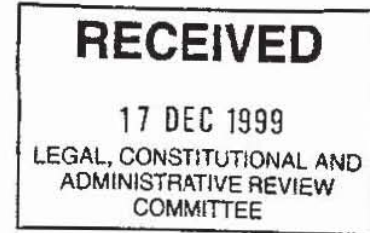


Submission NO 7
Spec 231

16 December 1999

The Research Director
Legal, Constitutional and Administrative Review Committee
Parliament House, George Street
BRISBANE QLD 4000



Dear Sir/Madam

Submission Re: Legal, Constitutional and Administrative Review Committee – The Role of the Queensland Parliament in Treaty Making, Position Paper (No 1)

Firstly, I would like to thank the Queensland Government for providing this opportunity for Queensland citizens to provide input into the matter of government processes in relation to treaty making. I have found, however, that the short timeline has presented me with considerable difficulty in making this submission by the closing date. I'd like to suggest that, when submissions are called for in future, more time be allowed for people to respond if possible.

Introduction

I would like to encourage the Queensland Parliament to do as much as practicable to increase the openness of the treaty making process, to increase the public's awareness of treaties being negotiated, and to facilitate public access to the contents of treaties under negotiation.

Observations on the Treaty Making Process Based on the MAI Experience

In spite of the 1996 reforms the treaty making process remains very secretive, as evidenced in the recent case of the Multilateral Agreement on Investment (MAI). The MAI had been negotiated for several years and yet there was no public awareness of this treaty and its potentially enormous effects on all citizens. In fact, most federal politicians remained unaware of its existence. This treaty only came to be known in the community because information about it was leaked in Canada - it was not brought to light through any democratic processes within the Australian system. When JSCOT was eventually asked to review the treaty (after considerable public outcry), the public servants responsible for the treaty refused to co-operate with JSCOT. So much for open and accountable democracy! As far as I know, the state and territory governments were also made aware of this treaty very late in the process and were given very little time to make submissions – instead of being given opportunities to have input throughout the negotiations. Surely this too is unsatisfactory in the case of a treaty like the MAI which would have considerable impact on this level of government and its laws and activities. In addition, although this treaty clearly had enormous potential to affect social and environmental conditions, relevant NGOs were neither invited to attend the negotiations nor even informed about the existence of the treaty. On the other hand, business interests were afforded the opportunity to provide input. Who decides who will be consulted, and who will be excluded from the consultation process? The 1996 reforms evidently have failed to truly introduce democratic processes into the treaty making process – at least where there is political will to keep a treaty secret.

My Impressions of the Treaty Making Process in Australia

It seems that treaties are negotiated in secret by a team of public servants, with who knows what agenda. Once finalised, the treaty is tabled in the Commonwealth Parliament for only 15 sitting days – hardly enough time for parliamentarians to research and debate the potentially complex and far-reaching effects of international treaties, or for public debate of issues arising from it. Of course, a National Interest Analysis (NIA) is tabled along with the treaty. But who prepares the NIA – the same people who negotiated the treaty? What precautions are in place to ensure that the NIA truly evaluates the treaty's effect on the national interest in an unbiased manner, and doesn't simply continue to push the agenda of those who negotiated the treaty in the first place? And then it is only the executive, not parliament, that enters into the treaty. All of this adds up to a very undemocratic process.

Availability of Text of Treaties Under Negotiation

It is desirable for state and territory governments and members of the public to be aware of the contents of treaties under negotiation very early in the process, so that input can be provided during the negotiation process rather than being presented with a final version of a treaty to comment on within a very short timeframe. The fact that the text of multilateral treaties that Australia is negotiating is available through the Australian Treaties library via the internet really is not very helpful since *many* people are unable to use the internet. In addition, although the treaty texts may be available, people will not know where to access them, or even know to look at treaties at all unless they have been alerted by some other means that there is a treaty of interest to them under negotiation. For these reasons, some form of *active public disclosure of treaties under negotiation* is necessary to help make the treaty making process more democratic. The Queensland Government could assist in this regard by tabling such treaties in Parliament, as proposed in Committee Proposal 1.

The 1996 Reforms

According to the procedures outlined in these reforms, the Queensland Government should be informed of current and forthcoming treaty action. It should also be given the opportunity to put forward its views where a treaty is of sensitivity and importance to the states and territories. Did this happen in the case of the MAI? I was under the impression that the state and territory governments learned of the existence of the MAI at about the same time as the rest of us – several years into negotiations. If this is the case then the 1996 reforms are not effective in increasing state and territory participation in the treaty making process. State and territory governments *must* be informed about treaties under negotiation early in the negotiation process so they are able to provide meaningful input to help guide the negotiations.

Why has the Treaties Council met only once since 1996, when it was to meet at least once per year? The Prime Minister, Premiers and Chief Ministers should be making full use of this mechanism to facilitate consultation between the commonwealth and state and territory governments.

The 1999 Review

'continue to ensure that commonwealth agencies that are leading treaty negotiations consult with states and territories at a sufficiently early stage, so that states and territories can make the best possible use of Ministerial Councils and other consultation mechanisms'

Who decides what stage is 'sufficiently early' for the states and territories – the commonwealth agencies? Is this working well for the states and territories. It seems that if

an agency negotiating a treaty has a vested interest in keeping it from the attention of the states and territories for as long as possible, then they are in a position to simply consult late in the process.

'provide states and territories with a report on the outcome of negotiating with a report on the outcome of negotiating sessions of sensitivity and importance to the states whenever practicable'

Again, who decides what is of importance to the states and territories, and when it is practicable? Again it seems that the negotiating agencies may have the power to 'keep the states and territories in the dark' if it suits them.

Rejection of 'extending the 15 sitting day requirement'

I believe a mere 15 sitting day period is insufficient to allow consideration of, and debate on, the potential effects of international treaties by the parliamentarians, interested groups, and the public. In the case of international treaties, which are often negotiated over a period of years, such a short scrutiny period seems ludicrous, especially when the ramifications of such treaties can be complex and far-reaching.

The Committee's Position on the Issues Raised at the JSCOT Seminar

Committee proposal 1 - The presentation of proposed treaty information to the Queensland Parliament

I strongly agree that it is important in a representative democracy that information regarding treaty making is readily available to all citizens and that it is available at a time when meaningful public consultation can occur – but I consider that this requires a reasonably *long* period prior to binding action being taken, and preferably would occur during negotiations rather than after a final treaty has been formulated and agreed to by the relevant national negotiating parties. I also support the intention to engender public debate on issues of relevance to Queensland (but I suggest that 'Queensland' should be changed to 'Queenslanders'), and facilitate the making of submissions to JSCOT.

I fully support Committee proposal 1, that the Premier be required to periodically table a schedule of treaties being negotiated by the Commonwealth Government and any other treaty information such as National Interest Analyses. However, I suggest that any impact analyses conducted or commissioned by the Queensland State Government also be tabled.

Committee proposal 2 - A Queensland treaties Committee

I disagree with Committee proposal 2. I believe that it is desirable for the Queensland Parliament to appoint a parliamentary committee, or confer an existing committee, with specific treaty responsibilities.

While not all treaties affect Queensland and many treaties may not contain controversial matter, those that do certainly should be assessed thoroughly by the Queensland Government, and the scrutiny of these treaties is an effective, in fact essential, use of the Queensland Parliament's time.

While the internet is used by some people as a means of communication and dissemination of information, many people are unable to use the internet. Therefore, the internet must not be relied on as a means of bringing important information to the community's attention. Parliament is a more appropriate means of bringing treaties into public awareness.

Committee proposal 3 – The establishment of an inter-parliamentary working group on treaties

I disagree with Committee proposal 3. I believe that it is desirable to establish an inter-parliamentary working group on treaties.

I disagree with the committee's view that such a working group would not significantly add value to the 1996 reforms. The committee itself acknowledges that the establishment of an inter-parliamentary working group would increase the level of parliamentary information and consultation in the development of treaties, as well as enhance opportunities for the state and territory parliaments to have a greater role regarding the implementation of international obligations accepted by the commonwealth. As I discussed above, the 1996 reforms do not seem to be working well to increase the level of parliamentary and public consultation in the development of international treaties. The 1996 reforms clearly cannot be relied upon to ensure input from state and territory governments and the public. The establishment of an inter-parliamentary working group on treaties, on the other hand, would help this to happen.

Conclusion

I believe that the treaty making process in its current form is most undemocratic, with decisions being made by a small number of people, often in secret. While there are mechanisms to facilitate consultation and debate, it appears that these can be circumvented if desired. Therefore it is essential to take every opportunity to establish compulsory mechanisms for disclosure and consultation so the degree of democracy in the treaty making process is increased.

I believe that each of the three proposals that came out of the treaties seminar provides an opportunity to do this. I support committee proposal 1, and encourage the committee to reconsider its proposals 2 and 3. Support of these mechanisms is in the interests of the Queensland Government and all Queenslanders.

I also encourage the committee and the Queensland Government to apply pressure to the Commonwealth Government to increase the 15 sitting day requirement, to allow for meaningful debate and input on the complex and far-reaching issues often involved in international treaties.

Thank you for considering my views, and for providing this opportunity to present them.

Yours faithfully



Kerry Brady (Ms)