

Dissenting report by Coalition Senators

1.1 Coalition members of the committee disagree with all of the findings and recommendations of the majority report. We do not believe that the evidence received by the committee during the inquiry leads to the argument that Australia's treaty-making process is in need of reform.

1.2 Australia's treaty-making system works well. Coalition senators are disappointed that a system that has been honoured by both major parties for nearly two decades is now being politicised by the Opposition as it struggles to find a coherent and united policy position on the pursuit of free trade agreements. Since its introduction by the Coalition government in 1996, Australia's treaty-making process has been subject to only minor alterations. Governments of either persuasion have made use of the system, accepting the balance between the respective role of parliament and the executive which is mandated by the Australian Constitution. Australia's recent success in concluding major free trade agreements with Korea, Japan and China shows that the system is robust and working well to support Australia's entry into high quality international agreements that will serve the national economic interest for many decades to come.

1.3 The majority report's suggestion that other countries have moved ahead of Australia in terms of parliamentary oversight and transparency is unconvincing and unsupported by the evidence. The report puts too much weight on events currently taking place in the United States despite the fact that a direct comparison between the two systems is unhelpful due to differences between our respective political systems. The process in place in Australia closely resembles that operating in countries with comparable political systems, such as Canada and New Zealand. There is nothing unusual or out of character in the way Australia enters in to and negotiates free trade agreements.

1.4 The insinuation that Australia subjects international agreements to less parliamentary scrutiny is incorrect. The Joint Standing Committee on Treaties (JSCOT) performs excellent work in carrying out exhaustive public inquiries into all major agreements. This report's recommendations in respect of JSCOT, quite frankly, would add little value to the scrutiny work it currently performs and risk overloading an already demanding work schedule.

1.5 Moreover, the government's recent decision to allow parliamentarians access to the draft text of the TPP on a confidential basis is consistent with the process followed in the United States where members of Congress seeking to examine draft treaty text must also sign confidentiality agreements. This demonstrates that the current system in Australia already contains sufficient flexibility to allow access when it is desirable to do so.

1.6 The majority report also downplays the extent to which confidentiality is almost always a precondition which is binding on all the negotiating parties. As the Department of Foreign Affairs and Trade (DFAT) told the committee, confidentiality is necessary to achieve the best possible negotiated outcomes in the national interest. It would be irresponsible for Australia to unilaterally walk away from an accepted

international practice. Calls from stakeholders to make the texts of agreements publicly available prior to signature are impractical and do not take into account the realities of negotiating international agreements.

1.7 The Coalition agrees that effective consultation is essential to getting the best outcomes from negotiations, but considers that Opposition criticism of DFAT's consultation process is overblown and borderline insulting. DFAT has convened over 1000 briefing sessions with stakeholders on the Trans-Pacific Partnership (TPP) alone since May 2011. Of the hundreds of stakeholders consulted by DFAT on the TPP and other trade agreements over the past few decades, the committee heard from only a small proportion. Opposition senators have made the mistake of concluding from the evidence that the process is not working. It was not surprising that stakeholders with grievances made submissions to an inquiry such as this one; but it is unhelpful to suggest that the consultation process is not working, as the majority report does. This is dismissive of the tireless effort put into stakeholder consultations by Australia's highly-skilled and hard-working treaty negotiators.

1.8 In short, the Coalition members of the committee see no reason to proceed with an extensive reform agenda when the current treaty-making system is working well. On this basis, Coalition senators do not support the majority report's recommendations.

Senator Chris Back
Deputy Chair