

18<sup>th</sup> August 1998

**A Submission to:**

The Executive Director  
Treaties Secretariat  
Department of Foreign Affairs and Trade  
John McEwen Crescent  
BARTON ACT 2600

**Subject: Review of the Treaty Making Process**

BACKGROUND

For some seven years the Council for the National Interest, Western Australian Committee, has argued that all United Nations type Treaties, Conventions, Protocols etc. should be debated in Parliament and signed or ratified only after approval to do so by a current resolution of both Houses of Federal Parliament. This philosophy reflects the overwhelming view of the members of CNI electorate branches in Western Australia.

The Parliament is the body charged with carrying out the will of the people and the constitutional authority for the making of laws affecting the people. There is a democratic deficit when the executive Government can enter into treaties which can then become 'law' by a decision of a Court without the Parliament having any power to allow or disallow the treaty.

The concerns of our members were reflected in a speech by Mr Alexander Downer to the Constitutional Centenary Foundation Conference on "Australian Government in a Global Society" on 6<sup>th</sup> May 1995 when he stated "...of 17 industrialised democracies only Australia and Great Britain exclude Parliament from any meaningful role in the treaty making process." Mr Downer went on to say "The argument that to involve our Parliament will somehow 'bind the hands of the Executive' is clearly not borne out by international experience."

During the same address Mr Downer sounded the warnings of eminent people such as Sir Ninian Stephen, who pointed to the democratic deficit which was occurring because "Parliament has no formal role in the treaty making process" and of Mr Justice Kirby who had called for action "to now involve the national Parliament in the superintendence of Executive action in respect of treaties."

RECOMMENDATIONS

CNI recognises that the reformed treaty making process is far more transparent than was the case previously. Nevertheless CNI heeds the view of its members and accordingly RECOMMENDS:

- (1) It should be a requirement that treaties be approved by current resolutions of both the House of Representatives and the Senate before being signed or ratified.
- (2) It should be a requirement that the Joint Standing Committee on Treaties be informed of all treaties in course of negotiation so that the Parliament and the public can be informed at an earlier date of the progress and directed of such treaties. Formal inquiries should be held when the treaty has far reaching social or economic impact for example the United Nations Draft Declaration on the Rights of Indigenous People or the Multilateral Agreement on Investment.

- (3) It should be a requirement that the government employees may be 'subpoenaed' to respond to the requisitions of the Joint Standing Committee and to attend as required and give effective responses.
- (4) It should be a requirement that widespread media publicity, if necessary by advertisement, be given to the parliamentary debates on treaties before they are signed; Joint Standing Committee deliberations, inquiry proceedings, reports and National Interest Analyses. Whilst it is acknowledged that a significant amount of information can be gleaned from the Internet, it should be the responsibility of the Treaties Secretariat to ensure that these activities are published in the mainstream media. The average citizen should not have to 'surf the net' constantly in case a treaty topic of interest is under discussion.

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CHAIRMAN - WESTERN AUSTRALIAN COMMITTEE.