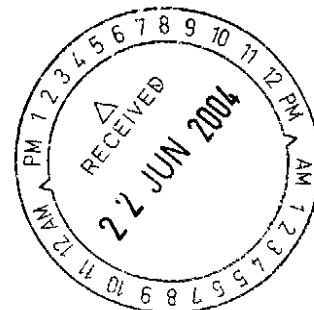


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Department of the Premier and Cabinet
Government of Western Australia

Our ref: 200407711/13643



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 copies of the transcript of evidence that was presented to the Senate Select Committee by representatives of the Western Australian Government on Tuesday, 8 June 2004.

Attached are the pages of the transcript requiring corrections.

I have also enclosed a copy of the communiqué from the Council of Australian Governments' meeting of 14 June 1996 and the accompanying *Principals and Procedures for Commonwealth-State Consultation on Treaties* (see pages 35 and 36 of the transcript). These are also available at

<http://www.coag.gov.au/meetings/140696/index.htm>

and

http://www.coag.gov.au/meetings/140696/attachment_c.htm.

Yours sincerely

Petrice Judge
EXECUTIVE DIRECTOR
OFFICE OF FEDERAL AFFAIRS

21 June 2004

enc.

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Introduction

The sixth meeting of the Council of Australian Governments (COAG) completed today was the first to be held for more than a year and was held under the Chairmanship of the Prime Minister. Heads of Government have endorsed the historic package of reforms to national firearms controls agreed by Australian Police Ministers. The Council has also agreed to an agenda of major reform to re-align fundamentally Commonwealth, State and Territory activity in the health and community services and housing fields. The Council noted a report from the Gas Reform Task Force and agreed to settle outstanding issues at its next meeting.

Other major reforms include the creation of a Treaties Council which will enhance consultations between the Commonwealth and the States and Territories on treaties and other international instruments of sensitivity or importance to the States and Territories; and signature by the Prime Minister, Premiers and Chief Ministers of a Trans-Tasman Mutual Recognition Arrangement.

This *Communique* sets out the agreed outcomes of the discussions on these issues.

The Council agreed that the next meeting would be held on 15 November 1996 in Brisbane.

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Gun Control

The Council agreed that all jurisdictions would continue to move expeditiously to implement in full the resolutions by the Australian Police Ministers on 10 May 1996 on firearms control.

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Housing

The Council reaffirmed its commitment to a fundamental shift in roles and responsibilities in the provision of housing assistance involving:

- (a) the Commonwealth accepting responsibility for income support and housing affordability; and
- (b) the States and Territories taking responsibility for the management and delivery of public housing services.

It is proposed that the Commonwealth forward a detailed reform package to the States and Territories for consideration by the end of August. In developing its package the Commonwealth will have regard to the paper, which was noted by COAG, at Attachment A, entitled Long-Term Housing Assistance Reform.

The Council noted an interest in modelling certain aspects of the proposal to test their practicability.

Senior Officials will report to COAG at its November meeting on progress in the negotiations. The Commonwealth acknowledged that State public housing capital works programmes involve long lead-times and therefore, any date for the discontinuation of Commonwealth capital grants and detailed transitional arrangements, including carryover of funding, need to be settled well in advance of the actual switch in Commonwealth funding from capital to recurrent.

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• Health and Community Services

- The Council agreed to broad directions for reform of health and community services and an approach to implementation. Long-term arrangements for system-wide reform are to be explored and developed, reflecting the directions agreed by the Council in April 1995. There will be parallel work on interim steps in the shorter term.

The Council endorsed a paper prepared by officials setting out details of this approach and recommending directions for future action. A copy is at Attachment B.

Australia's health and community services system works well for most of the people most of the time, but a major weakness is its focus on providers and programmes rather than on people and outcomes. There has been too great a focus by governments on financing and intergovernmental tensions at the expense of improvements in the health of Australians and the development of best practice in prevention and treatment.

As a result, the system is not as effective as it should be; there is insufficient control of costs; and there are inefficiencies between levels of government. Services are complex and inflexible for the people who use them and inefficient and costly for the governments which fund them.

- The Council agreed that there is an urgent need to shift the focus of health and community services from programmes to people, through a partnership between the Commonwealth and the States.
- This will involve building a system that:

- provides quality care responsive to peoples' needs;
- provides incentives for preventive health and cost effective care;
- gives better value for tax payers' dollars;

- more clearly defines roles and responsibilities; and
- retains the benefit of universal access to basic health services through Medicare.

The key elements agreed to by the Council include:

- working towards arrangements which place all health and related community services, including the Medical Benefits Scheme (MBS) and the Pharmaceutical Benefits Scheme (PBS), under the umbrella of a single multilateral agreement, with bilateral agreements covering funding and outcome measures for all relevant services. Development of these arrangements will be undertaken on the basis that they must:
 - provide improved outcomes for people;
 - not place government outlays in jeopardy; and
 - be consistent with Medicare principles;
- further exploration of key components of the long-term approach, including:
 - details of the global funding arrangements which would be put in place, taking into account concerns about risk sharing in the light of the uncapped nature of MBS and PBS;
 - options for establishing a nationally consistent information and payments system which could: handle the funds covered by the bilateral agreements, enable governments to monitor the overall quality of care and provide a basis for accountability;
- interim steps to consolidate and rationalise a number of existing arrangements, including consideration of transfer of responsibility for managing aged care programmes to the States, to be developed in parallel with work on the longer term approach. A range of options for consolidating Specific Purpose Payments (SPPs) will be considered, including:
 - combining most SPPs in either the Medicare Agreements or new bilateral agreements (e.g. Public Health), with arrangements to specify access and measures of output and outcome; and
 - conversion of current SPPs into identified grants within the stream of State general purpose payments, with bilateral agreements defining broad objectives and specifying access and measures of output and outcome for broad functional areas within the health system.

The Council agreed that a significant realignment of roles and responsibilities could flow from this approach, involving both levels of government in jointly setting objectives, priorities and performance standards, and funding the system; with the Commonwealth taking a leadership role in relation to public health standards and health research; and the States primarily responsible for managing and coordinating the provision of services and for maintaining direct relationships with most providers. The Council recognised the significant role played by Local Government in this area.

While the reform agenda deals with government funded health and community services, further work will also be undertaken on the on-going role of private sector funding, which currently

accounts for about one third of health expenditure.

Health and Community Services Ministers will progress this work, with the involvement of COAG Senior Officials, reporting back to the next Council meeting on progress with the interim steps and the development of long-term arrangements. Appropriate consultation with consumers and the industry will take place before any final decisions are taken by the Council.

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Treaties

The Council agreed to the establishment of a Treaties Council and related improvements to the provision of information about, and consultation procedures concerning, treaties and other international instruments of sensitivity or importance to the States and Territories. Premiers and Chief Ministers welcomed this initiative and saw it as a potentially important new Federal institution.

The Treaties Council will have an advisory role, and will comprise the Prime Minister and all Premiers and Chief Ministers. The inaugural meeting of the Treaties Council will be held in conjunction with the next meeting of COAG.

The agreed changes are incorporated in revised *Principles and Procedures for Commonwealth-State Consultation on Treaties* which the Council agreed should be adopted in order to achieve the best possible outcome for Australia in the negotiation and implementation of international treaties. They update those adopted in 1992. The revised document is at Attachment C to the communique. Amongst other changes, it sets out in detail the role and functions of the Treaties Council.

The Council also noted the reforms to the treaty making process announced by the Commonwealth on 2 May 1996 which implement, to a considerable extent, the initiatives proposed by the States and Territories in their April 1995 Joint Submission to COAG. In particular, the reforms include:

1. a new Parliamentary procedure for tabling treaties before they are ratified;
2. the establishment of a Joint Parliamentary Committee on Treaties; and
3. the enhanced provision of information on treaties, including National Interest Analyses.

The Commonwealth's intention is to review the initiatives taken to reform the treaty-making process after two years. The States and Territories recommend that the Treaties Council review the package of reforms (including the issue of parliamentary approval of treaties prior to their ratification) at that time, and the Commonwealth notes this recommendation.

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Gas

The Council noted a progress report on gas reform from Mr R M Charlton, the Chairman of the Gas Reform Task Force. Jurisdictions and the Gas Reform Task Force have made significant progress towards meeting the commitments for gas reform set at the Council's February 1994 meeting, although there are several outstanding issues. Full legislative implementation of the framework for free and fair trade in gas is unlikely to be completed before December 1996.

The report noted:

- substantial progress towards agreement of a uniform national access framework. The framework will apply Australia-wide and take the form of a Code extrinsic to legislation. It will be supported in legislation by each jurisdiction in line with an Inter-Governmental Agreement to deal with the implementation and maintenance of the Code;
- agreement had been reached on some of the main access principles to underpin the Code with further consideration being given to others such as asset valuation and other pricing principles, "ring fencing" requirements, information requirements, secondary trade arrangements and the role of franchise agreements; and
- the Task Force had agreed that the State regulator should be the regulatory institution for distribution systems.

The Council agreed that the national access framework would be finalised as follows:

- 20 June 1996 Finalisation of the principles in the draft Access Code.
- 30 June 1996 Release of the draft Access Code for a two month stakeholder consultation period.
- 30 September 1996 Access Code and associated draft Inter-Governmental Agreement to be finalised and submitted to Heads of Government for endorsement.

The Council also agreed that:

- (a) the Access Code should apply to distribution systems as well as transmission pipelines; and
- (b) the Commonwealth Minister for Resources and Energy would convene a meeting of State and Territory Energy Ministers to settle on a mode of regulation that would maximise competition and facilitate investment in the gas industry.

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Trans-Tasman Mutual Recognition Arrangement

At the meeting the Prime Minister, Premiers and Chief Ministers signed the TransTasman Mutual Recognition Arrangement.

The signing was attended by the New Zealand High Commissioner to Australia. The Arrangement will be despatched forthwith to New Zealand for signature by the Prime Minister of New Zealand, the Right Honourable James Bolger, MP.

The Arrangement provides for goods acceptable for sale in Australia to be sold in New Zealand (and vice versa), and for persons registered to practise an occupation in Australia to practise an equivalent occupation in New Zealand (and vice versa).

The Arrangement is intended to commence as early as possible in 1997 following the passage of Commonwealth, State, Territory and New Zealand legislation.

In entering into the Arrangement, the parties recognise the mutually beneficial economic and trade framework which has developed under the 1983 AustraliaNew Zealand Closer Economic Relations Trade Agreement and believe that trans-Tasman mutual recognition is a logical extension of this relationship. In particular, the parties believe that the Trans-Tasman Mutual Recognition Arrangement will enhance the international competitiveness of Australian and New

Zealand enterprises.

Attachment D contains a description of the Arrangement.

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Northern Territory Statehood

The Council received a report from the Chief Minister of the Northern Territory (the Hon. Shane Stone MLA) on the progress made since its last meeting on the question of Statehood for the Northern Territory.

In this context, the Prime Minister indicated the Commonwealth's willingness to facilitate Statehood for the Northern Territory according to a negotiated timetable through a truly co-operative Federal partnership.

It was agreed that the issue would be taken forward primarily in bilateral discussions between the Commonwealth and the Northern Territory, with the States and the Australian Capital Territory consulted on issues affecting them or in which they express an interest.

It was noted that it is the Northern Territory's objective to achieve Statehood by the year 2001.

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Attachment C - Principles and Procedures for Commonwealth-State Consultation on Treaties

**Council of Australian Governments' Communiqué
14 June 1996**

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3. Principles

Part B: Procedures

4. Information
5. Consultation Mechanisms
6. Participation on International Delegations
7. Implementation
8. "Federal - State" Aspects

National Interest Analysis Pro Forma
Federal Statement Example

Part A: Introduction and Principles

These principles and procedures are adopted subject to their operation not being allowed to result in unreasonable delays in the negotiating, joining or implementing of treaties by Australia.

1. Introduction

1.1 The Council of Australian Governments agreed at its meeting in June 1996 that this set of Principles and Procedures should be adopted in order to achieve the best possible outcome for Australia in the negotiation and implementation of international treaties. They update those adopted in 1992.

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2. Instruments covered by these Principles and Procedures

2.1 These Principles and Procedures relate to treaties of sensitivity and importance to the States and Territories.

2.2 Treaties are multilateral, limited party (plurilateral and trilateral) or bilateral agreements which create legally binding obligations under international law. Treaties pertaining to matters of national security are excluded from these Principles and Procedures.

2.3 Having regard to these Principles and Procedures, the Commonwealth will inform the States and Territories of other international instruments where they cover matters of sensitivity and importance to the States and Territories such as the United Nations Draft Declaration on the Rights

of Indigenous Peoples.

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3 Principles

3.1 In the interests of achieving the best possible outcome for Australia, and where a treaty or other international instrument is one of sensitivity and importance to the States and Territories, the Commonwealth should, wherever practicable, seek and take into account the views of the States and Territories, in formulating Australian negotiating policy, and before becoming a party to, or indicating its acceptance of, that treaty or instrument.

3.2 The Commonwealth should then also keep the States and Territories informed of the determined policy.

3.3 The consultative process will be continued through to and include the stage of implementation, if any.

3.4 The States and Territories will each be responsible for the timely development of their own whole of government position with respect to any aspect of the consultation and, where they choose, for the development of a consolidated States and Territories position.

3.5 The States and Territories will establish and advise the Commonwealth on the appropriate channels of communication, and persons responsible for consultation, to ensure that the Commonwealth can discharge its international responsibilities in a timely manner.

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Part B: Procedures

4. Information

4.1 The Commonwealth will inform States and Territories in all cases and at an early stage of any treaty discussions in which Australia is considering participation. Where available, information on the long-term treaty work programs of international bodies will be provided to the States and Territories.

4.2 There will be various ways in which information on treaty negotiations is provided to the States and Territories.

(a) Information about treaty discussions is forwarded to Premiers'/Chief Ministers' Departments or Cabinet Offices on a regular basis through the Department of the Prime Minister and Cabinet and the Treaties Secretariat of the Department of Foreign Affairs and Trade. One vehicle for making information about current treaties and negotiations available will be the Treaties Schedule.

(b) The Commonwealth will provide the States and Territories every six months with a list of current and forthcoming negotiations (forecasting 12 months ahead) and of matters under consideration for ratification, accession etc. Updates of this list will be provided at three monthly intervals.

(c) 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

NIA's in relation to those treaties in which they have a major interest. NIA's will be finalised in time for tabling in Parliament. NIA's will represent the best understanding of the Commonwealth at the time they are prepared. A National Interest Analysis which includes the elements in the NIA pro forma (Appendix 1) will accompany each treaty tabled in Parliament.

(d) the Commonwealth will whenever practicable provide States and Territories with a report on the outcome of international negotiating sessions which are of sensitivity and importance to the States and Territories. These may be provided on a confidential basis.

4.3 The provision of the above information will not affect the flow of information on treaties to the States and Territories which occurs on an ongoing basis from the time that negotiations begin.

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5. Consultation Mechanisms

The Treaties Council

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. 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.

Standing Committee on Treaties

5.4 There will be a Standing Committee on Treaties consisting of senior Commonwealth and State and Territory officers which will meet twice a year, or more often if required, to identify treaties and other international instruments of sensitivity and importance to the States and Territories and:

- decide whether there is a need for further consideration by the Treaties Council, a Ministerial Council, a separate intergovernmental body or other consultative arrangements;
- monitor and report on the implementation of particular treaties where the implementation of the treaty has strategic implications, including significant crossportfolio interests, for States and Territories;
- ensure that appropriate information is provided to the States and Territories; and
- co-ordinate as required the process for nominating State and Territory representation on delegations where such representation is appropriate.

5.5 In identifying treaties and other international instruments of particular sensitivity and

importance to the States and Territories, the Committee should have regard to their potential to affect the finances or current or future policy decisions of the States and Territories or the need for State and Territory participation in implementation, including legislation.

Ministerial Councils and other consultation mechanisms

5.6 Subject to any recommendation of the Standing Committee, as a general practice, consultation will be conducted by the functional Commonwealth/State and/or Territory Ministers for Departments concerned. Exceptions will exist where there are significant cross-portfolio interests.

5.7 In general, existing Commonwealth/State and Territory Ministerial Councils and consultative bodies will be used as the fora in which detailed discussions of particular treaties and other international instruments take place.

5.8 When issues are to be discussed that are of particular significance to either State and Territory or Commonwealth authorities other than those directly represented on the Commonwealth/State and Territory consultative bodies, representatives of such authorities may be invited to attend the meetings in an observer role.

5.9 The protocols relating to the operation of Ministerial Councils will apply to these consultations - including those relating to Representation of Constituent Governments and Liaison between Councils (*Commonwealth-State Ministerial Councils, A Compendium, May 1994*).

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6. Participation on International Delegations

6.1 In appropriate cases, a representative or representatives of the States and Territories may be included in delegations to international conferences which deal with State and Territory subject matters. 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. However, State and Territory representatives will be involved as far as possible in the work of the delegation.

6.2 The States and Territories will normally initiate moves for inclusion in a delegation, but the Commonwealth should endeavour to keep State and Territory interests in mind.

6.3 Unless otherwise agreed, the costs of the State and Territory representatives are a matter for State and Territory governments.

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7. Implementation

7.1 Before the Commonwealth becomes a party to any international treaty of particular sensitivity and importance to States and Territories, the Commonwealth and the States and Territories will consult in an effort to secure agreement on the manner in which the obligations incurred should be implemented.

7.2 Where the preparation of reports to international bodies on implementation action is required, States and Territories will be consulted and their views taken into account in their preparation.

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8. "Federal - State" Aspects

8.1 The Commonwealth does not favour including federal clauses in treaties and does not intend to instruct Australian delegations to seek to include them. In the Commonwealth's view, the international community sees the pursuit of federal clauses in treaties generally as an attempt by the "Federal State" to avoid the full obligations of a party to the treaty. The Commonwealth's experience at a number of International Conferences has shown that these clauses are regarded with disfavour by almost the entire international community. Further, its experience is that a federal clause tailored to the needs of one federation will be unacceptable to other federations. The Commonwealth believes that instructing an Australian delegation to press for a federal clause only diverts its resources from more important tasks.

8.2 The Commonwealth does not object to Australia making unilaterally a short "Federal Statement" when it signs or ratifies certain appropriate treaties, if this statement clearly does not affect Australia's obligations as a party. An "appropriate" treaty would be one where it is intended that the States and Territories will play a role in its implementation. An appropriate form for a statement like this is at Appendix 2.

8.3 The normal practice is that Australia does not become a party to a treaty containing a federal clause until the laws of all States and Territories accord with the mandatory provisions of the treaty. However, where a suitable "territorial units" federal clause is included in a treaty, the possibility of Australia acceding only in respect to those States and Territories which wish to adopt the treaty might be considered on a case by case basis where appropriate, perhaps in some private law treaties.

8.4 The Commonwealth will consider relying on State and Territory legislation where the treaty affects an area of particular concern to the States and Territories and this course is consistent with the national interest and the effective and timely discharge of treaty obligations. However, the Commonwealth does not accept that it is appropriate for the Commonwealth to commit itself in a general way not to legislate in areas that are constitutionally subject to Commonwealth power.

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◆ National Interest Analysis Pro Forma

◆ Date of proposed binding treaty action

Date and explanation of binding treaty action eg. definitive signature, ratification, exchange of notes etc.

Date of Treaty tabling

Date when the treaty will be tabled with this NIA.

Reasons for Australia to Become A Party to the Treaty

This section should address the advantages and disadvantages to Australia of becoming, and of not becoming, a party to the treaty. It should include significant, quantifiable and foreseeable economic and/or environmental effects of the treaty. Where relevant, it should also include a description of any likely social and cultural effects of the treaty.

Obligations

A description of the major provisions of the treaty and the obligations they impose on Australia.

Costs

Any direct financial costs to Australia of compliance with the treaty, for example, contributions to international organisations provided for in the treaty, costs of establishing any new domestic agency as a direct result of entering into the treaty.

Future Protocols etc

Whether the treaty provides for the negotiation of future related legally binding instruments such as protocols and/or annexes. If possible, what areas these future instruments are likely to address.

Implementation

A description of the measures Australia intends to take or has taken to implement the treaty, including any legislation. Whether Commonwealth and/or State and Territory action is required or desirable. Any changes to the existing roles of the Commonwealth and the States and Territories as a consequence of implementing the treaty in this way.

Consultation

A statement setting out the consultations which have occurred in relation to the treaty between the Commonwealth, the States and the Territories and with community and other interested parties. A summary of the views of those parties should also be included. The statement must include the date of first mention in *Insight* and of inclusion in the Standing Committee on Treaties' Treaties Schedules.

Withdrawal or Denunciation

Whether the treaty provides for withdrawal or denunciation and, if so, what procedures apply. In the absence of express provisions in the treaty, a general description of the Vienna Convention on the Law of Treaties provisions on termination and denunciation will be included.

Federal Statement Example

Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between its central and State and Territory authorities.

The treaty will be implemented throughout Australia by the Federal, State and Territory governments, according to their respective constitutional powers and arrangements concerning the exercise of these powers.

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