XI. Treaties

International Instruments — Unincorporated by Domestic Legislation — Operation in Australian Law

Following the High Court's decision in *Minister for Immigration and Ethnic Affairs v Ah Hin Teoh* (1995) 128 ALR 353, on the 10 May 1995, the Minister for Foreign Affairs, Senator Evans, and the Attorney-General, Mr Lavarch, issued the following joint statement concerning international treaties and the decision:

> This statement is to clarify the Government's position following the High Court's recent decision in the *Teoh* case. That decision concerned the way in which administrative decisions are made under the Migration Act but could have implications for the way the provisions of a treaty may operate in Australian law generally.
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> Prior to the High Court decision, it was established that ratification of a treaty did have some, albeit limited, significance in Australian domestic law: the treaty provisions could be used to resolve an ambiguity in legislation; could provide guidance on the development of the common law, particularly where the treaty declared universal fundamental rights, and could quite properly be taken into account in the exercise of a discretion by a decision maker under legislation without the decision being invalidated as a result.
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> However, it was also clearly established in a succession of High Court cases that treaties entered into by the Australian government, while creating rights and duties as a matter of international law, did not form part of Australia's domestic law unless and until they had been so incorporated by legislation, and could not give rise to rights and obligations unless they were so enacted into law.
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> The High Court reaffirmed in *Teoh* that provisions of treaties do not form part of Australian law unless they have been incorporated by legislation. At the same time, however, the Court developed a new way in which treaties could affect some administrative decisions. The High Court held that merely entering into a treaty could give rise to a legitimate expectation that government decision makers would make decisions consistently with Australia's obligations under the treaty. It was not necessary for any legislation governing the decision to refer to the treaty. Indeed the provisions of the treaty could apply even where the person affected by the decision did not raise or even know about the treaty in question. This was the case in itself, where the Court decided that there was a legitimate expectation that the decision maker under the Migration Act would take the relevant Article of the Convention on the Rights of the Child into account in coming to a decision not to give resident status, notwithstanding that the applicant did not know about the Convention and the decision maker did not raise it.
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> It may be only a small number of the approximately 920 treaties to which Australia is currently a party could provide a source for an expectation of the kind found by the High Court to arise in *Teoh*. But that can only be established

as individual cases come to be litigated. In the meantime, the High Court decision gives little if any guidance on how decision makers are to determine which of those treaty provisions will be relevant and to what decisions the provisions might be relevant, and because of the wide range and large number of decisions potentially affected by the decision, a great deal of uncertainty has been introduced into government activity. It is not in anybody's interests to allow such uncertainty to continue.

For that reason, the Government is taking action to restore the position to what it was understood to be prior to the *Teoh* case.

This action is of the kind foreshadowed by the High Court itself. In its judgment, the Court acknowledged that the expectation in question can be displaced by "statutory or executive indications to the contrary": there can be no legitimate expectation if the actions of the Parliament or the Executive are not consistent with that expectation. So far as the Executive is concerned, the Court made it clear that it was open for Government to make a statement about the effect that the obligations undertaken in international law by reason of treaty ratification are intended to have in the domestic law of Australia.

We now make such a clear and express statement. We state on behalf of the Government, that entering into an international treaty is not reason for raising any expectation that government decision makers will act in accordance with the treaty if the relevant provisions of that treaty have not been enacted into domestic Australian law. It is not legitimate, for the purpose of applying Australian law, to expect that the provisions of a treaty not incorporated by legislation should be applied by decision makers. Any expectation that may arise does not provide a ground for review of a decision. This is so, both for existing treaties and for future treaties that Australia may join.

The Government intends to legislate to reinforce this statement and put beyond any doubt the status of these unlegislated international obligations. We will be seeking approval for the necessary legislation to be introduced into Parliament later in these sittings. In the meantime, this statement has been issued to avoid, to the fullest extent possible in the circumstances, the inevitable uncertainty flowing from the High Court decision.

We should emphasise that the Government remains fully committed to observing its treaty obligations. However, we believe it is appropriate to retain the long standing, widely accepted and well understood distinction between treaty action undertaken by the Executive which creates international rights and obligations and the implementation of treaty obligations in Australian law. The implementation of treaties by legislation is the way that the rights, benefits and obligations set out in treaties to which Australia is a party are conferred or imposed on individuals in Australian law.

Ratification is a message sent by the Government to the international community that it intends to observe the provisions of a treaty. It is also a message to the international community that to the extent those obligations need to be part of Australian law and do not already have that status, the Government takes steps to incorporate them accordingly. However, the making of such a treaty obligation effectively part of Australian law is something for the legislature and not something which should be achievable by executive action alone.

The legislation referred to in both the above joint statement and Senator Evans' speech, which is set out at p 555 of this volume, was introduced in the House of Representatives on 21 September 1995 by the Minister for Justice, Mr Kerr, in the form of the Administrative Decisions (Effect of International Instruments) Bill 1995 (House of Representatives, *Debates*, vol 203, p 1435). The Bill was passed by the House and introduced into the Senate on 27 September 1995. The Bill has subsequently lapsed.

On 8 June 1995, the South Australian Attorney-General, Mr Griffin, made a ministerial statement in order to clarify the position of the South Australian Government following the *Teoh* decision. The following is an extract from the text of the statement:

> I state on behalf of the South Australian Government, that the entering into or ratification of a treaty by the Commonwealth Government is not a reason for raising any expectation that any South Australian Government decision-maker will act in accordance with the treaty. It is not legitimate, for the purposes of applying Australian law, to expect that the provisions of a treaty not incorporated by valid Commonwealth legislation and, in some instances, South Australian legislation, should be applied or even averted [sic] to by decision-makers. Any expectation that may arise does not provide a ground for review of a decision. This is so both for existing treaties and for future treaties that Australia may join.

The Attorney-General also foreshadowed the possibility of legislating to reinforce the statement. Further to this, the Administrative Decisions (Effect of International Instruments) Bill 1995 was introduced into the South Australian Legislative Council on 12 October 1995. The following are extracts from the second reading speech of the Bill, given by Mr Griffin (South Australia, Legislative Council, *Debates*, 12 October 1995, p 166):

> The Bill will restore the situation which existed before *Teoh,* in which if there were to be changes in procedural or substantive rights in domestic law resulting from the adherence to a treaty, they would be made by parliamentary and not executive action...
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> The purpose of the Bill is to eliminate any expectation which might exist that administrative decisions will be made in conformity with provisions of ratified but unimplemented treaties, or, that if a decision is made contrary to such provision, an opportunity will be given for the affected person to make submissions on the issue...

The Bill was assented to on 30 November 1995.

On 24 August 1995, the Western Australian Attorney-General, Mrs Edwardes, made a ministerial statement in similar terms to that of Mr Griffin in the West Australian Legislative Assembly (Western Australia, Legislative Council and Legislative Assembly, *Debates*, 24 August 1995, p 7209).

Treaties — Impact in Australia

On 4 September 1995, the Minister for Foreign Affairs and Trade, Senator Evans, gave the keynote address at the International Treaties Conference, held in Canberra on 4 and 5 September 1995. The following are extracts from the text of the speech, entitled *International Treaties: Their Impact on Australia*:

This conference on international treaties is certainly timely. Australia's involvement in treaty making is currently being examined in a number of forums; there is now a Senate Committee looking at the operation of the external affairs power in the Constitution; and there is legislation currently before the Parliament dealing with the effect of treaties on administrative decision making. I think there can be no doubt that treaties do have an important and developing influence on many aspects of Australian society and I want to examine their impact in a little detail. But first I think it would be useful to spend a few moments in considering what treaties actually are, and perhaps more importantly, what they are not. I feel constrained to do so because of the misinformation, some of it quite deliberately spread, which has clouded the whole issue of treaty-making over the last couple of years.

What treaties are not. Let me start by making clear what treaties are not. Despite assertions from the radical right, a treaty is not an edict issuing forth from some unelected and unrepresentative world body and imposed on unwilling nation states. Nor is a treaty a secret agreement between Australia and the rest of the world designed to undermine federalism and the Australian Constitution. And a treaty does not have any legislative type effects unless and until an Australian parliament incorporates it into Australian law.

To tackle the global conspiracy theory first. Nation states, i.e. individual countries, enter into treaties of their own free will and on the basis that the terms of those treaties serve their national interest. This is certainly the basis on which Australia enters into treaties. The United Nations has absolutely no power to impose treaty obligations on nation states. Governments negotiate treaties among themselves and, once they have agreed upon a text, each government decides whether or not it will become a party to the treaty. Treaties thus represent an agreed position between nations. By becoming a party nations freely accept the obligations imposed by the terms of the treaty. It is always open to them not to become a party, or to become a party with reservations where this is not excluded. The process is entirely voluntary. Indeed, becoming party to a treaty is an exercise and an affirmation of a country's sovereignty—a point that is lost sight of in the often confused debate about the impact of treaties on sovereignty.

And what of the national conspiracy theory which has it that the Federal government is secretly whittling away the power of the States and the foundations of the Constitution? The fact is that it is the Constitution itself which grants power to the executive government to enter into treaties and grants the legislative power to the Federal government to implement them. It is important to keep in mind that treaty making is not a process carried on in secret or behind closed doors. The Commonwealth government recognises that treaties may, in some cases, impact on State and Territory administration. The State and Territory governments are extensively consulted in all cases and at an early stage on all treaty negotiations in which Australia is considering participation. It is not only essential but, perhaps more importantly, it is very sensible, for the Commonwealth to seek the views of the States and Territories, particularly where they will be involved in implementing treaty obligations.

Finally, international treaties do not somehow subvert the constitutional arrangements in Australia. There can be no doubt that constitutional power to enter into treaties lies with the executive government. The Australian Constitution distinguishes between the treaty making power and the power to

implement treaty obligations in Australian law. The former is an executive power of the Commonwealth[1], and under section 61 of the Constitution it is exercised by the Federal Executive Council. The latter—the external affairs power—is a legislative power, and is exercised by the Parliament of the Commonwealth[2]. The rights and obligations contained in a treaty do not become binding rights and obligations under Australian law unless and until specific legislation is passed implementing its provisions. This basic position was reaffirmed in April this year by the High Court in *Teoh's* case[3] which I will return to in a moment. The position is in sharp contrast to that in the United States, for example, where treaties—which require the consent of two-thirds of the members of the Senate before they are ratified—are then generally self-executing and directly enforceable by domestic courts.

What treaties are. So, what then are treaties? The Vienna Convention on the Law of Treaties (itself of course a treaty) holds that a treaty is an international agreement concluded between states in written form and governed by international law. It has also been observed that "(t)reaties are landmarks which guide nations in their relations with each other. They express intentions, promises and normally appear to contain reciprocal advantages. Treaties represent attempts to reduce the measure of uncertainty inherent in the conduct of international affairs".[4]

It is sometimes claimed that Australia is party to over 2,000 treaties. This claim is based on a misreading of the *Australian Treaty List.* Simply counting the number of items in the *List* does not provide an accurate indication of the number of treaties which are currently in force in Australia. The *List* sets out separately all treaty actions which Australia has undertaken, or which were undertaken on its behalf by the United Kingdom: amendments to treaties are included as separate items in the *List,* which also includes references to treaties which have been terminated, superseded or replaced, and to treaties which have been signed but have not yet entered into force for Australia. In fact, at the end of 1994, Australia was a party to approximately 920 treaties. The majority, over 500, of these treaties are bilateral i.e. between Australia and just one other country. Some growth has occurred in recent years in the number of bilateral treaties, particularly in areas such as investment, extradition, mutual assistance in criminal matters and taxation. However, our rate of participation in treaties is by no means unusual: the United States, for example, is a party to more than 7,000 treaties[5]. Australia's adherence to multilateral treaties negotiated under the auspices of the United Nations is about average for an OECD country. There is simply no basis for the wild allegations that are sometimes made that the treaty

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1. See *R v Burgess; Ex parte Henry* (1936) 55 CLR 608 at 644 (Latham J); *Koowarta v Bjelke-Petersen; State of Queensland v Commonwealth* (1982) 153 CLR 168 at 211–213 (Stephen J). The treaty making power rests exclusively with the Commonwealth as the national government responsible for the conduct of Australia's foreign relations.
2. Constitution, Section 51 (xxix).
3. *Minister of State for Immigration and Ethnic Affairs v Teoh* (1995) 128 ALR 353
4. *The Major International Treaties Since 1945: a History and Guide with Texts,* Grenville and Wasserstein (1987), 6.
5. United States Department of State *Treaties in Force: A List of Treaties and Other International Agreements of the United States in Force on January 1, 1994.*

regime is somehow out of control or running amok with Australian constitutional arrangements.

The growing level of international interaction is, I believe, a positive force in the world, especially for a nation like Australia which reaps tremendous benefits from international developments in trade, transport, and communications. As an increasing number of activities are conducted on a transnational basis, national actions increasingly have international ramifications. Treaties have always been a feature of international relations but with the trend to globalisation they play an increasingly important role: some help us to achieve common goals, for example, cooperation in space, telecommunications and trade; some set reference points which guide international behaviour in times of crisis such as war and in relation to issues such as disarmament; some set common standards in relation to human rights and refugees, for example; and some address issues which, it is increasingly recognised, can only be addressed on a global scale, such as damage to the environment, transboundary movements of hazardous wastes and drug trafficking.

For small and medium-sized powers like Australia, international law and international treaties and institutions are particularly important. They provide a framework which ensures that our voice is heard and that we can play a fair and reasonable role in global deliberations. For a country of less than major power status, a world governed by principles of justice, equality and the rule of law is much more attractive than a world governed by status and power.

Let me now turn in a little more detail to the impact which treaties have and can be expected to have on Australia and Australians, in particular on Australian law, Australian policy making, Australian industry and business, and Australian society more generally.

Impact of treaties on Australian law. The impact of treaties on Australian domestic law has received a good deal of attention lately. The basic point to be noted here, again, is that the terms of treaties do not create rights or obligations in Australian law in the absence of legislation. Creating such rights and obligations is a role reserved for Parliament under the Australian Constitution.

That is not to say that treaties to which Australia is a party do not affect Australian law at all. The courts have traditionally used treaties to which Australia is a party in a limited way—to resolve ambiguities in legislation, and as a guide in developing the common law (i.e. judge-made law—where there is no legislation), particularly where a treaty declares universal fundamental rights. In addition, treaty provisions could quite properly be taken into account in the exercise of a discretion by an administrative decision maker: decision makers did not have to take a possibly relevant treaty into account, but if they did, they would not be taken to be in error.

In the *Teoh* case of April this year, however, the High Count went one step further. The Court held that merely entering into a treaty could give rise to a "legitimate expectation" that government decision makers would make decisions in accordance with the treaty provisions, even if they had not been legislated into Australian law: in this particular case, an immigration official deciding a deportation matter was held to be in error for not taking the Convention on the Rights of the Child sufficiently into account—even though there was no specific legislation implementing this particular Convention, and even though the Convention had not been referred to in argument. The Court went on in its

decision to state that such a "legitimate expectation" could be displaced by statutory or executive indications to the contrary.

The Court's decision raised a fundamental question about our system of parliamentary law making in Australia—should the Parliament be by-passed to allow treaties to have a direct effect in Australian law? The Government is firmly of the view that this is not an appropriate development and that the role of changing Australian law to conform with treaty obligations should remain with the democratically elected parliaments of this country.

The Joint Statement which the Attorney-General and I published on 10 May 1995 and the Administrative Decisions (Effect of International Instruments) Bill 1995 were designed to make that "contrary intention" clear, in the way that High Court itself allowed for. Our concern in making the statement and in introducing the Bill was simply to preserve the role of parliament in changing Australian law.

We still take our treaty obligations very seriously—and will continue to make every effort to ensure that Australian law is in accordance with the treaties we decide to adhere to. However, I firmly believe that it is appropriate to retain the long-standing, widely accepted and well understood distinction between treaty action undertaken by the Executive, which creates international rights and obligations, and the implementation of treaty obligations in Australian law. The implementation of treaties by legislation is the way that the rights, benefits and obligations set out in treaties to which Australia is a party are conferred or imposed on individuals in Australian law...

Impact of treaties on Australian policy making. Australia and Australians can no longer afford the inward looking mentality of past decades. Nor can we any longer rely on others to look after our interests in the wider world. Our future prosperity and security rely, to a large extent, on our playing an active and positive role on the international stage. Our contribution to international peace building and the international rule of law, our activism in international forums, and our commitment to establishing and maintaining global standards are what will keep us afloat in a sea of changing power relationships. Policy makers cannot try to disregard international developments such as these—rather they might try to influence those developments to promote and protect national interests.

To be successful in our efforts, we must approach treaty making in a cooperative and inventive way. We must seek outcomes which not only benefit Australia but which also benefit as many other parties as possible. As a middle power of some significance, we are in a strong position to influence the outcomes of important international deliberations. Our skill in coalition building, our flexibility in finding common ground, our experience over forty years of international diplomacy, and our pivotal position between Europe, America, and the Asia Pacific region give us added standing and credibility in international treaty negotiations.

Nationally, we must ensure that we plug into relevant international developments and make them our own. Let me take as an example the area of the environment. There is no doubt that concerns about the environment have become a major issue in the last ten years, both domestically and internationally, and they are likely to remain so for the foreseeable future. The issue has been driven internationally by the increasing recognition that many of the major threats to the world's environment extend beyond national borders and require

solutions to be worked out on a global scale if they are to be effective. Issues such as global warning [sic], depletion of the ozone layer, and threats to biodiversity are problems for the global community, not simply for individual states. For Australia the imperative to help resolve global and regional environmental problems goes well beyond our own national environment. Environmental problems, if unchecked, are likely to hamper our development, weaken our economic infrastructure and trade prospects, and diminish the quality of our lives and those of future generations. We therefore pursue solutions to such problems in negotiations for international treaties.

We are able to bring to these negotiations a wealth of practical background knowledge. In the case of climate change, for example, we have a strong record of technological innovation which will assist international efforts to reduce the threat of global warning [sic]. Australian researchers have developed a range of efficient and renewable energy technologies, including advanced generating technologies using fossil fuels and photovoltaics, and we have particular expertise in sustainably managing agricultural, pastoral and forestry resources which could assist in reducing emissions of greenhouse gases, enhancing sinks for greenhouse gases or in adapting to impacts of climate change.

Impact of treaties on Australian industry and business. The Australian economy is heavily dependent on international trade. As the rest of the world moves forward setting up international trading arrangements we cannot expect to maintain our rate of growth by acting alone. We must have an effective handle on developments in the international system to enable Australian business and industry to participate fully in the globalisation of the world economy.

The 1994 Agreement establishing the World Trade Organisation, to which we are party, is crucial in this respect. Major agreements negotiated under the World Trade Organisation Agreement are the revised General Agreement on Tariffs and Trade; the General Agreement on Trade in Services; and the Agreement on Trade Related Aspects of Intellectual Property Rights. Together, these agreements will result in estimated increases in Australian exports of $A5 billion and Australian GDP of $A4.4 billion by the year 2002.

These are major multilateral trade agreements but regional and bilateral trade agreements also form part of our integrated approach to international trade. The South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA) provides a mutually beneficial framework for trade among South Pacific countries. It also contributes to the prosperity and stability of the region. Our Closer Economic Relationship (CER) arrangement with New Zealand is a core element of our relationship with a country which is one of our largest trading partners. The Nara Agreement with Japan provides the cornerstone of our huge trading relationship there, the destination for 25 per cent of all our exports.

Australia has concluded some thirty-five double taxation agreements which increase our international competitiveness by reducing to fair levels the tax burdens of companies with international operations. These agreements also encourage international investment in Australia. We also have bilateral Investment Protection Agreements with ten countries which act as confidence building mechanisms for investors, and protect the interests of Australian investors overseas.

Equitable access to the world's natural resources is more than ever governed by international agreements. The United Nations Law of the Sea Convention, for

example, in the negotiation of which Australia played a critical role, establishes globally accepted regimes for access to the resources of the sea and the seabed with 200 nautical mile exclusive economic zones.

And the list goes on: civil aviation agreements, telecommunications agreements, postal agreements, customs agreements and the like all operate to support and facilitate international trade and commerce. The benefits are enormous, to Australia certainly, but also to the region and to the world.

Impact of treaties on Australian Society. Just as the benefits of treaties for business are often overlooked, this is also true of the benefits to individual Australians. In many everyday activities—including international post, air travel and communications—treaty arrangements are the silent partner.

This is particularly important and significant in a society as multicultural as our own. As a nation we have a heightened awareness of and interest in the people of other nations and this translates into a global outlook on issues like the environment and human rights. The responses of Australians to the crisis in Rwanda and to the ongoing conflict in the former Yugoslavia are indicative of the concern many Australians share for problems which are geographically remote from us.

Major international human rights treaties include the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination Against Women. These treaties establish world wide standards and the international machinery to monitor and help ensure that the rights are implemented.

Following Australia's ratification of the International Covenant on Civil and Political Rights in 1981, the Government established the Human Rights and Equal Opportunity Commission here in Australia to increase the understanding, acceptance and observance of human rights in Australia and promoting social justice and equal opportunity. The Commission administers Australian legislation in the field of human rights such as the Racial Discrimination Act 1975 and the Sex Discrimination Act 1984 which are squarely based on the relevant international treaties: the Australian Government brings these internationally accepted standards into Australian law and practice—by getting the Australian Parliament to enact appropriate Australian legislation.

Another major area of international treaty law which has clear benefits for Australian society generally is that of the International Labour Organisation Conventions, setting internationally accepted minimum standards in areas such as forced labour, discrimination in employment and workers with family responsibilities.

Treaties such as this allow us to examine ourselves against international standards and see how we measure up. Another way we do this is through our adherence to The Optional Protocol to the International Covenant on Civil and Political Rights. This allows individual Australians to approach the United Nations Human Rights Committee where they believe that their rights under the Covenant have been breached and where they have exhausted all available domestic remedies. The Committee is not a court and its decisions are not binding, but its views do provide valuable guidance on implementing human rights standards at the national level. As you will recall, last year the Committee provided its views to Australia in the *Toonen* case in relation to Tasmanian laws

which made sexual relations between consenting adult men in private a criminal offence. The Committee expressed the view that criminal laws of this sort did not meet the standards set out in the Covenant. The Australian Parliament agreed, and the Human Rights (Sexual Conduct) Act was passed in 1994, effectively negating the Tasmanian legislation. This is another example of our international obligations not being self-enforcing, but being examined by Parliament and enacted into Australian law.

The *Toonen* case is sometimes cited as an example of the Commonwealth Parliament overreaching itself and legislating in an area traditionally thought to lie within State responsibility. This ignores, however, the very extensive efforts the Commonwealth made to persuade the State to act first and the reality that the Commonwealth only acted as a last resort.

There are those who will go on expressing the view that by participating in the treaty system we are somehow ceding national sovereignty to the international community. But there is no frightening "new world order" telling us what to do. We are an active and successful player in the multilateral game and any concessions we make are met by concessions from other parties for the common good. Each decision to become a party to a treaty is taken after extensive consultation with States and Territories, with industry groups and other non government organisations and with Australia's national interest clearly in mind. We enter treaties freely as a sovereign nation state and with our eyes wide open.

It should really be apparent that full and active participation in the international arena and the international treaty system is simply a requirement of life in the modern world. There is little point in ignoring such developments, and every point in working within the system to promote and protect our national interests. The system has a very great deal to offer a middle power like Australia: it empowers us by establishing rules and systems which operate in a transparent and equitable way.

Overwhelmingly, Australia benefits from its involvement in the international community of nations and the treaty system. We are empowered and enriched politically, socially and economically. Treaties allow us to assist and to be assisted in an ever increasing range of areas. They oil the wheels of international dealings and provide guidance and rules for the conduct of international relations. Without them, Australia would be unworkably isolated and struggling to make its way. Treaties may at times seem to be difficult and complex beasts, but they are well worth the time and trouble to harness.

Australian Government — Power to Make and Implement Treaties — Inquiry — Report — Proposals for Reform

The Report of the Senate Legal and Constitutional References Committee Inquiry into the Commonwealth power to make and implement treaties, entitled *Trick or Treaty?* was issued in November 1995. Extracts from the Executive Summary and the Committee's Recommendations follow:

Chapter 1—Introduction

0.1 On 8 December 1994, the Senate asked the Committee to inquire into the Commonwealth's treaty making power and the external affairs power. The Committee consulted widely in relation to this reference. It conducted public

hearings in Canberra and every State capital and received 157 written submissions. This perhaps has been the most comprehensive review devoted solely to the operation of the external affairs power.

Chapter 2—Background

0.2 A number of central issues arose from the evidence and submissions before the Committee. Concerns were raised in relation to the impact of international treaties on the Australian federal system and the sovereignty of the nation. Concerns were also identified in relation to the degree of consultation undertaken by the Government prior to entering into and ratifying treaties. Finally, the issue of the respective roles of the Parliament and the Government, and especially the Executive, in treaty making was raised...

Chapter 5—The interpretation of the external affairs power and reform proposals

0.18 The current interpretation of the external affairs power is that it is an independent plenary head of power that supports laws with respect to matters that are physically external to Australia and laws affecting Australia's relations with other nations. The power also supports legislation that implements Australia's obligations under treaties, regardless of whether the subject matter of the treaty is otherwise constitutionally within the Commonwealth's legislative power.

0.19 The High Court has expressed the concern that limiting the interpretation of the external affairs power to matters which are truly "external" or matters of "international concern" would create uncertainty. The subjectiveness of such classifications would politicise the High Court and require it to make decisions which should be left to the Government. Accordingly, the current wide interpretation of the external affairs power ensures that political decisions about treaty making are made by the Executive rather than the Judiciary.

0.20 The external affairs power is not unfettered. It is subject to limitations such as express and implied constitutional guarantees.

0.21 The width of the current interpretation of the external affairs power is a cause of concern for some in the community and from time to time has resulted in proposals to amend the external affairs power to restrict the subject matter to which it applies. An example of such a proposal, which has not been passed, was the *Constitution Alteration (External Affairs) Bill 1984*. The Bill was introduced by the former Attorney-General Peter Durack QC. In the absence of bipartisan support, the Committee considers that a constitutional amendment to s 51(xxix) is unlikely to succeed at the current time.

0.22 The Committee recognises that the concerns raised about the external affairs power may be addressed by a range of new mechanisms to improve the process by which Australia's treaty obligations are implemented. The Committee makes recommendations in relation to such matters in Chapters 12, 13 and 15.

Chapter 6—Treaties and domestic law

0.23 It has been generally accepted that treaties are not directly incorporated into Australian law by the international act of ratification or accession to a treaty. The executive act of entering into a treaty creates international obligations for Australia. However, those international obligations do not become part of Australian law until the Parliament enacts legislation to implement them.

0.24 There is debate as to whether the High Court's judgment in *Teoh's* case changes this traditional view. However, the effect of *Teoh* does not alter the basic proposition that treaties are not directly incorporated into Australia's domestic law without legislative implementation. Rather, *Teoh* held that Government decision makers should have regard to treaties that have been ratified by Australia but are not yet directly incorporated into Australian law.

0.25 The Government has responded to *Teoh* by issuing a press release and introducing the *Administrative Decisions (Effect of International Instruments) Bill 1994*. The intended effect of the press release and the Bill is to restore the status quo as it was understood to have existed prior to the *Teoh* decision. The Government intends to put beyond doubt that the ratification of a treaty does not give rise to a legitimate expectation that an administrative decision will be made in conformity with the treaty.

0.26 The *Teoh* case demonstrates the increasing importance of the impact of treaties on Australian law and supports the necessity for greater parliamentary involvement in treaty making. (See Recommendations 8, 9 and 10).

Chapter 7—Current practices concerning entry into treaties

0.27 As noted above, the executive signs and ratifies treaties and the Parliament plays a minimal role in entering into treaties.

0.28 In 1961, the Government introduced a practice of tabling treaties 12 sitting days prior to the ratification of treaties. This practice fell into disuse and was overtaken with the practice of tabling treaties in bulk every six months. The effect of this practice was that many treaties were tabled after ratification. In October 1994, the Government announced that it would endeavour to table all multilateral treaties prior to ratification. Also, the Government undertook to table a schedule of multilateral treaties under negotiation.

0.29 The Government does not normally table bilateral agreements prior to signing on the basis of an accepted understanding between countries negotiating bilateral agreements that the content of such agreements is confidential until signed.

0.30 It is the official policy of the Government to pass legislation to implement Australia's obligations prior to the ratification of treaties. In practice, this official policy is not always followed, limiting the ability of the Parliament to play a meaningful role in entering into treaties. This need not be the case, for example, the Racial Discrimination Act 1975 included a provision whereby the Parliament approved the ratification of the Convention on the Elimination of All Forms of Racial Discrimination at the same time as passing domestic legislation to comply with the obligations under the Convention...

0.44 Although treaties do benefit Australia, a range of concerns have been raised in relation to the implementation of treaties and the monitoring of the implementation of treaties. It is ironic that currently the Government is only required to account for the manner in which it implements a treaty through the reporting mechanisms of the treaty itself. Such reporting mechanisms can require the Government to report to a United Nations agency about the action the Government has taken to implement a treaty and any further action that will be taken. In the same way that some treaties require reporting to an international organisation, similar reports should be tabled in Parliament on the progress of treaty implementation.

Recommendation 2:

That legislation provide that the Government report to the Parliament annually on actions taken in the course of the previous year to implement treaties to which Australia is a party...

Chapter 12—Consultation with interested groups...

0.48 Many concerns have been raised about the lack of transparency in the treaty making process and in particular the failure to educate the community about treaties. Foremost of these concerns is the lack of availability of information relating to treaties, such as full texts of treaties, the *travaux preparatoires* (which are the documents detailing the negotiation history of a treaty) and documents explaining treaties and their implications to the interested public. Information should also be available as to the status of Australia's negotiations, and which treaties are expected to be signed or ratified in the future.

Recommendation 5:

That funding be provided to the Department of Foreign Affairs and Trade and the Attorney-General's Department for a joint project to publish information on the meaning and interpretation of treaties, including collections of interpretative decisions and the *travaux preparatoires* (records of the negotiation proceedings) of treaties.

0.49 It is Government policy to consult with relevant groups in the negotiation of an international treaty. The Committee recognises that the appropriate consultation mechanism for treaties will depend on the particular treaty. Nevertheless, the Government should consider broadening the range of community groups it consults.

0.50 In some cases, the Government may only consult with a peak body in relation to a particular interest group. However, in relation to some groups, a peak body may not be as representative of that interest group as the Government may believe. The Committee considers that the Government should endeavour to consult widely with all relevant groups to overcome such problems.

Recommendation 6:

That the Government increase its efforts to identify and consult the groups which may be affected by a treaty which Australia proposes entering into, and groups with expertise on the subject matter of the treaty or its likely application in Australia...

Chapter 14—The need for greater parliamentary involvement

0.60 The act of entering into a treaty is a free decision of Australia as a sovereign nation. This decision is made by a government which has been democratically elected by the Australian people and is accountable to them. Any action taken to change the law in order to implement the treaty must be taken by the Commonwealth Parliament, or the parliaments of the States or Territories. Hence the process of entering into and implementing treaties is democratic, but the process could be improved, for example, by improving consultation on treaties.

0.61 The Committee recognises that by incurring international obligations under treaties, the Commonwealth Government exerts influence on the

Commonwealth Parliament or the States to fulfil those obligations. International influence may be brought to bear by the international community or organisations such as the United Nations Human Rights Committee.

0.62 International obligations are incurred at the point of entering into a treaty. However, the function of implementing the treaty is often reserved to the Commonwealth Parliament. Accordingly, it would be preferable to involve Parliament prior to ratification, so that it can make a free choice without the possibility of a potential breach of treaty obligations.

Chapter 15—Proposals for reform: tabling treaties, parliamentary committees and treaty impact statements

0.63 It is important that treaties be tabled in both Houses of the Parliament prior to their ratification, to ensure that Parliament is aware of them and that there is an opportunity to debate them. The tabling of treaties also provides another means of public access to the text of treaties.

0.64 The Committee considers that new legislation should be introduced to require that all treaties should be tabled prior to ratification, subject to special provisions for urgent treaties and sensitive treaties. In the case of urgent treaties, they should be tabled in the Parliament as soon as is possible after they have been entered into, with a statement by the Government justifying the reason for urgency. It would then be a matter for the Parliament to determine whether it finds the reason acceptable.

0.65 The Committee also accepts that in the case of sensitive treaties there may be reasons why they should not be tabled before Australia becomes a party to them (if, for example, their early publication would threaten the safety of people or the effectiveness of law enforcement operations). In such cases, the Committee considers that there should be exemptions from the general rule that treaties should be tabled in Parliament at least 15 days before ratification. However, these treaties should still be tabled as soon as practicable after Australia becomes a party to them.

0.66 Bilateral treaties should be tabled as well as multilateral treaties. Many bilateral treaties are of great significance for Australia and should therefore not be excluded from tabling until after Australia is committed to them.

0.67 The Committee recognises the existing practice that bilateral treaties are treated as confidential prior to signature and that they usually take effect upon signature. The Committee considers, however, that to the extent that such a problem exists, it would be resolved by having a two step procedure in entering into bilateral treaties, as occurs with multilateral treaties. Signature would therefore have to be followed by ratification before the bilateral treaty could come into effect. The treaty could therefore remain confidential up until the point of signature, but could be tabled in the Parliament between signature and ratification.

Recommendation 8:

That legislation be enacted which requires the tabling of treaties in both Houses of the Commonwealth Parliament at least 15 sitting days prior to Australia entering into them (whether by signature or ratification). This should be subject to an exception for urgent and sensitive treaties, in circumstances where it is not possible or not in the national interest to table them before Australia becomes a

party to them. In such cases, the treaty must be tabled as soon as practicable after Australia has become a party to it, accompanied by a statement explaining the reason why it could not be tabled before Australia became a party to it.

0.68 A parliamentary Committee process for the scrutiny of treaties could play an invaluable role in keeping the Parliament informed about the implications of treaties and allowing members of the public and other interested groups an opportunity to express their views on treaties. The Committee considers that a new Commonwealth parliamentary Treaties Committee should be established, which could develop expertise in international law and the application of treaties under domestic law. The Committee considers that the Treaties Committee should be a joint parliamentary committee which is established by statute.

0.69 The Committee considers that the terms of reference of the joint parliamentary Treaties Committee should be broad. It should not be confined to considering treaties after they have been tabled but before their ratification. The Treaties Committee should be able to initiate an inquiry into proposed treaties, treaties under negotiation, other proposed international instruments such as Declarations, and other treaty action such as removing reservations and making declarations under existing treaties. However, any inquiries initiated by the Treaties Committee would not involve the Parliament in negotiating the treaty.

0.70 The Treaties Committee should also have the power to initiate inquiries into existing treaties, in order to consider, amongst other things, how the treaty applies in Australia, and how it is being implemented, or should be implemented.

0.71 The Treaties Committee should not be obliged to report on all tabled treaties, but should be able to initiate inquiries on its own behalf, or be referred matters for inquiry by either House of the Parliament.

0.72 As some treaties may concern sensitive issues, the Treaties Committee should have the power to take evidence in camera.

Recommendation 9:

That legislation be enacted to establish a Joint Parliamentary Committee on Treaties. The functions and powers of the Committee should include:

- the function of inquiring into and reporting on any proposals by Australia to ratify or accede to any treaty, proposed treaty, or other international instrument or proposed international instrument, including whether Australia should become a party to the treaty or instrument;
- the function of inquiring into and reporting on whether Australia should make any reservations or declarations upon ratification or accession to any treaty;
- the function of inquiring into and reporting on any other proposed treaty action, such as the removal of a reservation, or the making of a declaration which subjects Australia to additional obligations under a treaty;
- the function of inquiring into and reporting on treaties to which Australia is already a party, including the method of their implementation and how they should be dealt with in the future;
- the function of scrutinising treaty impact statements;

- the power to hold public hearings and hold hearings in camera;
- the power to call for documents and witnesses; and
- the power to commence an inquiry into a treaty, proposed treaty, international instrument, proposed international instrument, or any other treaty action, at any time, regardless of whether it relates to a document that has been tabled in the Parliament...

Chapter 16—Proposals for reform: parliamentary approval of treaties

0.75 There seems little reason to doubt that the Legislature has the power to limit or regulate the Executive's power to enter into treaties, to make or remove reservations or denounce treaties. The Committee does not consider that the imposition of special majorities in such legislation is a viable option.

0.76 Several legislative proposals have been made concerning the parliamentary approval of treaties. A recent proposal is the Private Member's Bill introduced by Senator Bourne, the *Parliamentary Approval of Treaties Bill 1995* (the *Bourne Bill*). The *Bourne Bill* applies to both multilateral and bilateral treaties and provides that entering into a treaty must comply with the parliamentary approval process outlined in the Bill. The approval process requires gazettal of intended treaty action and the tabling of the treaty in Parliament within 15 sitting days of gazettal. Members and Senators have a further 15 sitting days in which to give a notice of motion requesting that one of the Houses consider the treaty. If no notice is given in either House within that 15 sitting day period, the treaty is deemed to have been approved. If, however, a valid notice is given in a House, then no action can be taken to enter a treaty until it is approved by that House. There is no time limit on debating the notice of motion, once it is made. The *Bourne Bill* also requires a treaty impact statement to be tabled in Parliament.

0.77 This procedure is similar to the existing procedure for regulations, which allows them to be disallowed by either House of Parliament. Under a disallowance procedure the Parliament would not be required to actively consider all treaties. This would be an advantage as many treaties are not considered to be controversial.

0.78 Careful consideration needs to be given to the implications of any treaty approval legislation for sensitive treaties. In addition, a mechanism would need to be in place to accommodate urgent treaties.

0.79 The issue of legislation requiring parliamentary approval of treaties is so important that the Committee considers it should be the subject of further public debate and consideration. The Committee hopes that this Report will play a useful role in facilitating that debate. The Committee further considers that the implementation of its other recommendations may assist in curing some of the problems which a system of parliamentary approval of treaties would also be designed to address.

Recommendation 11:

That the issue of what legislation, if any, should be introduced to require the parliamentary approval of treaties be referred to the proposed Treaties Committee for further investigation and consideration.

Treaties — Reservations to Treaties — Proposed Approaches to Harmonisation of Rules — Australian Position

On 27 October 1995, Mr James Baxter made a statement on behalf of the Australian delegation to the United Nations Sixth Committee, concerning Item 141, the Report of the International Law Commission on the Work of its Forty-Seventh Session. The following are extracts from the text of that statement, in which Mr Baxter focused upon Chapters VI and VII of the Report:

Mr Chairman,

My delegation thanks the Special Rapporteur, Alain Pellet, for the work he has undertaken on the topic "The Law and Practice Relating to Reservations to Treaties". The point has often been made—and was made again during the debate in the ILC—that this is one of the most difficult and controversial areas of international law. Part of the difficulty stems from certain deficiencies in the rules relating to reservations set down in the Vienna Convention on the Law of Treaties, and drawn upon in the subsequent Vienna Conventions on the Succession of States to Treaties and on the Law of Treaties between States and International Organizations or between International Organizations.

My delegation would exhort the ILC to focus its efforts on formulating practical solutions to some of the problems that have been identified in relation to reservations: a number of these problems are discussed in the Report. In this respect, the Commission is to be commended on its current approach that there should be no change in the relevant provisions of the 1969, 1978 or 1986 Vienna Conventions, but that the Commission's work should instead be directed at filling gaps and clarifying ambiguities inherent in those conventions. Any modification of the Vienna Conventions is likely to lead only to further uncertainty about the rules relating to reservations, as different regimes would then apply between different parties to the same treaties, depending upon whether they ratified the new rules or not. Such an outcome needs to be avoided.

My delegation also supports the Commission's conclusion that they should try to adopt a guide to practice in respect of reservations, taking the form of draft articles with commentaries. The preparation of model clauses for particular types of treaties to complement the draft articles will assist States and international organisations in the negotiation of new treaties, and will contribute to harmonising international practice in this area. This approach is preferable to deciding at this point to prepare a new legal instrument on reservations. If, when the issues of substance are closer to being resolved, it becomes apparent that a separate legal instrument would be viable, then—as the Commission's report points out—the guidelines may be transformed into a convention or into protocols. Until then, however, a guide of practice, with model clauses, seems the most realistic form for the Commission's work to take.

Mr Chairman,

Under the traditional "unanimity" rule, a reservation was not effective unless it was accepted by all the other parties to the treaty in question. The more flexible approach adopted in the Vienna Conventions follows on from the decision of the International Court of Justice in the *Reservations Case*. That decision held that a more flexible approach was appropriate in assessing the validity of reservations. The Court seems to have accepted the principle that reservations should encourage broad adherence to multilateral conventions, by finding that a State

which has specific problems with one or more of the rules contained in a convention may become party to the treaty, without accepting the effect of the rule with which it has a particular problem.

While a more flexible approach than the unanimity rule clearly has much to recommend it, the Vienna Convention rules which embody that approach do appear to put a State making a reservation in a very favourable position. An objection to a reservation excluding the operation of a particular rule does not have the effect of restoring the rule as between the reserving State and the objector: thus an objection to such a reservation is quite ineffective legally. (This may well be at the heart of what seems to be a trend where States are less frequently taking the trouble to express objections to reservations.) An objection to a reservation which modifies the effect of a rule does at least prevent the reserving State from asserting that its interpretation of the rule has been accepted. But it does not mean that the objecting State will be able to demonstrate that the rule applies between the two States as if the reservation had not been made.

In an article to be published shortly, D[W Grieg] argues that the principle of reasonableness should be employed in interpreting the Vienna Convention rules that could otherwise have arbitrary and perhaps unsatisfactory consequences for States reacting to reservations.[6] The Commission might wish to consider whether principles of reasonableness might be included in their guide of practice.

Another omission from the Vienna Convention rules is a clear guide as to the consequences of a State's failure to comply with Article 19 in formulating a reservation. Should a State which makes a reservation which is prohibited by Article 19 be bound to accept the treaty without reservation? How is the threshold question – whether a reservation contravenes Article 19 – to be determined? The Commission has undertaken to examine the "permissibility" and the "opposability" schools of thought. This study may provide guidance on these questions, and on the relationship between Articles 19 and 20(4) of the 1969 Convention, for example.

Mr Chairman,

My delegation supports the intention of the Special Rapporteur to look specifically at human rights instruments. The question of reservations in human rights treaties has been one of the more controversial aspects of this area of the law of treaties, and my delegation certainly considers it is worth examining whether special principles should apply to the making and interpretation of reservations in relation to rules which protect fundamental human rights.

Mr Chairman

I should like to conclude with some brief remarks about Chapter VII of the Report, in particular in relation to the Commission's programme of work. My delegation endorses the Commission's proposed timing for consideration of the topic on reservations to treaties—five years seems a reasonable period to allow for the preparation of a guide of practice, including model clauses where necessary. We also support the recommendation of the inclusion of the topic of "diplomatic protection" on the agenda, noting that the indicative list of issues it

6 See 'Reservations: Equity as a Balancing Factor' (1995) 16 *Aust YBIL* 21.

might cover appears to provide the basis for a constructive consideration of this topic by the Commission...

International Instruments — Australian Implementing Legislation

On 23 August 1995, in the House of Representatives, the Attorney-General, Mr Lavarch, answered a question upon notice from Mr Hollis (Throsby, ALP). The text of the question and answer follow (House of Representatives, *Debates*, vol 203, p 380):

Mr Hollis asked the Attorney-General, upon notice, on 11 May 1995:

Which international (a) conventions, (b) treaties and (c) agreements have been implemented by federal legislation since the answer to question No. 1792 *(Debates,* 7 October 1992, page 1676).

Mr Lavarch—The answer to the honourable member's question is as follows:

I am informed that the first column of the following table sets out Acts enacted by the Federal Parliament since July 1992 which have expressly implemented the specific international conventions, treaties and agreements and other issues of international concern, listed against them in the second column. (This list covers the period from 1 July 1992 until 29 May 1995.)

1992

Antarctic (Environment Protection) Legislation Amendment Act 1992 (No. 156 of 1992)	Implements the Madrid Protocol on Environmental Protection to the Antarctic Treaty done at Madrid on 4 October 1991 (other than Annex IV on Marine Pollution).
Crimes Legislation Amendment Act 1992 (No. 164 of 1992)	Inserts new provisions into the Crimes Act 1914 dealing with piracy, and repeals imperial legislation dealing with the subject. Reflects Part VII Section 1 of the United Nations Convention on the Law of the Sea done at Montego Bay, on 10 December 1982.
Crimes (Ships and Fixed Platforms) Act 1992 (No. 173 of 1992)	Implements the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988, and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.
Disability Discrimination Act 1992 (No. 135 of 1992)	Provides for national, uniform legislation to make discrimination against people with disabilities unlawful in certain circumstances, in the areas of employment, education, access to premises, the provision of goods, services and facilities, accommodation, the disposal of land, the activities of clubs, sport, the administration of Commonwealth laws and programs and in requests for certain information. The Act relies, *inter alia,*

	on the International Covenant on Civil and Political Rights 1966, the International Covenant on Economic, Social and Cultural Rights 1966, and ILO Convention No. 111—Discrimination (Employment and Occupation) 1958.
Endangered Species Protection Act 1992 (No. 194 of 1992)	Enables the making of regulations to give effect to the following six treaties so far as they relate to the recovery or conservation of native species or ecological communities listed in the Act: Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment, signed at Tokyo on 6 February 1974; Convention on Wetlands of International Importance especially as Waterfowl Habitat, adopted on 2 February 1971 by the Conference on the Conservation of Wetlands and Waterfowl, held at Ramsar, Iran; Convention on the Conservation of Migratory Species of Wild Animals done at Bonn, on 23 June 1979; Convention on the Conservation of Nature in the South Pacific done at Apia, on 12 June 1976; China-Australia Agreement for the Protection of Migratory Birds and their Environment (CAMBA) done at Canberra, 20 October 1986; and Convention for the Protection of the Natural Resources and Environment of the South Pacific (the SPREP Convention), signed at Noumea on 24 November 1986.
Income Tax (International Agreements) Amendment Act 1992 (No. 139 of 1992)	Implements double taxation treaties with Indonesia (done at Jakarta, 22 April 1992), Spain (done at Canberra, 24 March 1992) and Vietnam (done at Hanoi, 13 April 1992), and repeals provisions implementing an airline profits agreement with India.
International Air Services Commission Act 1992 (No. 103 of 1992)	Establishes the International Air Services Commission, the function of which is to determine which Australian carriers will be permitted to exercise Australia's rights under its bilateral air service agreements with other countries.
International Labour Organisation (Compliance with Conventions) Act 1992 (No. 220 of 1992)	Amends Commonwealth laws to enable Australia to demonstrate compliance with ILO Convention 68—Food and Catering (Ships' Crews) 1946, and Convention 108—Seafarers' Identity Documents 1958, and to comply with ILO Convention 147—Merchant Shipping (Minimum Standards) 1976. Provides for regulations to be made which would enable ratification of ILO Convention 73—Medical Examination (Seafarers) 1976. Provides for regulations to be made to prescribe procedures

	to be observed for the purposes of the Tripartite Consultation (International Labour Standards) Convention 1976, which was ratified by Australia on 11 June 1979.
Migration Amendment (No. 2) Act 1992 (No. 84 of 1992)	Introduces a scheme to allow the Minister to maintain effective control of the refugee processing system.
Migration Reform Act 1992 (No. 184 of 1992)	Establishes new mechanisms for determination of refugee status, including a Refugee Review Tribunal.
Qantas Sale Act 1992 (No. 196 of 1992)	Enables finalisation of the sale by the Australian Government of Qantas Airways Limited. The Act contains provisions designed to ensure that Qantas remains 'substantially owned and effectively controlled' within Australia for the purposes of Australia's bilateral air service agreements and the International Air Transit Agreement.
Social Security Legislation Amendment Act (No. 2) 1992 (No. 229 of 1992)	Implements amendments to the Agreement on Social Security done at London, 1 October 1990 between the United Kingdom and Australia. Implements the Agreement on Social Security done at Nicosia, 12 May 1992 between Australia and Cyprus.
Transport and Communications Legislation Amendment Act (No. 3) of 1992 (No. 216 of 1992)	Incorporates amendments to the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 to give effect to amendments to the Annex to MARPOL 1973/78, (Marine Environment Protection Committee, Resolutions MEPC.51(32) and MEPC.52(32), adopted on 6 March 1992).

1993

Australian Wine and Brandy Corporation Amendment Act 1993 (No. 93 of 1993)	This Act implements the EC-Australian Wine Agreement negotiated in December 1992 and signed in Brussels and Canberra on 26–31 January 1994. That Agreement provides, *inter alia*, for mutual recognition of each Party's winemaking practices and standards; protection of each Party's geographical indications; reduction of the number of analyses the EC requires of Australian wines; and allowing Australian winemakers to market wines in the EC with multi-varietal and multi-regional blends.
Charter of the United Nations Amendment Act 1993 (No. 30 of 1993)	This Act amends the Charter of the United Nations Act 1945 (No. 32 of 1945). The Charter of the United Nations Act simply approved the Charter of the United Nations, which was scheduled to that Act. The Charter of the United Nations Amendment Act 1993 inserts a new s.6 into the

	1945 Act, which provides that the Governor-General may make regulations to give effect to Security Council sanctions in so far as they do not require Australia to apply measures involving the use of armed force.
Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund—Customs) Act 1993 (No. 42 of 1993)	This Act imposes contributions payable under the Protection of the Sea (Oil Pollution Compensation Fund) Act 1993 so far as those contributions are duties of customs, when that Act comes into force.
Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund—Excise) Act 1993 (No. 39 of 1993)	Section 4 of the Act imposes contributions in the form of excise payable under the Protection of the Sea (Oil Pollution Compensation Fund) Act 1993 when that Act commences.
Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund—General) Act 1993 (No. 40 of 1993)	Section 4(1) of this Act imposes general contributions payable under the Protection of the Sea (Oil Pollution Compensation Fund) Act 1993 when that Act commences.
Protection of the Sea (Oil Pollution Compensation Fund) Act 1993 (No. 41 of 1993)	This Act gives effect to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 done at Brussels, 18 December 1971 (the Fund Convention). It also will enable Australia to give effect in due course to Protocols amending the Fund Convention adopted in 1976 and 1992, although neither of these has entered into force internationally.
Health and Community Services Legislation Amendment (No. 2) (No. 76 of 1993)	This Act, *inter alia*, implements provisions of the Convention for the Mutual Recognition of Inspections in respect of the Manufacture of Pharmaceutical Products done at Geneva, 8 October 1970. Australia acceded to the Convention on 25 January 1993. This Convention allows for the mutual exchange of information on the manufacturing standards in the eighteen signatory nations.
Industrial Relations Reform Act 1993 (No. 98 of 1993)	This Act amends the Industrial Relations Act 1988, the Trade Practices Act 1974, and certain other Acts. The amending Act adds new Schedules 5–13, 15 and 16 to the Industrial Relations Act 1988. Those Schedules contain the texts of the following International Labour Organization Conventions and Recommendations, and other international agreements: Convention No. 131:

Convention Concerning Minimum Wage Fixing, with Special Reference to Developing Countries; Convention No. 100: Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Recommendation No. 90: Recommendation Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Preamble, and Parts II and III, of the International Covenant on Economic, Social and Cultural Rights; Recommendation No. 111: Recommendation Concerning Discrimination in Respect of Employment and Occupation; Convention No. 158: Convention Concerning Termination of Employment at the Initiative of the Employer; Recommendation No. 166: Recommendation Concerning Termination of Employment at the Initiative of the Employer; Convention No. 156: Convention Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities; Recommendation No. 165: Recommendation Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities; Preamble, and Parts I and II, of the Convention No. 87: Convention Concerning Freedom of Association and Protection of the Right to Organise; Preamble, and Articles 1 to 6, of the Convention No. 98: Convention Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively.

Taxation Laws Amendment Act (No. 3) 1993 (No. 118 of 1993)	Part 5 of this Act amends the Income Tax (International Agreements) Act 1953 by making a minor correction to the words of the exchange of Notes dated 1 and 4 February 1993 between the Government of Australia and the Government of the Socialist Republic of Vietnam done at Hanoi, 13 April 1992.

1994

Chemical Weapons (Prohibition) Act 1994 (No. 26 of 1994)	An Act relating to the prohibition of the development, production, stockpiling or use of chemical weapons and the control of certain chemicals capable of being used as chemical weapons. The Act schedules the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction done at Paris, 13 January 1993.

Copyright (World Trade Organization Amendments) Act 1994 (No. 149 of 1994)	An Act to amend the Copyright Act 1968 to enable Australia to accept the Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994.
Customs Legislation (World Trade Organization Amendments) Act 1994 (No. 150 of 1994)	An Act to amend the Customs Act 1901 and the Anti-Dumping Authority Act 1988, to enable Australia to accept the Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994.
Customs Tariff (Anti Dumping) (World Trade Organization Amendments) Act 1994 (No. 151 of 1994)	An Act to amend the Customs Tariff (AntiDumping) Act 1975 to enable Australia to accept the Agreement Establishing the World Trade Organization, done at Marrakesh, on 15 April 1994.
Customs Tariff (World Trade Organization Amendments) Act 1994 (No. 152 of 1994)	An Act to amend the Customs Tariff Act 1987 to enable Australia to accept the Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994.
Dairy Produce (World Trade Organization Amendments) Act 1994 (No. 153 of 1994)	An Act to amend the Dairy Produce Act 1986 to enable Australia to accept the Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994.
Environment Protection (Sea Dumping) Amendment Act 1993 (No. 16 of 1994)	An Act to amend the Environment Protection (Sea Dumping) Act 1981 to implement provisions of the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping (the SPREP Protocol), done at Noumea on 25 November 1986.
Foreign Evidence Act 1994 (No. 59 of 1994)	An Act about certain evidentiary matters involving overseas jurisdictions, which implements obligations under the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, done at the Hague, 5 October 1961.
Human Rights (Sexual Conduct) Act 1994 (No. 179 of 1994)	An Act to implement Australia's international obligations under Article 17 of the International Covenant on Civil and Political Rights.
Maritime Legislation Amendment Act 1994 (No. 20 of 1994)	An Act to amend the law relating to Australia's maritime zones for the purpose of bringing those maritime zones into line with those to which Australia is entitled under the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982 (Parts II, V and VI of which are set out in the Schedule).

Patents (World Trade Organization Amendments) Act 1994 (No. 154 of 1994)	An Act to amend the law with respect to patents to enable Australia to accept the Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994.
Plant Breeder's Rights Act 1994 (No. 110, 1994)	An Act to provide for the granting of proprietary rights to breeders of certain new varieties of plants and funghi, and for other purposes. The Act schedules the International Convention for the Protection of New Varieties of Plants, done at Geneva on 10 November 1972, on 23 October 1978 and on 19 March 1991.
Sales Tax (World Trade Organization Amendments) Act 1994 (No. 155 of 1994)	An Act to amend the Sales Tax (Exemptions and Classifications) Act 1992 to enable Australia to accept the Agreement Establishing the World Trade Organization, done at Marrakesh, 15 April 1994.
Social Security Legislation Amendment 1994 (No 63, 1994)	An Act to amend the Social Security Act 1991. Schedule 3 to the Act reproduces the Agreement on Social Security between Australia and the Republic of Italy, done at Rome on 13 September 1993.
Social Security (New Zealand Agreement) Amendment Act 1994 (No. 157 of 1994)	An Act to amend the Social Security Act 1991 in relation to the signing of the new social security agreement with New Zealand, called Agreement Between the Government of Australia and the Government of New Zealand on Social Security done at Wellington on 19 July 1994.
Transport and Communications Legislation Amendment Act (No. 2) 1993 (No. 5 of 1994)	This Act schedules the Protocol Relating to an amendment Article 83 bis to the Convention on International Civil Aviation, done at Montreal, 6 October 1980.
Transport and Communications Legislation Amendment Act 1994	An Act to amend the law relating to transport and communications. This Act implements provisions of the United Nations Convention on the Law of the Sea done at Montego Bay, on 10 December 1982, in particular with regard to the detention of foreign ships in connection with pollution offences.

1995

Income Tax (International Agreements) Amendment Act 1995	An Act to amend the Income Tax (International Agreements) Act 1983 and for related purposes. The Act schedules the Agreement Between the Government of Australia and the Government of New Zealand for the Avoidance of Double

(No. 22 of 1995)	Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income done at Melbourne on 27 January 1995.
International War Crimes Tribunals Act 1995 (No. 18 of 1995)	An Act to provide for the Commonwealth to help the International War Crimes Tribunals perform their functions. The Statute of the Former Yugoslavia Tribunal and the Rwanda Tribunal are among the Schedules to the Act.
Organisation for Economic Co-operation and Development (Financial Support Fund) Repeal Act 1995 (No. 13 of 1995)	An Act to repeal the Organisation for Economic Cooperation and Development (Financial Support Fund) Act 1976, which had been enacted to give effect to a 1975 Agreement which never came into force.
Weapons of Mass Destruction (Prevention of Proliferation) Act 1995 (No. 38 of 1995)	An Act to prohibit the supply or export of goods that will or may be used in, and the provision of services that will or may assist, the development, production, acquisition or stockpiling of weapons capable of causing mass destruction or missiles capable of delivering such weapons. This Act implements obligations under the following Conventions: The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction done at Paris on 13 January 1993; The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction done at London, Moscow and Washington on 10 April 1972; and the Treaty on the Non-Proliferation of Nuclear Weapons done at London, Moscow and Washington on 1 July 1968.

International Labour Organisation — Conventions — Australian Obligations and Ratification Policy

On 23 August 1995, the report *ILO Conventions in Australia 1994* was tabled in the House of Representatives by the Deputy Prime Minister, Mr Beazley (House of Representatives, *Debates*, vol 203, p 258). The publication completely revised the 1984 publication *Review of Australian law and practice relating to conventions adopted by the International Labour Conference*. The following are extracts from the report:

5. Australia's obligations in respect of ILO standards

Once adopted by ILC, Conventions are communicated to all member States "for ratification" (Article 19(5)(a)). However, as noted earlier, there is no obligation to ratify. Rather, each member State is required, within a period of no more than 18 months, to "bring the Convention before the authority or authorities within

whose competence the matter lies, for the enactment of legislation or other action" (Article 19(5)(b)). In most countries, including Australia, the legislature constitutes the "competent authority" for these purposes.

These provisions are clearly intended to create a presumption in favour of ratification. However, the "other action" to which Article 19(5)(b) refers can quite properly consist of a decision not to ratify.

Recommendations are also communicated to member States after adoption for "consideration with a view to effect being given to it by national legislation or otherwise" (Article 19(6)(a)). Once again the text is to be drawn to the attention of the competent authorities for the enactment of legislation or other action, and again, the "other action" can quite properly consist of a decision to do nothing further to give effect to the Recommendation.

In the case of both Conventions and Recommendations member States are required to advise the Director-General of the measures taken to bring each instrument to the attention of the competent authorities, and as to the outcome of their deliberations. Failure to do so is a breach of a member State's obligations under Article 19, and can lead to adverse comment by either or both of the Committee of Experts and the Conference Committee on the Application of Conventions and Recommendations. It must be emphasised again, however, that the breach would reside in the failure to draw the Convention or the Recommendation to the attention of the competent authorities and to report back to the Director-General. It would *not* reside in the failure to ratify or to implement.

Article 19(7) of the Constitution makes special provision for federal States such as Australia where there is a division of legislative responsibility between the federal Parliament and the constituent states in relation to the implementation of Conventions and Recommendations.

Where the subject matter of a Convention or a Recommendation falls within the sole area of competence of the federal authorities, then Australia's obligations under Article 19 are the same as for a unitary State.

Where the subject matter falls wholly or in part within the area of competence of the constituent states then the Commonwealth Government must:

(i) make effective arrangements for the reference of newly adopted Conventions and Recommendations, not later than 18 months from the closing of the session of the ILC, to the appropriate Commonwealth, State and Territory authorities for the enactment of legislation or other action;

(ii) arrange for periodical consultations between the Commonwealth, State and Territory authorities with a view to promoting within Australia coordinated action to give effect to the provisions of the instrument concerned; and;

(iii) inform the ILO of the measures taken to bring the instrument before the appropriate Commonwealth, State and Territory authorities and of the action taken by them.

Most ILO Conventions come into force in international law 12 months after they receive their second ratification. Some—especially maritime Conventions and those adopted before 1947—use differing formulae for this purpose. Sometimes

they depend upon a specified number of ratifications, sometimes upon ratification by some or all of a specified list of countries.

Conventions become binding on any given country 12 months after the date upon which that country ratified the Convention in question. For example, the *Termination of Employment Convention 1982* (No. 158) came into force on 23 November 1985, which was the first anniversary of the date upon which it received its second ratification. It was ratified by Australia on 23 February 1993, which means that it came into force for Australia on 23 February 1994.

Once ratified, Conventions become binding upon the member State concerned unless or until denounced. Denunciation is possible during a 12 month period commencing on each tenth anniversary of the date upon which the Convention first entered into force in international law. For example, denunciation of Convention No. 158 would be possible at any time during the 12 months commencing 23 November 1995. After the expiry of that period, denunciation will not be possible until the 12 month period commencing 23 November 2005, and so on in perpetuity.

6. Australian ratification policy and practice

The approach to ratification of Conventions by Australia is that this occurs only where two preconditions are satisfied:

- that law and practice in all relevant jurisdictions is in compliance with the Convention in question; and
- that all State and Territory governments have formally agreed to ratification (except for those Conventions whose subject matter falls within the jurisdiction of the Commonwealth Government alone).

It is important to appreciate that these conditions are not laid down in the Australian Constitution, or in any other law. Strictly speaking, ratification of ILO Conventions, like the signing of any other international treaty, falls within the prerogative powers of the Crown in right of the Commonwealth. However, these procedures have been adopted in recognition of the fact that there is a division of legislative responsibility between the Commonwealth and the States and the Territories in relation to the subject-matter of many Conventions. It is highly desirable and prudent, therefore, that the Commonwealth should normally enter into international obligations with the agreement of those governments who have sole or partial responsibility for implementing them.

This logic finds expression in a number of procedures which have been adopted in order to facilitate and encourage consultation and agreement between the Commonwealth and the States and Territories in relation to the ratification of ILO Conventions and the implementation of Recommendations. These were formalised in a Resolution on ILO matters adopted by Commonwealth and State Ministers for Labour in 1947 and revised in 1973, and include:

Officials (Technical Officers) from each State and Territory Department for Labour meet annually (or more often if necessary) with Commonwealth officials to assess the extent to which Australian law and practice is in compliance with the provisions of unratified Conventions.

The Departments of Labour Standing Committee (DOLAC) meets annually to consider, *inter alia*, the recommendations of the Technical Officers' Meeting. DOLAC is made up of the Heads of Commonwealth and State Departments of Labour.

DOLAC reports to the Commonwealth and State Labour Ministers Council (LMC), which considers, *inter alia*, which Conventions are suitable targets for ratification.

The Commonwealth forwards to States and Territories the texts of any new Conventions or Recommendations adopted by the ILC, and seeks their views.

In recent years, the Commonwealth has on two occasions ratified ILO Conventions without the formal agreement of the States and Territories (apart from those Conventions whose subject matter falls within the jurisdiction of the Commonwealth alone).

The Commonwealth aimed to ratify the *Workers with Family Responsibilities Convention, 1981* (No. 156) on the 15th anniversary of International Women's Day (8 March 1990) and to this end had advised the States and Territories that this Convention was of the highest priority for early 1990; there was compliance with the provisions of the Convention but New South Wales and the Northern Territory had not provided formal agreement by the time of ratification.

In February 1993 the *Termination of Employment Convention, 1982* (No. 158) was ratified; ratification was unusual in that law and practice was not fully in compliance with the provisions of the Convention; however the federal Government indicated that it would legislate using the external affairs power to ensure compliance with the provisions of the Convention before it came into force. The Commonwealth reiterated its preference for a co-operative approach with the States and Territories but noted that the ratification of Convention No. 158 was a special case necessitated by the removal or possible removal in a number of jurisdictions of previously accepted employment conditions. The Commonwealth also reserved the right to take such action in the future should other special cases arise. The Minister made this clear in written advice to the State and Territory Labour Ministers dated 9 July 1993.

In November 1990 the LMC agreed on more detailed arrangements for consultation on the ratification of ILO Conventions. These were intended to raise the priority accorded to the ratification of particular Conventions and speed up the ratification process generally. They included:

- a revised process of classifying unratified Conventions;
- the adoption of specified criteria for the selection of priority Conventions;
- the adoption of a list of priority Conventions;
- the encouragement of a higher level of commitment to the ratification process, including more senior representation at Technical Officer meetings, and more frequent meetings; and
- a reduction in the number of Conventions examined annually by Technical Officers.

At the same meeting in 1990, the New South Wales Minister proposed that, in appropriate cases, a "Federal Statement" be included in future instruments of ratification of ILO Conventions. The Federal Statement would indicate that implementation of the Convention concerned will be by the Commonwealth, State and Territory authorities having regard to their respective constitutional

powers and accepted arrangements concerning their exercise. In November 1991, following consultations with the ILO, the Prime Minister, the Minister for Foreign Affairs and the Attorney-General, the Minister for Industrial Relations indicated to the States and Territories that the Commonwealth would agree to the use of a "Federal Statement" in future ratifications of ILO Conventions where appropriate.

In 1991 the then Minister for Industrial Relations established an interdepartmental ILO Ratification Task Force for the purpose of conducting an examination of 75 unratified ILO Conventions. At the commencement of the process Australia had ratified 48 of the 172 Conventions which had been adopted by the ILC at that time. Of the 123 Conventions not ratified by Australia, 49 were no longer open to ratification or were obsolete (Appendix E). The 75 Conventions remitted to the Task Force constituted the balance.

The Task Force comprised officers of the Department of Industrial Relations, the Attorney-General's Department, the Department of Foreign Affairs and Trade and other Commonwealth departments and agencies as necessary to deal with particular Conventions. The Commonwealth also engaged a full-time consultant for a period of 12 months to help co-ordinate the work of the Task Force, assist with analysis of law and practice in relation to each of the Conventions, and to facilitate consultation with the States and Territories and the social partners.

At the conclusion of this review in 1993, five additional Conventions had been ratified; 27 Conventions had been classified as suitable targets for ratification; 37 had been categorised unsuitable for ratification; and 6 remained unclassified (Appendix F). Since then, a further four Conventions (all dealing with work in the fishing industry) have been determined as unsuitable targets for ratification, and one Convention dealing with migrant workers has been included with the suitable targets for ratification.

Commonwealth, State and Territory officials have adopted a Workplan, whereby consideration of relevant unratified Conventions is spread over several years. The current Workplan (Appendix G) covers 1995—1997.

In addition to the arrangements described above relating to consultation with the States and Territories, the Commonwealth also engages in regular consultation with the most representative employer and worker organisations (ACCI and ACTU) on matters relating to the adoption, examination and ratification of ILO instruments. The National Labour Consultative Council (NLCC) has established a Committee on International Labour Affairs (ILAC) whose terms of reference include the consideration of matters of substance relating to the ILO and other international labour matters. These arrangements are consistent with the requirements of the *Tripartite Consultation (International Labour Standards) Convention,* 1976 (No.144), which was ratified by Australia in 1979. A list of Conventions which have been endorsed by NLCC as suitable targets for ratification is at Appendix H.

As at 30 November 1994 Australia had ratified 54 of the 175 Conventions adopted by the ILC (Appendix I).

Appendix E

UNRATIFIED ILO CONVENTIONS
NOT CONSIDERED BY THE 1991 TASK FORCE

Conventions closed to ratification

24 Sickness Insurance (Industry), 1927
25 Sickness Insurance (Agriculture), 1927
28 Protection Against Accidents (Dockers), 1929
32 Protection Against Accidents (Dockers) (Revised), 1932
33 Minimum Age (Non Industrial Employment), 1932
34 Fee Charging Employment Agencies, 1933
35 Old Age Insurance (Industry etc), 1933
36 Old Age Insurance (Agriculture), 1933
37 Invalidity Insurance (Industry etc), 1933
38 Invalidity Insurance (Agriculture), 1933
39 Survivors' Insurance (Industry etc), 1933
40 Survivors' Insurance (Agriculture), 1933
41 Night Work (Women) (Revised), 1934
44 Unemployment Provision, 1934
48 Maintenance of Migrants' Pension Rights, 1935
52 Holidays with Pay, 1936
54 Holidays with Pay (Sea), 1936
56 Sickness Insurance (Sea), 1936
62 Safety Provisions (Building), 1937
66 Migration for Employment, 1939
67 Hours of Work and Rest Periods (Road Transport), 1939
70 Social Security (Seafarers), 1946
72 Paid Vacations (Seafarers), 1946
75 Accommodation of Crews, 1946
91 Paid Vacations (Seafarers) (Revised), 1949
107 Indigenous and Tribal Populations, 1957

NB Since 1991, *Convention No.* 23, *Repatriation of Seamen, 1936* (which was considered by the Task Force) has been closed to ratification. One other Convention is also closed to ratification, but was not included on this list because it had already been ratified by Australia (i.e. *Convention No.* 63, *Statistics of Wages and Hours of Work 1938*).

Conventions which have been revised

3 Maternity Protection, 1919
4 Night Work (Women), 1919
5 Minimum Age (Industry), 1919
6 Night Work of Young Persons (Industry), 1919

17 Workmen's Compensation (Accidents), 1925

28 Protection Against Accidents (Dockers), 1929

59 Minimum Age (Industry) (Revised), 1937

60 Minimum Age (Non-Industrial Employment) (Revised), 1937

101 Holidays with Pay (Agriculture), 1952

Conventions whose ratification is no longer promoted by the ILO on a priority basis

1 Hours of Work (Industry), 1919

20 Night Work (Bakeries), 1925

30 Hours of Work (Commerce and Offices), 1930

31# Hours of Work (Coal Mines), 1931

43 Sheet Glass Works, 1934

46# Hours of Work (Coal Mines) (Revised), 1935

49 Reduction of Hours of Work (Glass Bottle Works), 1935

50 Recruiting of Indigenous Workers, 1936

51# Reduction of Hours of Work (Public Works), 1936

61# Reduction of Hours of Work (Textiles), 1937

64 Contracts of Employment (Indigenous Workers), 1939

65 Penal Sanctions (Indigenous Workers), 1939

82 Right of Association (Non-Metropolitan Territories), 1947

104 Abolition of Penal Sanctions (Indigenous Workers), 1955

Conventions 31, 46, 51 and 61 have not come into force

Appendix F

CATEGORISATION OF ILO CONVENTIONS BY THE RATIFICATION TASK FORCE

The Ratification Task Force completed its review of 75 unratified ILO Conventions in April 1993. The outcome of its work is provided below.

1. Conventions ratified

C.58 Minimum Age (Sea) (Revised), 1936

C.92 Accommodation of Crews (Revised), 1949

C.133 Accommodation of Crews (Supplementary Provisions), 1970

C.135 Workers' Representatives, 1971

C.158 Termination of Employment, 1982

Total 5

2. Considered suitable targets for ratification

C.53 Officers' Competency Certificates, 1936

C.69 Certification of Ships' Cooks, 1946

C.73 Medical Examination (Seafarers), 1946

C.108	Seafarers' Identity Documents, 1958
C.119	Guarding of Machinery, 1963
C.120	Hygiene in Commerce and Offices, 1964
C.129	Labour Inspection (Agriculture), 1969
C.134	Prevention of Accidents (Seafarers), 1970
C.139	Occupational Cancer, 1974
C.140	Paid Education Leave, 1974
C.141	Rural Workers' Organisations, 1975
C.143	Migrant Workers (Supplementary Provisions), 1975
C.145	Continuity of Employment (Seafarers), 1976
C.146	Seafarers' Annual Leave with Pay, 1976
C.147	Merchant Shipping (Minimum Standards), 1976
C.148	Working Environment (Air Pollution, Noise and Vibration), 1977
C.149	Nursing Personnel, 1977
C.151	Labour Relations (Public Service), 1978
C.152	Occupational Safety and Health (Dock Work), 1979
C.154	Collective Bargaining, 1981
C.155	Occupational Safety and Health, 1981
C.161	Occupational Health Services, 1985
C.162	Asbestos, 1986
C.164	Health Protection and Medical Care (Seafarers), 1987
C.166	Repatriation of Seafarers (Revised), 1987
C.167	Safety and Health in Construction, 1988
C.170	Chemicals, 1990

Total 27

3. Considered not suitable targets for ratification

C.13	White Lead (Painting), 1921
C.14	Weekly Rest (Industry), 1921
C.23	Repatriation of Seamen, 1926
C.55	Shipowners' Liability (Sick and Injured Seamen), 1936
C.68	Food and Catering (Ships' Crews), 1946
C.71	Seafarers' Pensions, 1946
C.74	Certification of Able Seamen, 1946
C.77	Medical Examination of Young Persons (Industry), 1946
C.78	Medical Examination of Young Persons (Non-Industrial Occupations), 1946
C.79	Night Work of Young Persons (Non-Industrial Occupations), 1946
C.89	Night Work (Women) (Revised), 1948
C.90	Night Work of Young Persons (Industry) (Revised), 1948
C.94	Labour Clauses (Public Contracts), 1949

C.95 Protection of Wages, 1949
C.96 Fee Charging Employment Agencies (Revised), 1949
C.102 Social Security (Minimum Standards), 1952
C.103 Maternity Protection (Revised), 1952
C.106 Weekly Rest (Commerce and Offices), 1957
C.110 Plantations, 1958
C.115 Protection Against Radiation, 1960
C.117 Social Policy (Basic Aims and Standards), 1962
C.118 Equality of Treatment (Social Security), 1962
C.121 Employment Injury Benefits, 1964
C.124 Medical Examination of Young Persons (Underground Work), 1965
C.127 Maximum Weight, 1967
C.128 Invalidity, Old Age and Survivors' Benefits, 1967
C.130 Medical Care and Sickness Benefits, 1969
C.132 Holidays With Pay (Revised), 1970
C.136 Benzene, 1971
C.138 Minimum Age, 1973
C.153 Hours of Work and Rest Periods (Road Transport), 1979
C.157 Maintenance of Social Security Rights, 1982
C.163 Seafarers' Welfare, 1987
C.165 Social Security (Seafarers) (Revised), 1987
C.168 Employment Promotion and Protection against Unemployment, 1988
C.171 Night Work, 1990
C.172 Working Conditions (Hotels and Restaurants), 1991
Total 37

4. To be determined

C.97 Migration for Employment (Revised), 1949
C.113 Medical Examination (Fishermen), 1959
C.114 Fishermen's Articles of Agreement, 1959
C.125 Fishermen's Competency Certificates, 1966
C.126 Accommodation of Crews (Fishermen), 1966
C.169 Indigenous and Tribal Peoples, 1989
Total 6

Note: As at November 1994, Convention No. 97 has been determined to be a suitable target for ratification, and Conventions No. 113, 114, 125 and 126 have been determined not to be suitable targets for ratification. A decision has yet to be made with respect to Convention No. 169.

Appendix G

WORKPLAN FOR CONSIDERATION OF UNRATIFIED ILO CONVENTIONS

Annual Human Rights Conventions

97	Migration for Employment (Revised), 1949
138	Minimum Age, 1973
141	Rural Workers' Organisations, 1975
143	Migrant Workers (Supplementary Provisions), 1975
151	Labour Relations (Public Service), 1978
154	Collective Bargaining, 1981

1995: Occupational Safety and Health Conventions

119	Guarding of Machinery, 1963
134	Prevention of Accidents (Seafarers), 1970
139	Occupational Cancer, 1974
148	Working Environment (Air Pollution, Noise and Vibration), 1977
155	Occupational Safety and Health, 1981
162	Asbestos, 1986
167	Safety and Health in Construction, 1988
170	Chemicals, 1990

1996: Maritime Conventions

53	Officers' Competency Certificates, 1936
69	Certification of Ships' Cooks, 1946
73	Medical Examination (Seafarers), 1946
145	Continuity of Employment (Seafarers), 1976
146	Seafarers' Annual Leave with Pay, 1976
147	Merchant Shipping (Minimum Standards), 1976
164	Health Protection and Medical Care of Seafarers, 1987

1997: Conditions of Employment Conventions

81	Labour Inspection, 1947 (Part II Commerce)
120	Hygiene (Commerce and Offices), 1964
129	Labour Inspection (Agriculture), 1969
140	Paid Educational Leave, 1974
149	Nursing Personnel, 1977
152	Occupational Safety and Health (Dock Work), 1979
161	Occupational Health Services, 1985
169	Indigenous and Tribal Peoples, 1989

Commonwealth Only Conventions

108	Seafarers' Identity Documents, 1958
166	Repatriation of Seafarers (Revised), 1987

Appendix H

ILO CONVENTIONS ENDORSED BY NATIONAL LABOUR CONSULTATIVE COUNCIL AS SUITABLE TARGETS FOR RATIFICATION

53	Officers' Competency Certificates (17.05.91)
97	Migration for Employment (Revised), 1949 (23.09.94)
119	Guarding of Machinery, 1963 (23.09.94)
120	Hygiene (Commerce and Offices) (27.05.94)
132*	Holidays with Pay (Revised) (14.08.87)
139	Occupational Cancer (23.09.94)
141	Rural Workers' Organisations, 1975 (23.09.94)
143	Migrant Workers (Supplementary Provisions) (23.09.94)
145	Continuity of Employment (Seafarers) (22.11.85)
147	Merchant Shipping (Minimum Standards) (22.11.85)
148	Working Environment (Air Pollution, Noise and Vibration), 1977 (23.09.94, with respect to Noise and Air Pollution)
149	Nursing Personnel (26.03.86)
151	Labour Relations (Public Service) (23.09.94)
155	Occupational Safety and Health (23.09.94)
162	Asbestos (23.09.94)
167	Safety and Health in Construction (23.09.94)
168*	Employment Promotion and Protection Against Unemployment (23.05.90)
170	Chemicals, 1990 (23.09.94)

* These Conventions were more recently considered by the Ratification Task Force as not appropriate targets for ratification.

Appendix I

ILO CONVENTIONS RATIFIED BY AUSTRALIA

2	Unemployment, 1919 (ratified 15.6 72)
7	Minimum Age (Sea), 1920 (28.6.35)
8	Unemployment Indemnity (Shipwreck), 1920 (28.6.35)
9	Placing of Seamen, 1920 (3.8.25)
10	Minimum Age (Agriculture), 1921 (24.12.57)
11	Right of Association (Agriculture), 1921 (24.12.57)
12	Workmen's Compensation (Agriculture), 1921 (7.6.60)
15	Minimum Age (Trimmers and Stokers), 1921 (28.6.35)
16	Medical Examination of Young Persons (Sea), 1921 (28.6.35)

18	Workmen's Compensation (Occupational Diseases), 1925 (22.4.59)
19	Equality of Treatment (Accident Compensation), 1925 (12.6.59)
21	Inspection of Emigrants, 1926 (18.4.31)
22	Seamen's Articles of Agreement, 1926 (1.4.35)
26	Minimum Wage Fixing Machinery, 1928 (9.3.31)
27	Marking of Weight (Packages Transported by Vessels), 1929 (9.3.31)
29	Forced Labour, 1930 (2.1.32)
42	Workmen's Compensation (Occupational Diseases) (Revised), 1934 (29.4.59)
45*	Underground Work (Women), 1935 (7.10.53)
47	Forty Hour Week, 1935 (22.10.70)
57	Hours of Work and Manning (Sea), 1936 (24.9.38)
58	Minimum Age (Sea) (Revised), 1936 (11.6.92)
63	Statistics of Wages and Hours of Work, 1938 (5.9.39)
76	Wages, Hours of Work and Manning (Sea), 1946 (25.1.49)
80	Final Articles Revision, 1946 (24.1.49)
81	Labour Inspection, 1947 (24.6.75)
83	Labour Standards (Non-Metropolitan Territories), 1947 (15.6.73)
85	Labour Inspectorates (Non-Metropolitan Territories), 1947 (30.9.54)
86	Contracts of Employment (Indigenous Workers), 1947 (15.6.73)
87	Freedom of Association and Protection of the Right to Organise, 1948 (28.2.73)
88	Employment Service, 1948 (24.12.49)
92	Accommodation of Crews (Revised), 1949 (11.6.92)
93	Wages, Hours of Work and Manning (Sea) (Revised), 1949 (3.3.54)
98	Right to Organise and Collective Bargaining, 1949 (28.2.73)
99	Minimum Wage Fixing Machinery (Agriculture), 1951 (19.6.69)
100	Equal Remuneration, 1951 (10.12.74)
105	Abolition of Forced Labour, 1957 (7.6.60)
109	Wages, Hours of Work and Manning (Sea) (Revised), 1958 (15.6.72)
111	Discrimination (Employment and Occupation), 1958 (15.6.73)
112	Minimum Age (Fishermen), 1959 (15.6.71)
116	Final Articles Revision, 1961 (29.10.63)
122	Employment Policy, 1964 (12.9.69)
123	Minimum Age (Underground Work), 1965 (12.12.71)
131	Minimum Wage Fixing, 1970 (15.6.73)
133	Accommodation of Crews (Supplementary Provisions), 1970 (11.6.92)
135	Workers' Representatives, 1971 (26.2.93)
137	Dock Work, 1973 (25.6.74)
142	Human Resources Development, 1975 (10.9.85)

144	Tripartite Consultation (International Labour Standards), 1976 (11.6.79)
150	Labour Administration, 1978 (10.9.85)
156	Workers with Family Responsibilities, 1981 (30.3.90)
158	Termination of Employment, 1982 (26.2.93)
159	Vocational Rehabilitation and Employment (Disabled Persons), 1983 (7.8.90)
160	Labour Statistics, 1985 (15.5.87)
173	Workers' Claims (Employer's Insolvency), 1992 (8.6.94)

Total Number of Conventions ratified by Australia: 54

* Denounced 20 May 1988

International Labour Organisation — Conventions — Australian Ratification and Voting Patterns

On 23 October 1995, in the House of Representatives, the Minister for Industrial Relations, Mr Brereton, answered a question upon notice from Mr Latham (ALP, Werriwa), concerning the 82nd Session of the International Labour Conference, which was held in Geneva from 6 to 23 June 1995. The following are extracts from the text of the question and answer (House of Representatives, *Debates*, vol 204, p 2725):

> Mr Latham asked the Minister for Industrial Relations, upon notice, on 18 September 1995:
>
> (2) What conventions and recommendations were adopted by the Conference.
>
> (3) How did the Australian (a) Government, (b) employers' and (c) workers' delegate vote on each convention and recommendation.
>
> (4) Which ILO Conventions has Australia ratified since 1993, and on what dates.
>
> Mr Brereton—The answer to the honourable member's question is as follows:
>
> (2) The 1995 ILC adopted the following three instruments:
>
> Convention No 176, Safety and Health in Mines, 1995
>
> Recommendation No 183, Safety and Health in Mines, 1995
>
> Protocol to extend the provisions of Convention No 81, Labour Inspection, 1947 to cover the non-commercial services sector.
>
> (3) All four Australian delegates (two Government, one Employer and one Worker) voted for the adoption of each of the new instruments.
>
> (4) Since 1993, Australia has ratified four ILO Conventions. They are:
>
> Convention No 69, Certification of Ships' Cooks, 1946
>
> Convention No 73, Medical Examination (Seafarers), 1946
>
> Convention No 166, Repatriation of Seafarers (Revised), 1987
>
> Convention No 173, Workers' Claims (Employers Insolvency), 1992.
>
> C173 was ratified on 8 June 1994. The remaining Conventions were ratified on 29 August 1995.

On the same day, the Minister for Industrial Relations, Mr Brereton, answered a question upon notice relating to Australian action with respect to International Labour Organisation Conventions since 1994, from Mr Hollis (ALP, Throsby). The following is an extract from the text of the answer (House of Representatives, *Debates*, vol 204, p 2726):

> Mr Brereton—The answer to the honourable member's question is as follows:
>
> RATIFICATION OF ILO CONVENTIONS
>
> Since 8 June 1994, Australia has ratified three ILO Conventions. They are:
>
> C.69 Certification of Ships' Cooks, 1946
>
> C.73 Medical Examination (Seafarers), 1946
>
> C.166 Repatriation of Seafarers (Revised), 1987.
>
> The ratification of all three was registered with the ILO in Geneva on the same day, 29 August 1995...
>
> REPORTS TO THE DIRECTOR-GENERAL
>
> Article 19 Reports
>
> In accordance with Article 19 of the ILO Constitution, Member States are required to inform the Director-General of the ILO about action taken with respect to new international labour standards within 12 months of their adoption by the International Labour Conference (or within 18 months in the case of federal Member States, such as Australia).
>
> Since October 1994, Australia has forwarded two such Article 19 reports to the ILO:
>
> Convention No 174, Prevention of Major Industrial Accidents, 1993 (tabled in the House of Representatives on 8 December 1994 and the Senate on 31 January 1995); and Convention No 175 and Recommendation No 182, Part-time Work, 1994 (tabled in the House of Representatives and the Senate on 7 June 1995).
>
> Article 19 of the ILO Constitution requires Member States to provide reports on unratified Conventions and Recommendations, as may be required by the ILO's Governing Body. Since October 1994, Australia has provided one such report to the ILO, addressing Recommendation No 166, Termination of Employment, 1982.
>
> Article 22 Reports
>
> In accordance with Article 22 of the ILO Constitution, Australia reported to the Director-General in 1994 on the effect given to the following Conventions which Australia has ratified:
>
> C.8 Unemployment Indemnity (Shipwreck), 1920
>
> C.11 Right of Association (Agriculture), 1921
>
> C.22 Seamen's Articles of Agreement, 1926
>
> C.58 Minimum Age (Sea), 1936
>
> C.87 Freedom of Association and Protection of the Right to Organise, 1948
>
> C.105 Abolition of Forced Labour, 1957

C.111 Discrimination (Employment and Occupation), 1958

C.122 Employment Policy, 1964

C.144 Tripartite Consultation (International Labour Standards), 1976

C.150 Labour Administration, 1978.

Due to a change in timing of requests for Article 22 reports, Australia has also forwarded its 1995 reports to the ILO. They included First Reports for the following four Conventions:

C.92 Accommodation of Crews (Revised), 1949

C.133 Accommodation of Crews (Supplementary Provisions), 1970

C.135 Workers' Representatives, 1971

C.158 Termination of Employment, 1982.

Updated reports on the following five Conventions were also provided to the ILO in 1995:

C.81 Labour Inspection, 1947

C.98 Right to Organise and Collective Bargaining, 1949

C.105 Abolition of Forced Labour, 1958

C.111 Discrimination (Employment and Occupation), 1958

C.144 Tripartite Consultation (International Labour Standards), 1976.

Not all reports were complete, as contributions were not received in time from several jurisdictions.

Reports provided by the Norfolk Island Government on the implementation of Conventions 11, 87, 98, 105, 122, 142 and 160 were also forwarded to the ILO during 1994 and 1995...

PROGRESS TOWARDS RATIFICATION OF CERTAIN ILO CONVENTIONS

Question No. 287 identified three ILO Conventions, and asked what progress had been made in ratifying them.

Convention No 169, Indigenous and Tribal Peoples, 1989

The process of ascertaining indigenous views on ratification of ILO Convention 169, plus the views of the States and Territories and the social partners is progressing.

The completion of the report on compliance in law and practice with the Convention at Commonwealth level was interrupted by the Western Australian High Court challenge to the Native Title Act 1993. The draft report is now being finalised, and an agreed Commonwealth report should be completed by end October 1995. Completion of the report will facilitate the States and Territories and the ACTU and ACCI in consulting indigenous groups in establishing their respective positions on ratification.

In respect of indigenous consultations, information dissemination and consultation with indigenous organisations and communities is underway. In this context, my Department will convene a small working group of officials from the Human Rights and Equal Opportunity Commission, ATSIC and the Council for Aboriginal Reconciliation to prepare and disseminate relevant information on the Convention to indigenous organisations and communities.

Convention No 151, Labour Relations (Public Service), 1978

All governments, except New South Wales, have formally agreed to ratification, although several jurisdictions have indicated that they wish to review their position because of new or pending legislation.

The Convention has been identified as an appropriate target for ratification by the Labour Ministers' Council, the ILO Ratification Task Force and the tripartite National Labour Consultative Council. Australia's 1994 National Action Plan on human rights identified the Convention as one whose ratification would be actively pursued.

The ratification prospects of the Convention are currently under consideration in the light of recent advice from the ILO following questions raised by New South Wales on the conformity of its legislation with the provisions of the Convention.

Convention No 155, Occupational Safety and Health, 1981

As indicated in my response to Mr Latham's Question No. 2382 (part 3) on 31 May 1995, the Northern Territory formally agreed to ratification in May 1995. All jurisdictions, except New South Wales and Tasmania, have now formally agreed to ratification. The New South Wales Department of Industrial Relations has consulted with the Workcover Authority with a view to achieving compliance with the Convention. A submission is currently being prepared for consideration by the New South Wales Minister for Industrial Relations in order to further progress the matter. Tasmania has identified two relatively minor compliance problems, which are expected to be overcome when the Workplace Health and Safety Bill 1995 is passed into legislation.

UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects — Question of Australian Signature

On 16 October 1995, in the House of Representatives, the Minister representing the Minister for Foreign Affairs, Mr Bilney, answered a question upon notice from Mr Jones (Lalor, ALP) (House of Representatives, *Debates*, vol 204, p 2160). Extracts from the text of the question and answer follow:

Mr Jones asked the Minister representing the Minister for Foreign Affairs, upon notice, on 22 August 1995:

(1) ... was the Convention on Stolen or Illegally Exported Cultural Objects (a) adopted by Diplomatic Conference in Rome on 23 June 1995 and (b) opened for signature at the closing session of the conference on 24 June 1995.

(2) Which states have signed the convention.

(3) On what date did each sign.

(4) What declarations did each make when signing.

(5) What is Australia's timetable for (a) signing and (b) ratifying the convention.

Mr Bilney—The Minister for Foreign Affairs has provided the following answer to the honourable member's question:

(1)(a) The Unidroit Convention on Stolen or Illegally Exported Cultural Objects was adopted by the Diplomatic Conference in Rome on 23 June 1995 with the following vote: 37 delegations in favour, 5 against and 17 abstentions.

(b) Yes, the convention was opened for signature on 24 June 1995 at the concluding meeting of the Conference.

(2) and (3) the following states signed the Convention:

Burkina Faso—24.VI.1995; Cambodia—24.VI.1995; Cote d'Ivoire—24.VI.1995; Croatia—24.VI.1995; France (ad referendum)—24.VI.1995; Guinea—24.VI.1995; Hungary—24.VI.1995; Italy—24.VI.1995; Lithuania—24.VI.1995; Zambia—24.VI.1995; Georgia—27.VI.1995;

(4) At the time of signature, the states concerned made no declarations.

(5) The Unidroit Convention is open for signature until the 30 June 1996 and is open for accession by all states which are not signatory states as from the date on which it is open for signature.

(a) and (b) Australia has no timetable for signing or ratifying the convention at this stage.

Agreement on Maintaining Security — Australia and Indonesia — Signature

The following are extracts from the text of a statement made by the Prime Minister, Mr Keating, on 14 December 1995:

Cabinet has agreed that Australia and Indonesia will sign on Monday 18 December a security agreement between our two countries.

The Agreement on Maintaining Security commits the two governments to:

- consult at Ministerial level on a regular basis about matters affecting their common security and to develop such cooperation as would benefit their own security and that of the region;
- consult each other in the case of adverse challenges to either party or to their common security interests and, if appropriate, consider measures which might be taken by them individually or jointly and in accordance with the processes of each government; and
- promote, in accordance with the policies and priorities of each, cooperative activities in the security field.

This is a serious and important step for both countries. The agreement is a significant and natural extension of the cooperation Australia and Indonesia have built in recent years through mechanisms such as the Australia Indonesia Ministerial Forum and our collaboration on APEC. It demonstrates the confidence each of us has in the intentions of the other. But it goes beyond that to set out in formal terms for the first time our common interests in the peace and security of the region around us, and our intention to cooperate together in support of those interests.

The agreement will reinforce the security of the region as a whole by demonstrating to our friends and neighbours that Australia and Indonesia will continue to build a close and cooperative relationship.

It does not affect our existing international commitments. It is premised on our respect for the sovereignty, political independence and territorial integrity of all countries...

The agreement will be signed by the Foreign Ministers, Senator Gareth Evans QC and Mr Ali Alatas SH, in the presence of President Soeharto and myself. The two Defence Ministers, Senator Robert Ray and Mr Edy Sudradjat,

> will be present, together with the Chief of the Australian Defence Force, General John Baker AC, and the Commander in Chief of the Armed Forces of the Republic of Indonesia, General Feisal Tanjung.

The Agreement was signed on the 18 December 1995.

Treaty on Development Cooperation — Australia and Papua New Guinea — Review — Exchange of Notes

On 11 December 1995, the Deputy Prime Minister of Papua New Guinea, Mr Haiveta, and the Australian Minister for Development Cooperation, Mr Bilney, issued the following news release:

> The Deputy Prime Minister of Papua New Guinea, Mr Chris Haiveta, and the Australian Minister for Development Cooperation and Pacific Island Affairs, Mr Gordon Bilney, held discussions about development cooperation issues during the PNG-Australia Ministerial Forum meeting in Kavieng, New Ireland, on 9–10 December.
>
> Following their discussions Mr Haiveta and Mr Bilney confirmed indicative levels of budget support and program aid to be provided by Australia to Papua New Guinea until the year 2000. The Ministers signed an exchange of letters covering future aid levels under the Papua New Guinea-Australia Treaty on Development Cooperation. The exchange of letters is the final step in a review of the treaty undertaken during 1995. In September, at the South Pacific Forum in Madang, the Ministers agreed arrangements to increase the effectiveness and long-term sustainability of the PNG-Australia Development Cooperation Program.
>
> Mr Haiveta and Mr Bilney confirmed the importance of Papua New Guinea maintaining its program of economic reform and public sector restructuring. The Ministers agreed that the Australia program of development cooperation with Papua New Guinea would remain closely linked to Papua New Guinea's reform efforts, and agreed on specific measures of performance to monitor reforms in key sectors. The Ministers confirmed that progress in achieving essential reforms would be an important factor in determining the level and shape of Australian program aid to priority sectors in future years. Mr Haiveta and Mr Bilney agreed to review the specific measures of performance established in 1995 on an annual basis.
>
> Ministers also agreed on the importance of building on the already significant level of PNG participation in the delivery of Australian program aid. They agreed to extend arrangements for aid-funded activities to be implemented by PNG agencies through trust account mechanisms. Ministers also endorsed the establishment of a mechanism for channelling funding particular to improve the delivery of basic health, education and infrastructure on rural areas.
>
> Mr Haiveta and Mr Bilney agreed that in future the PNG-Australia Development Cooperation Program will have a particular focus on support for Papua New Guinea Government efforts to maintain and repair PNG's transport network. Major support programs would also be developed to assist delivery of basic health and education services. Cooperation will also be maintained in law and justice, renewable resources—especially forestry, and in support of private sector development.

Information on Australian Treaty Action

Current information concerning treaties which Australia has signed, ratified or acceded to is available from :

Treaties Secretariat
The Legal Office
Department of Foreign Affairs and Trade
Barton ACT 0221

Treaty action taken by Australia in 1995 was set out in the booklet *Treaty Action 1995*, published as the Australian Treaty Series 1995, No 1, the text of which is set out as the final item in this volume.

Australian Treaty List

The Australian Treaty List, current as at the end of 1995, has also been published and information on its supply can be obtained from the above address.

Tabling of Texts of Treaties in Parliament in 1995

Texts of all treaties on which Australia had taken action in the course of the preceding six months were tabled in both the House of Representatives and the Senate on 21 June 1995 and 18 October 1995. Corrigendum were tabled in the House of Representatives on 21 and 28 June 1995, and, in the Senate, on 5 July 1995.