



Premier of Western Australia

Our ref: 24-85712

Mr Kelvin Thomson MP
Chair
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

By email: jsct@aph.gov.au

Dear Mr Thomson

Thank you for your letter of 6 July 2011 providing information about the treaties tabled in the Commonwealth Parliament on 5 July 2011 and inviting "comments as part of the review process undertaken" by your Committee. In relation to this matter, the following comments are provided.

The above treaties principally relate to the International Telecommunication Union (ITU), and matters relating to the Antarctic area. As you will be aware, both of these matters fall within the Commonwealth's powers and responsibilities rather than those of the States.

For example, it has been noted that the National Interest Analysis prepared for the Committee in relation to the ITU states:

"The ITU provides an international framework for the operations of the communications industries and an international forum to put forward Australian and regional perspectives on radio communications, broadcasting and telecommunications. Australia promotes the development of timely and cost-effective global open standards that support the development of efficient, inter-operable telecommunications networks. This is achieved by reducing barriers to trade through the standardisation of communications systems and the harmonisation of regulatory arrangements. It is therefore in Australia's national interest to reinforce its support for the ITU through the proposed treaty action to ratify the amending instruments."

"The purposes of the ITU, which are laid out in Article 1 of its Constitution, include maintaining and extending international cooperation between all Member States for the improvement and

rational use of telecommunications of all kinds, including the radio frequency spectrum.”

“The ITU Constitution and ITU Convention are the primary instruments of the ITU, and they set out the rights and obligations of Member States of the ITU. Australia has been a Member State of the ITU, and its predecessor Union, since Federation. The cooperative approach to international telecommunication issues facilitated by the ITU is beneficial to Australia.”

From a more general perspective, in Western Australia's view it is important that the States are aware of, and have the opportunity to be involved in, all aspects of treaty development, including negotiations, drafting, ratification and legislative implementation. That is, the Commonwealth should not unilaterally enter into treaties which impinge upon, or adversely affect, areas of State legislative power and responsibility. This is especially important where the subject matter of the treaty is not within an express and direct grant of legislative power to the Commonwealth Parliament under section 51 of the Commonwealth Constitution. For example, the Commonwealth Parliament, under s 51(5) has power over telecommunications. However, the external affairs power in s 51(29) should not be used to expand the scope of Commonwealth lawmaking into areas where it would not, except for the existence of the treaty, have legislative power. A recent example of the latter situation which may well have a detrimental effect on State criminal laws is the Council of Europe Convention on Cybercrime which is proposed to be implemented, using the external affairs power, through the Cybercrime Legislation Amendment Bill 2011 (Cth). My letter dated 22 July 2011 to the Joint Standing Committee on Cyber-Safety elaborated on some of these concerns.

Thank you for providing the Western Australian Government with the opportunity to comment on the tabling of these treaties.

Yours sincerely

Colin Barnett MLA
PREMIER

4 AUG 2011