on the Treaties Committee.
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4 The National Security Committee of Cabinet comprises the Prime Minister (Chairman), the Deputy Prime Minister, the Minister for Defence, the Minister for Foreign Affairs, the Treasurer and the Attorney-General. Other Ministers may, from time to time, be coopted to attend particular meetings.

4.20 Accordingly, we make the following recommendations.

#### **Recommendation 1**

- 4.21 **That the Minister for Defence authorise his departmental officials to provide the Joint Standing Committee on Treaties with:**
- a classified briefing on the purpose and operation of the Joint Defence Facility;
  - a copy of the classified agreement that gives operational effect to the Agreement between the Australian Government and the United States Government relating to the Establishment of a Joint Defence Space Research Facility (1966);
  - on-site access to the Joint Defence Facility at Pine Gap; and
  - such other information as may be required to enable the Committee to determine if the treaty action is in Australia's national interest.

#### **Recommendation 2**

- 4.22 **That the Minister for Defence, in conjunction with the Minister for Foreign Affairs and the Joint Standing Committee on Treaties, develop a protocol for ensuring constructive parliamentary consideration of sensitive security related treaties. The protocol should:**
- identify the full range of sensitive security related treaties and subsidiary agreements to which Australia is a party;
  - recognise the legitimacy and importance of the reformed treaty making process;
  - require that briefings provided to the Treaties Committee be comprehensive and at least the equivalent in terms of detail and depth as briefings provided to the ASIO and NCA Committees of the Parliament, provided that such briefings be held *in camera*; and
  - empower the Committee to request the relevant Ministers to be present during such briefings to assist the Committee.

- 4.23 At this stage, on the basis of the limited evidence available to us, we are inclined to the view that the continued operation of the Joint Defence Facility is in Australia's national interest and therefore come to the following conclusion.

### Conclusion

- 4.24 **The Joint Standing Committee on Treaties:**
- **supports, in principle, the *Exchange of Notes constituting an Agreement between Australia and the United States of America to further extend the Agreement relating to the Establishment of the Joint Defence Facility at Pine Gap*; and**
  - **with the limited evidence made available, finds no reason to object to the continuation of the Joint Defence Facility.**

**ANDREW THOMSON MP**

Committee Chairman

12 October 1999



## **Appendix A – Extract from Resolution of Appointment**

The Joint Standing Committee on Treaties was reconstituted in the 39th Parliament on 9 December 1998.

The Committee's Resolution of Appointment allows it to inquire into and report upon:

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





## **Appendix B – Witnesses at the public hearing**

**Monday, 9 August 1999, Canberra**

Professor Desmond Ball

Professor Paul Dibb, Head, Strategic and Defence Studies Centre, Research School of Pacific and Asian Studies, Australian National University



## **Appendix C – National Interest Analysis**

**Exchange of Notes, done at Canberra on 4 June 1998, constituting an Agreement between the Government of Australia and the Government of the United States of America to further extend in force the Agreement relating to the Establishment of a Joint Defence Facility at Pine Gap of 9 December 1966, as amended**

### **Date of Proposed Binding Treaty Action**

The proposed Agreement, which was done by an exchange of Notes on 4 June 1998 with the Government of the United States of America (the 1998 Agreement) to further extend in force the 1966 Agreement relating to the Establishment of a Joint Defence Facility at Pine Gap (the Head Agreement), provides for its entry into force on the date that Australia notifies the United States that all domestic procedures to give effect to the 1998 Agreement in Australia have been satisfied. It is proposed that this notification will take place on or before 16 November 1998.

### **Date of Tabling of the Proposed Treaty Action**

30 June 1998.

### **Reasons for Australia to take the Proposed Treaty Action**

The Head Agreement, providing for the establishment, maintenance and operation of the Joint Defence Facility at Pine Gap, has been in force since December 1966. It was amended by an exchange of Notes in 1977 and again in 1988. Amongst other things, the 1988 amendment extended the non-termination period of the Head Agreement as amended for 10 years from 16 November 1988 to November 1998. The proposal for a further Agreement to extend the non-termination period for a further 10 years was finalised at the July 1996 Australia-

United States Ministerial (AUSMIN) Consultations held in Sydney, and was subsequently released in the Joint Security Declaration at those Consultations. Once in force, the 1998 Agreement will provide that extension.

The 1998 Agreement is an important indication of the continuing commitment of both the Australian and United States Governments to cooperation at the Joint Defence Facility at Pine Gap. The Pine Gap Facility is an intelligence collection facility, which serves to support our mutual security interests, and contributes to global security.

The systems supported by Pine Gap will evolve to meet the demands of the post Cold War era, and it is expected that Pine Gap will remain a central element in our cooperation with the United States well into the next century.

All activities at the Pine Gap Joint Defence Facility are managed to ensure that they are consistent with Australian interests. The activities take place with the full knowledge and concurrence of the Australian Government, and Australia benefits fully from them. Australians are fully involved in the management and operation of the Joint Defence Facility.

### **Obligations**

The 1998 Agreement extends the non-termination period of the Head Agreement as amended by a further 10 years from 16 November 1998. After seven years from 16 November 1998, either Government may inform the other Government in writing that it desires to terminate the Head Agreement as amended, in which event it shall then terminate three years after such notice has been given. This treaty action does not increase the scope or operation of the Head Agreement as amended, nor impose further obligations on Australia.

### **Costs**

This treaty action does not to impose any additional costs on Australia in terms of meeting its obligations under the 1998 Agreement in addition to those already incurred under the Head Agreement.

### **Future Protocols**

Neither the Head Agreement as amended, nor the 1998 Agreement, provide for the negotiation of any future legally binding instruments.

**Implementation**

No legislation is required to give effect to Australia's obligations under the 1998 Agreement.

**Consultation**

The proposed extension to the Head Agreement was given wide publicity through the release of the AUSMIN Consultations Joint Security Declaration on 27 July 1996, a Media Release from the Office of the Minister for Defence on 6 February 1997 and a further Media Release from the Office of the Minister for Defence on 4 June 1998 in respect of the signing of the 1998 Agreement.

The 1998 Agreement was notified to the States and Territories through the Commonwealth-State Standing Committee on Treaties' Schedule of Treaty Action. Consultation on technical aspects of the Pine Gap Joint Defence Facility was considered inappropriate as disclosures of other technical information of its classified activities would involve damage to both United States and Australian security interests.

**Withdrawal or Denunciation**

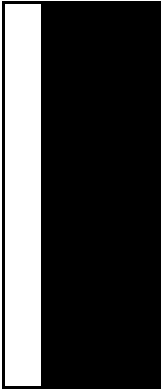
In the absence of the 1998 Agreement, the Head Agreement as amended by the 1988 Agreement provides that it would continue to remain in force indefinitely, unless terminated on three years written notice. The 1998 Agreement provides that after seven years from 16 November 1998, either Government may inform the other Government in writing that it desires to terminate the Head Agreement as amended, in which event it shall then terminate three years after such notice has been given.

**Contact Details**

Alliance Policy and Management Branch

International Policy Division

Department of Defence



## **Dissenting report**

Senator the Hon Chris Schacht, the Hon Dick Adams MP, the Hon Janice Crosio MP and Kim Wilkie MP

### **Introduction**

- 1 We agree with much of the material contained in the majority report. I support Chapters 1, 2 and 3 of the report. We also agree with the early sections in Chapter 4, up to and including paragraph 4.13.
- 2 Our disagreement with the majority arises in consideration of how to resolve the dilemma exposed by our review.
- 3 The text that follows should be read as a replacement to the text appearing in paragraphs 4.14 to 4.24 in the majority report.

### **Resolving this dilemma**

- 4 This situation is untenable and must be resolved.
- 5 The Government should direct the Department of Defence to provide information which will enable the Treaties Committee to make a finding about whether the proposed treaty action is in Australia's national interest.

**Recommendation 1**

- 6 **The Minister for Defence should authorise his departmental officials to provide the Joint Standing Committee on Treaties with:**
- **a full (classified level) briefing on the purpose and operation of the Joint Defence Facility;**
  - **a copy of the classified agreement that gives operational effect to the Agreement between the Australian Government and the United States Government relating to the Establishment of a Joint Defence Space Research Facility (1966); and**
  - **on-site access to the Joint Defence Facility at Pine Gap.**
- 7 If the Government does not accept the recommendation to provide a full briefing to the Joint Standing Committee on Treaties, then the Government should move to establish a National Security Committee of Parliament to oversee the operation of Defence facilities, including the Joint Defence Facility, and other defence-related security and intelligence agencies.

**Recommendation 2**

- 8 **The Prime Minister, the Minister for Defence and the Attorney-General should jointly move to establish a Joint National Security Committee of Parliament to oversee the operation of Defence facilities, including the Joint Defence Facility, and other defence-related security and intelligence agencies.**

**The motion to appoint the National Security Committee of Parliament should provide:**

- **for a Committee of seven members of parliament, comprising 4 members of the House of Representatives and 3 Senators, with a majority of government members;**
- **for the House members of the Committee to be appointed by resolution of the House on the nomination of the Prime Minister;**
- **for the Senate members of the Committee to be appointed by resolution of the Senate on the nomination of the Leader of the Government in the Senate;**

- that the following members of Parliament are not eligible for appointment to the Committee – a Minister, the President or Deputy President of the Senate, and the Speaker or Deputy Speaker of the House of Representatives;
- that the Committee be empowered to monitor and review the performance of those agencies involved in gathering and analysing defence-related security and intelligence information; and
- that the Committee be empowered to report to Parliament on any matter pertaining to the performance of its duties, provided that the Minister for Defence certifies that nothing in a proposed committee report would jeopardise Australia's national security interests.

### Recommendation 3

- 9      **The first task of the National Security Committee of Parliament should be to review whether the continuation of the Joint Defence Facility at Pine Gap is in Australia's national interest. To enable the National Security Committee to form a view on this matter, the Minister for Defence should provide the Committee with:**
- a full (classified level) briefing on the purpose and operation of the Joint Defence Facility;
  - a copy of the classified agreement; and
  - on-site access to the Joint Defence Facility.

### Concluding comment

- 10      We acknowledge that there must be some limits on the extent to which classified defence and intelligence information is divulged and to whom. Wide disclosure of some such information may well damage Australia's political, strategic or commercial interests. But in a changing world environment, expectations about community influence over government decision-making have grown. Transparency, not secrecy, is being demanded of governments. Likewise, a better balance is being sought between Executive decision-making and parliamentary oversight.
- 11      It is precisely these sentiments which lead to the development of the reformed treaty making process.

- 12 To argue that elected representatives of the Australian community cannot be entrusted with any more information than has been provided to us during this review displays a disturbing lack of confidence in the maturity of Australia's democracy and profound disregard for the fundamental principles of public accountability that underpin our parliamentary system.
- 13 The absurdity of this argument is highlighted by the fact that members of a good many US congressional committees are routinely allowed access to such information without apparent jeopardy to US national interests.
- 14 We acknowledge that the Joint Defence Facility is subject to some political oversight in Australia. All members of the National Security Committee of Cabinet are fully briefed on the Joint Facility and are entitled to full access to the Facility and its operations.<sup>1</sup> In addition, the Leader of the Opposition and the Opposition spokesman on defence are entitled to full briefings and access.
- 15 It is not within the Committee's charter to speculate upon whether these arrangements provide an adequate level of operational oversight of the Joint Defence Facility. Our point is simply that these oversight arrangements are quite different from, and should not be substituted for, Parliamentary oversight arrangements.
- 16 We remain inclined to support the proposed treaty action and it is highly likely that, had the Committee received sufficient information, it would have concluded unanimously that the proposed treaty action is in Australia's national interest. However, in the absence of such information we believe that the Committee has no basis upon which to make such a recommendation at present.
- 17 There is no particular urgency associated with this treaty action. The Head Agreement, as amended by the 1988 Amendment, provides that it will continue to remain in force indefinitely, unless terminated on three year written notice. Accordingly, the Joint Defence Facility is operating and will continue to operate pending the conclusion of the 1998 Amendment.

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1 The National Security Committee of Cabinet comprises the Prime Minister (Chairman), the Deputy Prime Minister, the Minister for Defence, the Minister for Foreign Affairs, the Treasurer and the Attorney-General. Other Ministers may, from time to time, be coopted to attend particular meetings.



- 18 The Government must act to resolve this matter and, as there is no pressing need to conclude the Amendment, binding treaty action should be postponed until either:
- the Committee receives sufficient information to allow its review to be properly concluded; or
  - the Government establishes a Joint National Security Committee to deal with matters relevant to Australia's national security and intelligence communities.
- 19 Either of these approaches would enable the community to have confidence in a Parliamentary recommendation that the Agreement was in Australia's national interest. The taking of binding treaty action in the absence of these approaches would undermine the reforms to the treaty making process. Until the Government is prepared to take either of the above approaches, binding treaty action should not proceed.

**SENATOR THE HON CHRIS SCHACHT**

12 October 1999

**HON DICK ADAMS MP**

12 October 1999

**HON JANICE CROSIO MP**

12 October 1999

**KIM WILKIE MP**

12 October 1999