

Introduction

Purpose of the report

- 1.1 This report contains an overview of the discussion at the seminar conducted by the Joint Standing Committee on Treaties *Treaty Scrutiny: A Ten Year Review* held in Canberra on 30-31 March 2006.
- 1.2 The seminar was convened to coincide with the tenth anniversary of the establishment of the Joint Standing Committee on Treaties.
- 1.3 A transcript of the seminar proceedings is included as an appendix to the report, as are a list of participants, the program and additional speeches provided by seminar participants.¹

Program and participants

- 1.4 The seminar was attended by approximately 80 participants from a diverse range of backgrounds including Senators and Members of Parliament, State and Territory Members of Parliament, international guests, academics, public servants and interest groups.

1 References in this report refer to RT Report Transcript and OT Official Transcript. The Report Transcript is included as Appendix C, the Official Transcript is available on the JSCOT website.

- 1.5 The seminar addressed four main themes:
- reflections on a decade;
 - treaty making and review in a federal system;
 - new development in treaty making and review; and
 - perspectives from abroad.
- 1.6 The seminar commenced with a reception and dinner at The Lobby Restaurant in Parkes, Canberra. The reception was hosted by Senator the Hon Paul Calvert, President of the Senate, and the Hon David Hawker MP, Speaker of the House of Representatives. The Presiding Officers both welcomed seminar participants, congratulated the Committee on the work it has done in the ten years of its operation and wished the Committee the best for its future.
- 1.7 Following the Presiding Officers, the Minister for Foreign Affairs, the Hon Alexander Downer MP, and the Shadow Minister for Foreign Affairs and Trade and International Security, Mr Kevin Rudd MP, both addressed the seminar. A copy of the Minister's address is provided at Appendix D.
- 1.8 Mr Greg Sheridan, Foreign Editor at *The Australian*, provided the lunchtime address and spoke compellingly about the value and importance – and sometimes the needlessness – of treaties. His address sparked discussion both at the time and throughout the afternoon sessions of the seminar.

Background

- 1.9 Prior to 1996 there had been some attempts to introduce measures which would keep the Parliament more informed about treaty matters. For example, in 1961 Prime Minister Menzies committed the Government to a general rule that it would lay on the tables of both the Senate and the House of Representatives, for at least twelve days, the text of treaties which had been signed for Australia, or to which Australia contemplated accession.
- 1.10 This rule was gradually eroded. While in the 1960s and the early 1970s treaties were tabled individually or in small groups to comply with this commitment, by the late 1970s they were being tabled in bulk after periods of about six months. Often, more than half of the treaties had been ratified before they were tabled and Australia was

already obliged by international law to comply with them, thereby denying any meaningful Parliamentary scrutiny or input.

- 1.11 As Australia entered into a period of negotiating a broader range of treaties, some of them quite controversial, it became increasingly recognised that the role played by the Parliament in the treaty process was inadequate.
- 1.12 Concerns were raised in relation to the impact of international treaties on the Australian federal system. Treaties entered into by the Commonwealth Government can potentially impact on the States and Territories and concerns were raised about consultation undertaken by the Commonwealth Government prior to entering into and ratifying treaties. With this came pressure for reform.
- 1.13 In December 1994 the Senate asked its Legal and Constitutional References Committee to inquire into the Commonwealth's treaty making power and the external affairs power. In November 1995, the Senate Committee presented its findings to the Parliament with proposals for reform in a report entitled *Trick or Treaty? Commonwealth Power to Make and Implement Treaties*. The Committee's report provided a basis for the reforms that were later made to the treaty-making process.
- 1.14 On 2 May 1996, the Hon Alexander Downer MP, the Minister for Foreign Affairs, in a Ministerial Statement, announced reforms to the treaty making process (the 1996 Reforms).
- 1.15 The reforms were intended to create a more transparent and democratic treaty making process. The reforms had five key elements:
 - the tabling of treaties in Parliament for a minimum of 15 sitting days before the Government takes binding treaty action;²
 - the tabling of a National Interest Analysis (NIA) for each treaty;
 - the establishment of the Joint Standing Committee on Treaties to examine treaties;
 - the establishment of a Treaties Council as an adjunct to the Council of Australian Government, to be chaired by the Prime Minister; and
 - an internet based treaties database.

2 Following an announcement by the Minister for Foreign Affairs and Trade, the Hon Alexander Downer MP, in August 2002 some treaty actions which are considered to be less routine or potentially controversial are now tabled for 20 sitting days.

- 1.16 The seminar provided an opportunity to consider the role and effectiveness of the Committee, the treaty making reforms and the role of parliaments in the treaty making process more generally.
- 1.17 In assessing the 1996 reforms in 2006, some of the issues which participants considered were:
- Has the Joint Standing Committee on Treaties made the treaty making process more democratic, transparent and accountable?
 - How adequate is the consultation between the Commonwealth and the States and Territories in relation to treaties? How could it be more effective?
 - Has the failure of the Treaties Council to meet more than once since 1996 had an impact on the treaty making process?
- 1.18 The seminar also provided an opportunity to consider recent trends in treaty making, such as the increase in free trade agreements, treaties with regional neighbours and climate change treaties.
- 1.19 Finally, the seminar provided the opportunity to consider the Committee's role, and Australia's treaty making processes more generally, in an international context.
- 1.20 Chapter 2 of this Report provides an overview of the discussion from each of the four major themes and Chapter 3 examines the 1996 Reforms ten years on.