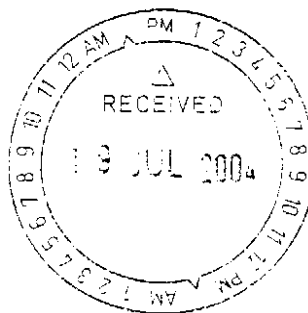




Department of the Premier and Cabinet
Government of Western Australia

Our ref: 13664



Mr Brenton Holmes
Committee Secretary
Senate Select Committee on the Free Trade Agreement
between Australia and the United States of America
Room S1.30.1
Parliament House
CANBERRA ACT 2600

Dear Mr Holmes

Thank you for your letter, dated 24 June 2004, in which you enclose Questions on Notice arising from the public hearing on 8 June 2004.

Attached are Western Australia's responses to the Committee's questions.

Yours sincerely

Petrice Judge
EXECUTIVE DIRECTOR
OFFICE OF FEDERAL AFFAIRS

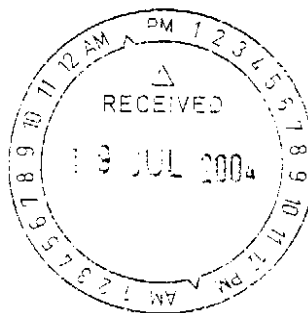
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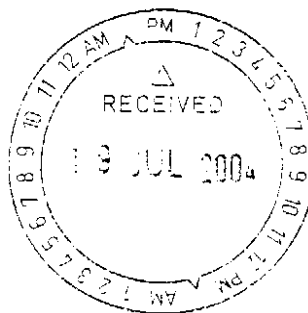
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QUESTIONS FOR THE WESTERN AUSTRALIAN GOVERNMENT

1 General Questions

I want to explore how trade agreements adopted under the foreign affairs powers in the Constitution impinge on State constitutional rights.

- 1.1 Is it your view that the Australia US Free Trade Agreement, which has now been signed by the two Governments and would be brought into force if the Senate adopted the implementing legislation, would create a head of power for the Commonwealth to legislate on matters of state authority that are referred to in the Agreement.
- 1.2 If you do not agree, does the bringing into force of AUSFTA extend the reach of the Commonwealth versus the State in any way, and if so what?
- 1.3 If you answer in the affirmative to 1.1 how will the ratification of AUSFTA extend the Constitutional reach of the Commonwealth and what is the State's response to the enlargement of Commonwealth authority?

1.1 to 1.3

With respect to the scope of the external affairs power in section 51(xxix) of the Commonwealth *Constitution*, it is not entirely clear the extent to which the Commonwealth Parliament is able to rely on Australia's obligations under a bilateral treaty to enact legislation to implement the treaty as part of domestic law.

The High Court of Australia has, so far, limited the use of the external affairs power in this manner to Australia's obligations under multilateral treaties and international instruments concluded in good faith. It has also made it clear that the external affairs power cannot be used for the implementation of a treaty that was entered into in order to obtain legislative power. There would, therefore, appear to be no impediment to the Commonwealth Parliament using the external affairs power to enact legislation to meet an obligation under a bilateral treaty entered into in good faith.

Western Australia would be concerned if there was any indication that the AUSFTA would be used as an instrument for the Commonwealth to enact legislation to gain power over an area of state responsibility. There is currently no formal mechanism to protect the interests of the States and Territories. Consequently the States and Territories have to rely on the precedence of High Court decisions and the goodwill of the Commonwealth.

- 1.4 Do you have any more general observations to make about the issues canvassed in questions 1.1 to 1.3 which may be in the public interest or which you may wish to be brought to the attention of the Senate?
- 1.4 One area of concern is the potential for the Commonwealth to enact legislation under which the States and Territories would be required to meet successful claims for compensation resulting from State or Territory legislation. While there is no suggestion that this is being contemplated, the potential is there.

There is no formal mechanism for the States and Territories to get a commitment from the Commonwealth that it will not legislate to increase its authority. It would be useful to have an exchange of letters about how the treaty will be implemented. Alternatively the Commonwealth could make a statement such as it did in its response to the 30th Report of the Joint Standing Committee on Treaties regarding the United Nations Convention to Combat Desertification, that is:

. . . the Minister for Foreign Affairs also issued a statement on land management responsibilities within the Australian federal system. The statement affirms that ratification of the UNCCD will not entail any changes to Commonwealth and State land management regimes and that the Commonwealth acknowledges that primary responsibility for land management issues rests with the State and Territory Governments.

- 1.5 I understand under the COAG arrangements, a Treaty Committee has been established which enables Federal/State issues relating to treaties and trade agreements to be sorted out; is this an effective mechanism from the State's point of view and could you give reasons for your opinion?
- 1.6 Has the Treaties committee considered AUSFTA and, if so, on how many occasions and what can you tell us is the result of those considerations?
- 1.7 If the Treaties Committee has not considered AUSFTA what are the reasons for this?
- 1.8 If AUSFTA is still under consideration by the Treaties Committee when is that consideration likely to be completed and will there be a public disclosure of any outcome, and further can the Senate be advised?
- 1.9 What are the powers of the Treaties Committee, is it consultative, advisory or a decision-making body? Does it have the power to approve, modify or reject proposed trade agreements such as AUSFTA?

1.5 to 1.9

The Treaties Council was established by the Council of Australian Governments at its meeting in June 1996 following COAG's review of the *Principles and Procedures for Commonwealth-State Consultation on Treaties* and the recommendations of the Senate Legal and Constitutional References Committee's report *Trick or Treaty? Commonwealth Power to Make and Implement Treaties*.

COAG agreed that (taken from the 1996 revised *Principles and Procedures for Commonwealth-State Consultation on Treaties*):

5.1 *There will be a Treaties Council consisting of the Prime Minister, Premiers and Chief Ministers. The Treaties Council will have an advisory function.*

5.2 *The role of the Treaties Council is to consider treaties and other international instruments of particular sensitivity and importance to the States and Territories either of its own motion, or where a treaty is referred to it by any jurisdiction, a Ministerial Council, an intergovernmental committee of COAG or by SCOT [Standing Committee on Treaties]. Senior Officials will co-ordinate and prepare*

the agenda for the Treaties Council. The Treaties Council will also be able to refer treaties to Ministerial Councils for consideration.

5.3 The Treaties Council will meet at least once a year. The Prime Minister will chair the meetings, with the Minister for Foreign Affairs in attendance when appropriate. Meetings of the Treaties Council will normally take place at the same time and place as COAG.

Despite 5.3 above, the Treaties Council has met only once, in 1997. Hence it has not met to consider AUSFTA.

Western Australia considers that the Treaties Council could be an effective mechanism as it can provide the opportunity for consultation with Heads of Government on significant international treaties, such as the AUSFTA. Western Australia recommends that the Treaties Council be called upon to meet and function in line with the agreed principles and procedures.

- 1.10 When fully implemented, trade agreements have been described as, in effect, economic legislation for the nation, bearing in mind the extent and limits to Federal and State constitutional authority in Australia, what do you regard as the ideal state federal procedures or machinery in dealing with trade agreements?
- 1.10 Western Australia is not in a position at this stage to define the ideal State and Commonwealth procedures for dealing with trade agreements. Some points to be borne in mind, however:
- (i) Trade agreements are international treaties and, as such, may raise constitutional issues.
 - (ii) While it is acknowledged that the Commonwealth Government is vested with the power to enter into an international treaty, the States and Territories must have proper opportunity to provide comment, particularly on issues that ultimately impact on State and Territory legislation and/or economies.
 - (iii) The Treaties Council, if used as it was intended when established, has the capacity to be the best mechanism for Commonwealth-State consultation on treaty matters, including trade treaties.

It should be noted that under the COAG procedures it is expected that, in general, the detailed discussions on a particular treaty will take place in the relevant Ministerial Council(s).

- 1.11 If you believe some form of existing arrangements should be made, should AUSFTA be dealt with according to those new arrangements or can you let AUSFTA through under the existing arrangements while putting reforms in place for future FTAs.
- 1.11 There does not appear to be any justification in delaying the AUSFTA. Any reforms would be used for future treaties, such as a free trade agreement with China.
- 1.12 If you believe reforms need to be made to the existing Federal/State arrangements on trade agreements do you want your proposals drawn to the attention of the Senate and/or do you seek the support of the Senate in pursuing them?

- 1.12 COAG is the best forum to consider any reform of the consultation process for treaties, including trade treaties. The role of the Commonwealth Parliament, however, including JSCOT, is acknowledged and welcomed by Western Australia.

One area that has not been considered is a way of dealing with the impact of a treaty on future legislation, particularly one as significant as the AUSFTA. It is understood that at one stage such issues were considered by the Standing Committee of Attorneys-General, but that this is no longer the case.

- 1.13 Do the States and Territories consult with each other on AUSFTA and agree on how to advise the Commonwealth or how to have State interests represented in the negotiations?
- 1.14 If the States and Territories did consult, what were the matters they agreed on, what was reserved for each State to pursue on its own, what were the rights of the States to participate in the negotiations and which States were delegated to participate in the negotiations and on what issues?

1.13 and 1.14

The States and Territories consulted with each other on a number of occasions:

- To decide on the State and Territory representatives.
- To agree on the specific role and responsibilities of the representatives for these negotiations.
- To discuss the major issues for the States and Territories to assist the representatives to fulfil their role.
- To reach common understanding regarding the reservation lists and to share information on what each State and Territory had submitted.
- Generally, to share or seek information or opinions on the content of the agreement, the process of the negotiations or the positions of other States and Territories.

See also the answer to question 2.3.

- 1.15 At what level and how fully did the States consult with each other on behalf of the bureaucracy and at ministerial level?

Most of the consultation was at officer level, including the State and Territory members of: COAG Senior Officials, the National Trade Consultations Officers' Group; and the Standing Committee on Treaties. At officer level the contact was quite regular.

While there was no formal arrangements made for State and Territory First Ministers to discuss the AUSFTA, all Premiers and the Chief Minister of the Northern Territory issued a joint statement – see http://www.dfat.gov.au/trade/negotiations/statement_on_ausfta.html .

- 1.16 It is clear from your answers to the Senate Inquiry that on some issues there was Cabinet consideration of matters covered by the Agreement, can you tell us which issues were considered at Cabinet level and whether your State has undertaken an evaluation of all or part of the Agreement which mayor may not be for the purposes for

Cabinet consideration and, if so, is it possible to obtain a copy of any study or assessment?

It is not appropriate to disclose Cabinet deliberations. The Western Australian Government has, however, agreed to the inclusion of its government procurement market in the AUSFTA and to the content of the submissions to the two Commonwealth parliamentary inquiries.

A copy of the evaluation *The Australia-United States Free Trade Agreement: Impacts on Western Australia* will be available on the website of the Department of Industry and Resources (<http://www.doir.wa.gov.au>).

2. Consultation with the Commonwealth

The Commonwealth has submitted to the Senate Select Committee that it has consulted with the States on the negotiations of AUSFTA. The next set of questions are about the understanding and the nature and effectiveness of those consultations from a State point of view.

- 2.1 Is there an agreed format and or procedure for how consultation between the Commonwealth and the States are to be conducted with respect to the negotiation of free trade agreements in general or AUSFTA in particular?
- 2.2 If there is, what is it and how effective is it in providing you with the necessary information to brief Ministers on the full implications of matters requiring your consideration?

2.1 and 2.2

COAG's *Principles and Procedures for Commonwealth-State Consultation on Treaties* applies to all treaties, including trade treaties. These *Principles and Procedures* were not, however, used as effectively as they could have been. The response to question 2.7 provides more detail on this.

- 2.3 I have been led to understand that for AUSFTA the State of Victoria was regarded as the State with principal responsibility on behalf of the other States and Territories on most issues with Western Australia being the lead State on the issue of government procurement. Is this true? Did other States take responsibility for particular issues and if so, which State took what responsibility?

- 2.3 No, this is not the case. No State was the 'lead State' on any particular issue.

Initially, the State and Territory representative to be a member of the Australian AUSFTA negotiating team as an observer came from the Victorian Department of Premier and Cabinet. Quite a bit of work by the States and Territories was put into defining the role of the State and Territory representative and in providing him with a comprehensive list of issues that we each considered important, so that he was in a good position to fulfil his purpose as stated in the agreed principles and procedures, that is:

Subject to any special arrangements, the purpose is not to speak for Australia, but to ensure that the States and Territories are well informed on treaty matters and are always in a position to put a point of view to the Commonwealth.

It should be noted that the States and Territories had an additional representative, from the Queensland Department of State Development, attending the fourth round of negotiations.

With respect to government procurement, during its June 2003 meeting the Australian Procurement and Construction Ministerial Council nominated an Australian Procurement and Construction Council (APCC) representative to be an observer on the Australian delegation for the government procurement negotiations. That representative came from the State Supply Commission of WA.

- 2.4 Were the States and Territories invited to submit ideas for inclusion in AUSFTA and to nominate matters which should not be conceded in negotiations, and if so, what were your priorities?
- 2.4 The Commonwealth called for public submissions on issues relevant to the negotiations towards the end of 2002. The Commonwealth Minister for Trade wrote to the State and Territory Ministers with trade portfolios encouraging State and Territory submissions outlining any issues and priorities they would like to see pursued in the negotiations with United States.

Otherwise it was really a matter of the States and Territories being provided with information, unless the Commonwealth specifically needed the input of the States and Territories, such as in the government procurement chapter.

A possible exception is the proposed investor-state dispute settlement clause. A number of State and Territory Leaders wrote to the Prime Minister expressing their view that the AUSFTA had no need for such a clause. It's not clear whether the removal of the clause from the final agreement was because of the views of the States and Territories, or whether it would have been removed anyway.

- 2.5 How would you characterise the tone of consultations, -could they be characterised as (a) a general idea but with some detail of the Commonwealth's objectives and priorities followed by questions and comment with your remarks being noted for consideration. (b) Were you given a detailed briefing including all the relevant documentation, engaged in a deep consideration of the issues with particular care taken by the Commonwealth to ascertain your priorities and given the chance to insist on your priorities in the event of this Agreement? (c) Were you asked to approve the mandate and priorities for the negotiations, observe and monitor developments in the talks with a view to shaping the Commonwealth's response including the opportunity to veto decisions with which you disagreed? (d) If none of the above fits your circumstances please describe the nature of the consultations?
- 2.5 Option (a) is the closest, although, with the possible exception of the government procurement chapter, little details of the Commonwealth's negotiating positions were given.

2.6 Was the information obtained from the consultations an adequate basis to brief Ministers for Cabinet level discussion and sufficient to enable departments to analyse questions from the point of view of the States' interests?

2.6 For most chapters of the agreement the answer is no. While some information was provided, there was insufficient detail to allow analysis of the impact of the proposed AUSFTA on Western Australia.

For those areas which required input from the States and Territories, that is government procurement and the services and investment chapters, more detail was provided.

It should be noted that briefings were also provided to State and Territory Ministers in meetings such as the National Trade Consultations and the Primary Industries Ministerial Council.

2.7 Ideally, what would have been the preferred nature of the consultations?

2.7 As stated in the Western Australian Government's submission, the consultation process organised by DFAT is acknowledged and appreciated. There were, however, a number of difficulties with the consultation process. A number of suggestions to avoid these difficulties follow:

- (i) In order to avoid situations such as the one that occurred just before the third round of negotiations, it needs to be established, prior to the commencement of the negotiations, that the Australian negotiating team will include at least one representative of the States and Territories and who the representative(s) will be.
- (ii) Given the complexity of some of the negotiations, such as the AUSFTA, it is extremely difficult for one, or even two, people to represent the States and Territories effectively. It is recommended that the number of State and Territory representatives reflect the complexity and size of the negotiations. This is consistent with the *Principles and Procedures for Commonwealth-State Consultation*.
- (iii) The national interest analysis states that:
The States and Territories . . . participated closely . . . in ensuring the appropriate framing of reservations to the Cross-Border Trade in Services and Investment Chapters.

While the States and Territories were asked to provide their input into Australia's Annex II list (in early January 2004), it is disappointing they were not kept informed of the results of the negotiations in the area, even when they specifically asked the Commonwealth for information in this area. Consequently, Western Australia was unaware that the reservations it had requested were not in the final Annex II list until the draft text was made public.

It is suggested that in future the States and Territories be kept informed of developments during the final negotiations as soon as is practicable.

- (iv) It is disappointing that, despite agreeing to do so, the Commonwealth failed to provide the States and Territories with information on the outcomes of the negotiations or the draft text before these were made public.

While it is recognised that there are protocols to be observed during negotiations, it is recommended that State and Territory Governments be kept informed of progress, particularly on areas that affect them, during the final stages of the negotiations.

- (v) The establishment of the Treaties Council was agreed to by COAG in 1996 . . . *to consider treaties and other international instruments of particular sensitivity and importance to the States and Territories . . .* (from *Principles and Procedures for Commonwealth-State Consultation*). The Treaties Council was to meet at least once a year, usually at the same time and place as COAG. It has, however, only met once, in 1997.

The Treaties Council should provide the opportunity for consultation with Heads of Government on significant international treaties, such as the AUSFTA, and should be called on to meet and function in line with the agreed principles and procedures.

- 2.8 Were the States as a group or WA in particular excluded from the negotiations at any time and, if so, for what reasons and on what issues?
- 2.8 Just before the third round of negotiations commenced (which was to have been the first time a State and Territory representative attended the AUSFTA negotiations) the State and Territory representative was informed that he could not attend as the USA had some issues with a State and Territory representative attending.

3. Impact of AUSFTA on the State

There are some general questions about the impact on AUSFTA on Western Australia and in the next section I will be asking some detailed questions on specific issues.

- 3.1 Has the State Government been able to make its own assessment or glean from other sources a relatively clear, independent idea of the cost and benefits of the Agreement to Western Australia?
- 3.2 If so, what is your analysis and how do you assess the costs and benefits?
- 3.3 If not, do you intend to conduct such an analysis and if you do, when do you expect it to be completed and will the findings be made public?

3.1 to 3.3

The analysis referred to in the response to question 1.16 provides some general statements on the impact of the AUSFTA on Western Australia.

The States and Territories had requested that the latest analysis commissioned by the Commonwealth Government include some analysis of the implications for the States and Territories. This was agreed to by the Commonwealth and it was disappointing to see that only one page had been devoted to such implications.

- 3.4 Have you had a chance to assess the impact on the State Budget of AUSFTA and, if so, what is that impact and how can it be quantified?
- 3.4 No. It would be difficult to conduct such an analysis at this time given the lack of quantifiable data on changes in business behaviour as a result of the AUSFTA.
- 3.5 If you have not been able to assess the impact on the State Budget, do you intend to do so and if you do, when do you expect that assessment to be completed and will it be made public?
- 3.5 No. Western Australia would welcome, as part of the first review period, an analysis from the Commonwealth on the impact of the AUSFTA on the State.
- 3.6 Have you sought to be reimbursed by the Commonwealth for any Budget cost increases caused by the FTA and if so, have they agreed?
- 3.6 No.
- 3.7 Are you able to say if any legislation or regulations need to be amended or enacted to bring W A into line with AUSFTA prior to it coming into force on the target date of January 1 2005 in order to comply with its terms and, if so, what are they?
- 3.8 If legislation or new regulations are required before the target date, will WA be able to meet the 1 January 2005 deadline with regulations or legislation?
- 3.9 Are you able to say if any legislation or regulations will need to be amended or enacted after AUSFTA comes into force and, if so, what are they?

3.7 to 3.9

It is understood that no current Western Australian legislation will be amended or new legislation required to be enacted so as to comply with Australia's obligations under the AUSFTA.

In Annex I for the two chapters Cross Border Trade in Services and Investment, a reservation has been taken out for all existing non-conforming measures at the State and Territory level. While this allows Western Australia to maintain its existing measures that are not conforming with Australia's obligations under the AUSFTA, these measures cannot be made more restrictive. In addition, if such a measure is made less restrictive then this more liberal measure becomes 'bound' as part of the AUSFTA.

As stated in the Regulation Impact Statement:

*The proposed action will have an impact on the States and Territories.
The Chapters on Cross Border Trade in Services, Government
Procurement and Competition Policy will be the most significant to State*

and Territory Governments. The commitment to review Australia's plasma fractionation arrangements will also be important for the States and Territories. A number of trade-restrictive measures will be bound at existing levels in the list of reservations to the Cross-Border Trade in Services and Investment Chapters. As is the case with the Commonwealth Government (as described above), this will mean less regulatory flexibility for State and Territory Governments to impose new trade-restrictive measures in those areas or to make existing measures more trade restrictive.

Any non-conforming measure that falls under Annex II for these chapters can be made more restrictive. Any new legislation, however, unless it falls into those sectors identified in Annex II, must conform with the agreement.

- 3.10 The attention of the Senate Select Committee has been drawn to some of the provisions in AUSFTA which require ongoing consultations or negotiations or reviews. Some of these relate to important matters such as the nature of the PBS Review Committee and while for others, the significance appears less, the effect is unknown. Are there arrangements for the States to be consulted on these ongoing consultations or decisions, or not?
- 3.11 If the answer to the above question is in the affirmative, are you satisfied that the nature of those consultations will enable the States' point of view to be properly considered and/or to shape the final outcomes?
- 3.12 If no arrangements have been made about ongoing issues in AUSFTA or for involvement in consultations or review mechanisms, what arrangements do you believe should be put in place?

3.10 to 3.12

It is understood that the Commonwealth has established, or will be establishing, a number of committees and working groups under the AUSFTA.

In April this year, the States and Territories sought information about these committees, including their roles, timeframes and the opportunity to be involved. While DFAT provided a list of the committees, it was unable at that stage to provide any detail on how they would work or their composition.

Western Australia considers it important that it has the opportunity to be involved in those areas in which it had a particular interest, such as the Sanitary and Phytosanitary Committee. Details on the composition of the committees and working groups, their terms of reference, their timelines and what opportunities there are for the States and Territories to be involved would be appreciated.

- 3.13 The AUSFTA Rules of Origin (ROO) adopt the US format and therefore require a different assessment than ROOs in all other Australian trade agreements. Do you support this change and what is its impact on Western Australia?

- 3.13 As stated in its written submission to the Select Committee, Western Australia would welcome additional analysis on the impact of ROOs in Western Australian industry. At this stage, Western Australia is not in a position to comment on the change of ROOs for the AUSFTA.
- 3.14 AUSFTA involves changing the direction of Intellectual Property law in Australia and according to some submissions received by the Select Committee this has the potential of impacting on our innovation effort by making the IP regime less liberal. Do you have a view about this issue and, if so, what is it?
- 3.15 Does the proposed IP changes effect the cost of IP to the WA Government or its agencies and, if so, how?

3.14 and 3.15

In its written submission to the Select Committee, Western Australia stated:

It is noted, however, that Australia will be required to align its intellectual property laws and practices more closely with those of the United States, including . . . and increased enforcement provisions. This is a complex area and Western Australia would welcome further information on the likely impact, including costs, of the obligations under this chapter for Western Australian businesses.

At this stage, Western Australia is not in a position to comment on the impact of changes in the intellectual property area.

- 3.16 The Libraries Association has complained that the extension of copyright to 70 years after the death of the author limits the availability of works and generic medicine producers have indicated concerns about "evergreening" of patent drugs. Do you have any comments on these issues? And if the concerns are realised, will it have an impact on your arts, education and health policies and services?

Any delay to the entry of generic medicines into the market place will have a negative impact upon the cost of medicines. Any extensions of patents for medicines will result in a review of the policies associated with their use in the public sector.

With respect to the arts sector, the extension is considered a positive development and will have a marginal impact on availability as it does not apply retrospectively. Exceptions for educational use will continue to apply through the length of the copyright period.

- 3.17 The Commonwealth has published a national interest statement. Were you consulted, did you contribute to it, do any of the elements of it represent WA priorities and, if so, which ones?

Western Australia was not involved in the preparation of the national interest analysis. It is noted that section 4.2(c) of the *Principles and Procedures for Commonwealth-State Consultation* states:

National Interest Analyses (NIAs) will be prepared by the Commonwealth for all treaties. States and Territories will be consulted at an early stage in the preparation of NIAs in relation to those treaties in which they have a major interest.

The NIA provides some information on issues of importance to the Australian economy, but does not directly address the priorities of the State Government.

4. Health

- 4.1 Do you have a view about the proposed "independent review" for drugs proposed for the PBS and if so, how should the "independent review" be structured, what should be the balance of qualifications and type of expertise among the personnel conducting the review and what should be the scope of a review?
- 4.2 Since the terms of the "independent review" are not finalised, are you happy to let the Commonwealth go ahead and bring the Agreement into force without these details spelt out or do you wish to have these details filled in prior to the Agreement taking effect?
- 4.3 A view has been put to the Select Committee along the lines that the "independent review" may lead to the introduction of more high cost drugs into the PBS eventually making the cost of the PBS in budget terms unsustainable thus leading to a recasting of the PBS along the New Zealand lines i.e. a relatively small number of drugs available through the PBS with the remainder being available at market prices. Do you have a view about this argument and, if so, what is it?
- 4.4 Views have been put to the Select Committee that it is in the interests of public health that access to generic drugs not be impeded by evergreening and that AUSFTA potentially opens the door to this practice. What are your views?
- 4.5 Are there costs involved for the Western Australian health system if the concerns about evergreening were substantiated?

4.1 to 4.5

The submission by Western Australia expressed concern that there was a potential for the cost of PBS drugs to increase under the provisions of the AUSFTA and that the flow-on effects of an increase in drug prices would have a detrimental effect upon hospital budgets.

The proposed "independent review" and the Intellectual Property arrangements are partly responsibility for the potential cost increase. Western Australia has not received any information on how the "independent review" is anticipated to operate and is not in a position to comment on its composition.

- 4.6 The Australian Red Cross and a US company, Baxter Health Care, have both made submissions to the Senate Select Committee drawing attention to the AUSFTA provisions which open up the Australian blood supply sector to competition from

American companies? What are your views on this issue, were the States consulted about it, and do you agree?

- 4.6 The Commonwealth did inform the Jurisdictional Blood Committee (JBC) of the content of the AUSFTA side letter on blood plasma. State and Territory members of the JBC satisfied themselves that the AUSFTA (or the side letter) would not compromise the current National Blood Agreement or the operations of the National Blood Authority.
- 4.7 The Red Cross places significance on the Australian voluntary donor system, the present self-contained nature of the Australian network for collection, fractionation, storage and distribution of blood and the health and safety advantages this brings. They also refer to cost efficiencies under the Australian system. What are your views on this subject?
- 4.7 National self-sufficiency for blood and blood products remains the underpinning policy for the Australian Blood Sector. The establishment of the National Blood Authority (NBA) from 1 July 2003 has established an integrated national blood supply system. With the establishment of NBA, the Australian Red Cross Blood Service has one contract with government for the majority of its activity. There is a view that with standardisation of operating procedures, and national planning there are significant efficiencies that can be realised.

5. Industry

- 5.1 It has been authoritatively argued to the Select Committee that access to Government procurement in the US is useless unless Australian companies are schooled in how this most tough and competitive market functions and how to access procurement contracts. It is possible the Select Committee might request the Government introduce a program to help Australian companies to become market-ready for procurement opportunities. Would you support such a program and who should do it -the States or the Commonwealth?
- 5.1 There is a general need for the Commonwealth and State Governments to support Australian companies in identifying and pursuing the opportunities presented by the AUSFTA. Government procurement is an area where companies would benefit from government supported programs. There would need to be discussions with the State about the objectives of any such program and the most appropriate form for such a program.
- 5.2 It has been put to the Select Committee that the American system of quality assurance will apply in the place of the ISO international quality assurance system. It would be a matter of concern to us if such a requirement were imposed on Australian exporters in a way which would require them to requalify to meet a different system of quality assurance and comply with a different system of customers checks. We are examining this matter but would appreciate if in your consideration of AUSFTA you have arrived at a similar conclusion on standards conformance and what the implications are for Western Australian industry, particularly small business?

- 5.3 If exporters to the US have to move to a different quality assurance standard is there any way of knowing what extra costs might be involved in doing so?

5.2 and 5.3

The outcome on quality assurance is subject to further discussions. The costs of moving to a different quality assurance standard would be variable depending on a range of factors such as the particular standards, the industry, the processes adopted and so on. Individual companies or industry associations may be able to provide case studies. Accreditation bodies may have indicative costs.

- 5.4 Taking AUSFTA as a whole, does it require the State Government to review its industry support programs and services to small business in order to provide assistance to be more competitive in the face of potentially greater US involvement in our economy?
- 5.4 AUSFTA focuses the attention of companies onto the US market. It prompts companies to inquire with State agencies how they may take advantage of the potential opportunities. The inquiries are immediate and before the AUSFTA has come into effect and certainly before there are programs or materials ready to support companies. It is the response of WA companies that drive the State Government to review its industry programs more than the existence of AUSFTA per se.
- 5.5 One of the provisions commented on in our Inquiry as favourable concerns the movement of natural persons and the recognition of professional qualifications. Do you have any comments to make on this subject in general and on what value it may be to professionals associated with the mining industry?
- 5.5 It is Western Australia's understanding that the movement of natural persons is not part of the AUSFTA. This is a matter on which the State did seek some action. Performers indicated that they experienced additional costs as they had to travel twice to the US to undertake performances. One trip would be to secure the booking and then they were required to re-enter the country to undertake the performance. ICT professionals indicated a similar difficulty in seeking visa extensions to complete project work.

It is understood that this is one of the issues to be taken up by one of the committees referred to in questions 3.10 to 3.12.

6. Industry

- 6.1 Does AUSFTA require you now to review existing legislation or consider any proposed legislation to ensure that it is AUSFTA compliant and if so how do you propose to do this and does it involve extra cost?
- 6.1 See answers to 3.7 to 3.9.