COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: Multilateral Agreement on Investment (MAI)

BRISBANE

Friday, 24 July 1998

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STANDING COMMITTEE ON TREATIES

Mr Taylor (Chairman)

Mr McClelland (Deputy Chairman)

Senator Abetz	Mr Adams
Senator Bourne	Mr Bartlett
Senator Coonan	Mr Laurie Ferguson
Senator Cooney	Mr Halverson
Senator Murphy	Mr Hardgrave
Senator O'Chee	Ms Jeanes
Senator Reynolds	Mr McClelland
	Mr McGauran

Matter referred for inquiry into and report on:

The potential consequences for Australia arising from the matter known as the MAI.

Advantages and/or disadvantages for Australia arising from the MAI currently being negotiated in secret by the Australian Government at the Organisation for Economic Co-operation and Development, with particular reference to:

(a) the ability of countries to impose conditions on foreign investment;

(b) the ability of countries to establish limits on foreign investment;

(c) the implications arising from the 'roll back' and 'standstill' provisions;

(d) the ability of countries to pursue social, environmental, labour, cultural, human rights and indigenous protections and the impacts for each of these sectors resulting from foreign investment regimes under the MAI;

(e) any implications for Australia's national debt and current account deficit of the growth in foreign investment the MAI is expected to bring;

(f) the MAI's dispute handling procedures;

(g) the issue of the constitutionality of the MAI for Australia;

(h) the impact on agricultural and manufacturing sectors;

(i) the impact on State, Territory and local governments; and

(j) the impact on Australian investors seeking to invest overseas.

WITNESSES

JOINT STANDING COMMITTEE ON TREATIES

(Subcommittee)

Multilateral Agreement on Investment

BRISBANE

Friday, 24 July 1998

Present

Mr Hardgrave (Acting Chair)

Senator Cooney

Senator O'Chee

Subcommittee met at 10.00 a.m.

Mr Hardgrave took the chair.

ACTING CHAIR (Mr Hardgrave)—I welcome everybody in the gallery today. I declare open the third public hearing into the matter known as the Multilateral Agreement on Investment, or MAI. The Joint Standing Committee on Treaties has asked a subcommittee consisting of Senator Barney Cooney, a Labor senator from Victoria, and me to take evidence in Brisbane. Later this morning we will be joined by Queensland National Party Senator Bill O'Chee.

Firstly, I apologise for the changes that have been made to today's program. These will make it slightly different from the one which was advised by letter. We have received a large number of quality submissions from Queensland which, combined with limits on our time, has meant that great care has had to be exercised in the selection of witnesses today. To fit into the time available, we have had to group some individuals together. At about 2.45 p.m., we will be calling 16 members of the public who have contacted the secretariat to give evidence. As the hearing must finish before 4 p.m., it will not be possible to give anyone unlimited time. A list of those who will be speaking is available from the secretariat. If anyone else feels that they would like to register their views, the committee would certainly welcome a written submission.

Copies of material relating to this inquiry are available on the table in the foyer outside this room. This includes copies of the submissions from those who are appearing as witnesses today as well as copies of the committee's interim report on the draft MAI, which was tabled on 1 June. Stocks are not unlimited today, because it was not possible to bring many copies of the nine volumes of submissions we have received. Please see the secretariat if you would like a set posted to you.

I turn now to the MAI itself. I cannot stress sufficiently that the draft MAI has not been finalised by the OECD, and Australia has not yet decided whether it will sign it. In our interim report the committee outlined a range of concerns about the MAI and recommended that Australia not sign the final text unless and until a thorough assessment has been made of the national interest and a decision has been made that it is in Australia's interest to do so. The government has indicated that we will not be signing up to anything unless it is in the national interest.

Today we would like witnesses to focus on the MAI itself rather than making general comments about the need for consultation or the impact on Australia's sovereignty of treaties. We make this request because we have been very critical in our interim report of the lack of consultation on the MAI that has been carried out by Treasury officials. There is no need for anyone here today to go over this ground again.

The subcommittee is well aware of the arguments about the impact that treaties have on Australia's sovereignty. In fact, the reforms of the treaty making process introduced by the current government are designed to allow greater public input and parliamentary scrutiny of the treaty making process. Since they were introduced in May 1996, over 1,750 organisations and individuals have taken the opportunity to make their

views known on particular treaties. Our presence here today shows that parliamentary scrutiny of the draft MAI is being undertaken and that the new process of public consultation introduced just two years ago is actually working.

The new treaty arrangements introduced by the coalition guarantee that there can be no more secret treaties. The treaties committee has not been backward in criticising government departments when they have not been open enough. As anyone who has read our interim report will see, we have been very critical of the Treasury in this respect when it comes to the MAI. I now call on our first three witnesses today—Mr Downey, Mr Edwards and Mr Gierke—to give evidence to the subcommittee.

[10.04 a.m.]

DOWNEY, Mr Hugh Robert Hamilton, 2 Bourne Street, Clayfield, Queensland 4011

EDWARDS, Mr William Alexander, 165 Kadumba Street, Yeronga, Brisbane, Queensland 4104

IERKE, Mr John Owen, PO Box 326, Aspley, Queensland 4034

ACTING CHAIR—Mr Downey, would you like to make a brief opening statement? Could you also state the capacity in which you are appearing before this committee.

Mr Downey—I am appearing as an ordinary private citizen. This presentation is made in the hope that the Australian government now or in the future will not be a signatory to the MAI or to any treaty which purports to have similar functions or objects. I find it quite bizarre being here today in my very amateurish way to justify why the government should not be a party to the MAI, the son of MAI, or the multilateral framework for investment now being peddled by the United Nations Conference on Trade and Development. The onus really should be on the government to convince us that any of these treaties are in the interests of Australia, or any other country for that matter. Such a proposition presupposes that people trust the government, and that in itself is a very questionable supposition.

So far the Australian government has failed to do so. There has been a sense of secrecy about the treaty in the early stages, and this is obscene, in my view, as is the comment by the foreign minister that treaties should not be subjected to the vagaries of parliament. More openness by our government in this forum is a positive response, but there is still a lack of trust and a fear that whatever comes out of this committee will not have an impact on the government.

Australia is a pretty fragile nation, but the people are fairly robust because they have always had to fend for themselves and withstand the pressures of being colonial. The economy is fragile and that fragility spills over into mock robustness within our political systems. Not since Prime Minister Hughes has there been a leader in Australia who stood up for Australians. His famous response to President Woodrow Wilson at the Paris peace talks in 1919 has not been matched since. We have become a nation led by appeasers and we have become dependants.

Only recently I believed that until we were financially independent we could not be politically independent. Now I know that we can never be financially independent until we are politically independent. How can we work towards financial independence when since 1962 the manufacturing gross product has steadily fallen from 62 per cent of GDP to 14 per cent in 1995-96? One of the effects of this is the loss of dignity of the skilled and

semiskilled work force in manufacturing, where the percentage of total employment has fallen from 26 per cent to about 13 per cent in the same period.

Just in the June quarter of 1997 there was a marked increase in foreign debt attributable to foreign investment in Australia. The net liabilities of Australian residents at June 1997 were a massive $307.46 billion. In the 1980s Australia had the highest inflow of direct foreign investment of all the developed market economies measured as a percentage of GNP. It now has the highest levels of foreign ownership of its economy of all the developed markets, with net foreign liabilities of 59 per cent of GDP, making Australia the second most indebted country in the world after New Zealand.

Fifty-five per cent of transnational corporations operating in Australia paid no tax in 1995-96. This was amplified in *Hansard* on 7 April 1998 in questions on notice. Again, it is reported that foreign investors, including the owners of US food giants Kraft and Campbells, are paying an average 1.2 per cent on Australian profits of $12.8 billion. The ATO estimates that it is losing about $2 million a year through tax concessions to foreign owners.

With the establishment of the FIRB in 1976, it was found that the successive wave of foreign investment constituted the selling of Australia and locked us into a new corporate world economic order created by the explosion of a few hundred transnational corporations with headquarters in the USA, the UK, Europe and Japan. Hence our continued colonial status. The new global capitalist class has emerged which dictates economic transnational practices, forming a triple alliance of host states, transnational corporations and elements of the indigenous elite.

We can be stripped bare as an exploitable resource for predatory transnationals. What we have, ideologically, is one political party with two right wings. This really started back in Dunbarton Oaks in 1944 and led inexorably to the Lima round of discussions by the United Nations General Conference in 1995. Lower tariffs resulting in the transfer of expertise and technology to developing countries at Australia's expense have made Australia fall further and further behind.

I argue that the establishment of the United Nations in 1945, the General Agreement on Tariffs and Trade in 1948 and upon GATT's being subsumed within the World Trade Organisation in 1995 that the process to one world economic order has been one of gradualism that was nevertheless aimed at being set in concrete in the sole interests of a few large multinational organisations and not in the interests of the people of the world in general. The present Asian economic crisis and the bail-out by yet another UN organ, the International Monetary Fund, sets the seal on the economic dependence of nation states.

The government and the opposition are supportive of the MAI. The Leader of the Opposition has said that Labor's policy has stressed the need to set limits on foreign

investment in sensitive sectors of the Australian economy. Such a caveat is not feasible if Australia becomes a signatory.

ACTING CHAIR—Mr Downey, could I get you to recognise the word 'brief' and speed it up a bit, please?

Mr Downey—Yes. I have many examples of the way in which NAFTA, on which the MAI is based, is being used by the United States. For example, I refer to cases against Mexico and Europe. With the United States as the driving force behind the United Nations for one world government there is little chance for the likes of Australia, that is, unless we take a stand now and become a permanent neutral nation, which would prevent us from taking part in the political activities of the United Nations and provide not only a basis towards self-reliance but also a framework for political and economic stability for Australia and for our region.

ACTING CHAIR—Mr Edwards, could you also state the capacity in which you appear before the committee.

Mr Edwards—I am appearing as a private citizen. I will table an expanded version of my opening address, and you can feel free to print it.

Resolved (on motion by **Senator Cooney**):

That the document be received as evidence and authorised for publication.

Mr Edwards—I will be as quick as I can, although I did not count on being part of a triple-header. I wish to begin by talking about our failed Clayton's MAI. I start with the proposition that historical reality is often a far better teacher than half-baked theory. For about 15 years we have run a self-imposed de facto MAI. It has been a little watered down, but that is all. The results are nothing to be proud of at all. By 1996-97, our net foreign indebtedness had reached $307 billion, or 60 per cent of GDP. That is net equity plus net debt. The consensus forecast for this year's current account deficit—our independence index—is some $30 billion.

So far, governments have tried two main remedial strategies to solve the current account problem. We were first told that we would export our way out—the J-curve and so on. I predicted in 1985 that that would not work. It has not worked and it will not work. The next strategy we were told about is government debt reduction. The result of that in 1996-97, if you use the original data, is that debt rose some 10 per cent. Instead of using, say, article XII of GATT—primage duty—we have embarked on a program of selling off the family silver, which will be very much to our detriment. Unfortunately, the bulk of sales were to foreign interests, and those foreign interests have borrowed very heavily, thereby sending up the current account deficit further.

I suggest that we try looking at foreign ownership reduction rather than things that facilitate foreign ownership. In fact, foreign ownership is causing a great deal of the net income deficit, which is the key factor in the current account deficit. I remind you that any financial adviser who told you that you could become permanently wealthy by selling off your productive assets would be drummed out of the corps.

You hear a lot about the benefits of foreign ownership. I will tell you about some of the disbenefits. First of all, the dividends and royalties feed directly into the net income deficit, and hence the current account deficit. Foreign investors, when they buy our assets, have been borrowing heavily. For example, by the time they had sold $18.5 billion worth of the Victorian power industry, the borrowings had amounted to $11.5 billion, mostly in syndicated foreign loans. That is massive gearing of 164 per cent. That is the debt to equity ratio. Approximately 85 per cent of purchases are to buy existing assets in Australia, with very little going into high value adding greenfield development. Often the foreign owners will not export. A recent example is the proposed trade sale to foreign insurance companies of HIH Winterthur, quite a successful Australian insurance company. They wanted to buy it on the condition that they could sell off its overseas operations, which contribute 40 per cent of its business.

From my reading of the transcript so far, I believe that Treasury has failed very badly to look at the negatives. It has done no proper cost-benefit analysis. I believe also that the MAI would make a cure of our problem difficult, if we accept that we have to roll back some of this foreign ownership. For example, I believe that standstill and rollback would make it difficult to reverse the excessive foreign ownership we have.

You have probably asked for details. However, my view is this: if I believe that murder is wrong in principle, don't ask me about the details; I don't want to know how to do it or tell you how to do it. I believe the MAI is wrong in principle. It is based on a one size fits all theory. It has been heavily criticised by people such as Sir James Goldsmith, now dead. That theory is primarily suited to powerful fully developed countries, of which Australia is not one. It pits the strong against the weak under conditions very much favouring the strong. The discrimination, so-called, which it speaks of is one of the few defences that weak countries have to protect themselves against strong predators. One thing that I find quite surprising is that it mentions no upper limit on foreign ownership in countries. I find that quite surprising.

In relation to the dubious benefits of this MAI, from my reading of the transcript I would say that Treasury's claim is apparently based on blind faith and a set of hollow abstractions, to put it kindly. I will give you some of the facts. In relation to employment, the top 200 corporations in the world produce 28 per cent of global GDP. They employ 0.75 per cent of the global work force. That is a big disparity. In relation to claims of an improved standard of living, I point out that the wages of the average US worker in real terms, in the last 20 years to 1993, fell 16 per cent, and that is during a period of globalisation. We are seeing similar sorts of things in Australia, although not quite the

same.

In relation to the problematic details of the MAI, I believe the national treatment provision will limit our ability to boost locally owned industry and to reverse excessive foreign ownership. The performance requirements aspect will limit our ability to demand the things we need to demand in order to fix up the current account deficit. Those things include demanding exports, a reduction in debt and the use of local suppliers, just to name three of them. I think the element of expropriation could spawn a plague of litigation. That is partly due to the very broad definitions of 'investment' and 'expropriation'.

The point is that we need flexibility, but if we sign this thing we will be tied into black letter law for a minimum of 20 years. I think that is boxing yourself into a corner. In relation to the political consequences, which I am sure you are interested in, I believe the situation in Australia today is somewhat akin to that in 19th century China, with our country being economically colonised at a very rapid rate. Many Australians are now asking themselves whether their elected representatives are really mouthpieces for overseas interests as opposed to furthering the interests of their own people. In short, a quantum change in mindset will be necessary to avoid crushing political defeat.

If you seek some comments on the fifth protocol later, I will be quite happy to deliver those.

ACTING CHAIR—Mr Gierke, would you like to make a very short opening statement, and state the capacity in which you appear?

Mr Gierke—Yes. I will be only about five minutes. I am a member of Queensland for a Constitutional Monarchy Incorporated. I am making this statement by direction of the state council of that organisation.

Firstly, I would like to respectfully agree with what you said, Mr Chairman, regarding the improvement in the treaty making powers in the past two years. However, the society was disappointed that there was no look at the external affairs power, the way the treaties are made and how that affects the constitution made at the last Constitutional Convention. The society feels that section 61, which is where the royal prerogative is exercised, can be done very flippantly—I am not saying in this case; it has improved—but the opportunity is there. The society feels that, already, through what Brennan J., as he then was, said in the Mabo case, the fact that the Commonwealth has entered into a treaty affects domestic law. This was also followed up by the High Court in Teoh's case.

At the very least, a treaty is moving to the stage where it can affect Australian domestic law. I do not say that is crystallised definitively at this stage, but it is moving that way in the High Court. There is no doubt that, if the Commonwealth enters into this treaty, the Commonwealth can then pass legislation as distinct from making a treaty that can override the states and the local government authorities. I think that this is why the

whole process of exercising the royal prerogative is a false situation. No real adversarial political debate occurs regarding the treaty. It is all consultation—'We have consulted you and, therefore, we go ahead and do it.' I do not think that there is any substitute in our society for real, active adversarial political debate. This is one of the things that I feel that this consultative process misses.

With regard to the legal side, section 75(1) of the constitution gives to the High Court in its original jurisdiction all matters arising under any treaty. This treaty that we are contemplating has its own special situation where disputes can be taken off to this committee. That is another ground where we would be against it on the basis that you are putting up another legal tier for certain people in society, certain people who are operating. We feel that it is against the constitution for a start to even contemplate another judicial system running throughout Australia. It is on that basis also that it is distinctly against the constitution.

In any real adversarial situation, a case should be made out for those, by those, who want this treaty. I have read what Senator Kemp has said. He said, 'So-and-so and so-and-so, we will not go against Australia's national interest.' Nothing has been given positively to say that, 'Yes, the net benefit to Australia is going to be such and such.' He mentions that Australians can invest overseas. We have nothing to quantify how much Australians can invest overseas and we have got nothing the other way. He also says, 'We will lodge exceptions to protect current policies.' Does this mean that Australia is going to give up having its own initiative in other policies? We are talking about contemporary policies; we are not talking about developing future policies. We would feel that it is important that Australia has the ability to develop future policies. There is nothing in Senator Kemp's statement to look after that at all. Then he talks about, 'We will lodge exceptions.' If you take the lack of positive reasons why we should move into the treaty, why should we even be here today? No case has been made out to show that it is going to be good for us. We are forced to come along and argue against a case that we cannot really grasp.

I feel that this consultative process should go on until the government, if that is the government's will, is contemplating a draft treaty and then distribute the draft treaty and continue with this consultative process so that we who are opposed to it can request then to particularise our objections to various parts of it. I think that is terribly important: the net benefits should be made out and the other side of it should be put, 'This is how you are going to benefit. We are going look after you by one, two, three, four, five, six and seven and it is all set out in the constitution.'

The other thing from looking at the interim report that really frightens me, beside the fact that the treasury department has not really put in an adequate submission, is that there is nothing from the Commonwealth Attorney-General's Department to show how this is going to affect the Australian constitution. The society feels that it is terribly important that people should be informed of how signing this treaty has the ability at the instant

moment or in the future—not necessarily by this government but down the track in 5 or 10 years time—can alter the whole of the Australian constitution without any consultation with the Australian people. I think that it is derelict of state governments that they have not been to the fore in putting their submissions to it.

In conclusion, Mr Chairman, I would say that it may be that they are like a lot of us in that they have not seen the hard copy or what looks like moving into being the hard copy of the treaty, and they are waiting for that to crystallise. I urge the committee to continue with the consultative process and give people the opportunity before the final draft is given to the Executive Council. As I see it, the treaty would be signed off in the Executive Council and it would not necessarily even have to go to a cabinet meeting. Thank you, Mr Chairman.

ACTING CHAIR—Thank you very much, all three gentlemen. I have a couple of very quick points and then I will offer Senator Cooney the chance to ask a question. The committee certainly has not lost sight of the effect of our quite unique constitution and the way that our constitution, in fact, can affect our nation as a result of any treaty that we have to sign. That is the one thing that has not escaped the committee's gaze. As far as the government convincing people that we should be signing this is concerned, it has certainly been a challenge to Treasury officials all the way through. The Treasury officials have yet to give us an adequate explanation of what is in it for Australia before we as a committee recommend to parliament one way or the other. So I guess that a lot of what you have had to say we have certainly been arguing as a committee. I think that is a fair representation of our work to date. Nevertheless, Senator Cooney, do you have any questions?

Senator COONEY—I must say that most of the witnesses we have heard from seem to be opposed to the concept. The Business Council of Australia said that it did two things that helped a little with capital coming into Australia but, more importantly, it would help Australian business to invest overseas. Have you got any comments on that?

Mr Gierke—I missed that last bit.

Senator COONEY—Invest overseas.

Mr Downey—Australians do invest overseas.

Senator COONEY—Certainly. What it says is that this would help more. Unless this treaty is signed, Australia might not have as full an opportunity as it otherwise would of investing overseas. Have you got any comments about that?

Mr Downey—I rather take the point of Heather Prendergast's submission from the NTN in Laos as being a case in point. Australia is investing in a project there that will possibly destroy the social fabric and the environmental fabric of the area where she is

working. That sort of investment is probably not terribly good. I suppose the other interesting thing is that the Australian society—or whatever it is—of investment that has recently been formed admits that it has $400 billion of Australians' money for investment. Most of that is being invested overseas. We also have to take the fact that $320-odd billion goes into superannuation funds in Australia and there is no government desire to have any of that money flowing into the infrastructure of Australia as Canada has from its superannuation funds. That is $17 billion a year. Surely we can make ourselves a little bit more self-reliant and supportive by the use of Australians' money.

Mr Edwards—Could I comment on this? To begin with, the question of this investment flow is a question of balance. It is a question of the pluses less the minuses. At the moment, foreign investment into Australia exceeds investment out of Australia by something like $100 billion or so. So, on balance, the freeing up affects us more on the deficit side than on the positive side. That is for one.

I think also, as I have pointed out in my introductory remarks and in this 46-page thing that I tendered to the committee originally, so far the disbenefits of the liberalised flow have been very clear. We have had, and I do not know how much more you can have, over a fairly extended period something like 15 per cent to 16 per cent per annum compound growth in foreign investment into Australia. Look where it has got us: I have never seen the country in such a mess as it is at the moment.

Senator COONEY—As far as investment into Australia is concerned, the Business Council agreed that it was fairly free at the moment and that this would not make a great deal of difference. It was this issue of investing overseas that it seemed to stress. You have answered the question from what you have said so far, but do you want to develop that issue?

Mr Edwards—A couple of things I would say. First of all, in most of the OECD countries we get a fairly open go—not totally, but a fairly open go. The real targets, of course, are the developing countries. I disagree with some of the remarks that were made about how you need an MAI to stop them changing the rules once you are in there. In my opinion, you do not need an MAI to do that; you need something else much simpler, and if you do not like their rules do not invest there. The thing that I would remind you about a lot of these developing countries is that they have been exposed to colonisation before. For example, the Chinese ended up having to have revolutions to kick out the foreign investors. I just remind you of that. I could say more, but I think that I will let it rest at that.

Senator COONEY—Perhaps one other issue that we ought to raise is that it was said not only by the Business Council but by others that this does not give overseas capital an advantage; it simply gives it an equal status with local capital. There are two questions I want to ask about that. Do you agree with that proposition?

Mr Edwards—No.

Senator COONEY—How do you say that this advantages the overseas capital compared to the local capital?

Mr Edwards—In a couple of primary ways. Fundamentally, it is a question of purchasing power. Our purchasing power is very unequal with the purchasing power of overseas countries. That is due primarily, I suppose, to the current account situation that we find ourselves in and, in particular, its effect on the Australian dollar. With a very weakened Australian dollar, it is very easy for them to come in and pick us off. There is very little that we can do about it when they are in the process of doing this. Until we reverse the foreign ownership thing, we are not going to get anywhere. By the way, I remind you that the Business Council of Australia includes a lot of overseas transnationals among its members.

Senator COONEY—They did not deny that, I do not think.

Mr Edwards—No.

Senator COONEY—So you say that as a matter of reality—

Mr Edwards—It is a matter of reality.

Senator COONEY—Can I qualify that? As a matter of reality, having the same Australian laws applying to local and overseas capital nevertheless gives overseas capital an advantage in Australia?

Mr Edwards—It must, because it is like putting Evander Holyfield in the ring with an amateur flyweight. We know what the result will be.

Mr Gierke—Senator, the proof of the pudding is in the eating. One only has to look across the Australian economy to see how successful overseas companies are investing in this country. If it was not a good climate for them, they would not be investing and they would not be continuing to invest. As I see it, they must think as business decision makers that they are on a good thing by coming here. All I can see is that the Business Council wants to make something that is very good even better. With regard to Australians going overseas, there is no reason why we cannot have bilateral agreements with particular countries. The other side of the story is that a lot of these overseas companies that come here take over various Australian businesses that are already established and then limit the right of Australian companies that they have taken over to export. That is the other side of the story that you can deal with only internally in Australia. You do not have rights then to export overseas. So that is a disadvantage of this question of foreign capital. In relation to the statement that you made from the business council, they should give further and better particulars before that sort of thing is thrown

across to us to answer. They should particularise where it is they are at a disadvantage and then we should be called on to answer.

Senator COONEY—Thank you.

ACTING CHAIR—I might just take up one of the points that Mr Edwards made with regard to the de facto MAI through, I guess, weak FIRB mechanisms.

Mr Edwards—A two per cent to three per cent knock-back rate.

ACTING CHAIR—That is what I was wanting to drag out from you. In a very quick way, are you suggesting then that, currently, Foreign Investment Review Board mechanisms are not applying a 'What's in it for Australia?' approach?

Mr Edwards—Not that I can see, no.

ACTING CHAIR—It would be a little beyond the direct brief of the committee to get into that, but the fact that you have raised it perhaps gives us the opportunity to look at that in our report.

Mr Edwards—I will raise another thing, then, too, and that is the ACCC has been an impediment as well. I will give you an example of that. The Australian listed company Wattyl wanted to take over Courtaulds' assets in Taubmans. Despite Dulux—or perhaps ICI—at the time being the biggest operator, the ACCC said, 'No, you cannot do that. It will lessen competition.' It forced Courtaulds to look elsewhere. They did look elsewhere and they found some South African buyers. So we were not allowed to sell it to Australians but we were allowed to sell it to South Africans. Apparently, that is better than selling it to Australians.

ACTING CHAIR—Have you ever done any work on the number of jobs created by foreign investment versus the jobs that might not be created if Australian investors could not take up the slack of foreign investors?

Mr Edwards—No, I have not, but I would say this: seeing that approximately 85 per cent of the foreign investment is to buy existing companies, basically all you have got is a transfer of ownership. I do not see how that really creates jobs in most instances.

Mr Downey—And the consequent downsizing.

Senator O'CHEE—I thought that China's problems in the 19th century arose from the fact that at the beginning of the 15th century they shut themselves off from the rest of the world. Did not that happen at the beginning of the reign of the fourth Ming emperor? They decided to shut their door on the rest of the world.

Mr Edwards—I am not an expert on Chinese history.

Senator O'CHEE—Was it not the case that, in the reign of the third Ming emperor, they had the biggest empire in the world and they decided to close it down? Then they were incapable of dealing with technological change.

Mr Edwards—I cannot tell you that. What I can tell you is that at one stage the British, the French and the Americans—this is my understanding, at any rate—actually administered Shanghai and that on one occasion at least the British went into China to defend their merchant houses there. I would hate that sort of thing to happen in Australia.

Senator O'CHEE—I think in history it is always dangerous to look at things without looking at the causality.

Mr Edwards—I totally agree with that.

ACTING CHAIR—One last question, Mr Downey. You have raised a quote from the Minister for Foreign Affairs.

Mr Downey—Yes, 5 March in *Hansard*.

ACTING CHAIR—In what year?

Mr Downey—This year.

ACTING CHAIR—Right. In what context did he say that?

Mr Downey—It was in relation to the Multilateral Agreement on Investment.

ACTING CHAIR—All right.

Senator COONEY—Mr Downey and Mr Edwards, you have done a lot of work here. What qualifications or what experience have you had? Mr Downey, you have made it quite clear that you are giving this submission as an individual. If we are going to quote from these, we would like to know what experience these people have had.

Mr Downey—Would you like to know now?

Senator COONEY—Yes.

Mr Downey—I was a regular army officer for a number of years; I worked for the Ford Motor Company in personnel for a number of years; I was a corporate personnel manager at Australian Consolidated Industries—which, by the way, is no longer Australian Consolidated Industries but BTR, or it has been split off to Owens, Illinois—for a number

of years; I was a permanent head in the Victorian government for a number of years and a senior petty despot in the Queensland government for a number of years before my retirement.

Senator COONEY—Since your retirement, you have no doubt kept up with all these issues?

Mr Downey—Yes.

ACTING CHAIR—On behalf of the committee, I would like to thank you very much for appearing. Mr Downey, I know that you paraphrased a lot of your opening statement. Would you like to submit your statement?

Mr Downey—Yes.

Senator COONEY—Mr Edwards, could you please give your qualifications to the committee later?

ACTING CHAIR—Perhaps you would just submit those to the committee so we can have a brief understanding of your background.

Resolved (on motion by **Senator Cooney**):

That the document be received as evidence and authorised for publication.

ACTING CHAIR—Thank you very much for appearing before the committee today. Your assistance in this matter is greatly appreciated. We will now move on to the Queensland Conservation Council.

[10.42 a.m.]

BOOTH, Dr Carol Jeanette, Chairperson, Queensland Conservation Council, PO Box 12046, Elizabeth Street, Brisbane, Queensland 4002

PATERSON, Emeritus Professor Hugh, 74 Marshall Lane, Kenmore, Queensland 4069

ACTING CHAIR—We welcome the representative from the Queensland Conservation Council here this morning. Professor Paterson, could you please state in what capacity you appear?

Prof. Paterson—I am a retired professor of entomology. I appear in a private capacity.

ACTING CHAIR—Submission 851 has been submitted to the committee this morning.

Resolved (on motion by **Senator O'Chee**):

That the document be received as evidence and authorised for publication.

ACTING CHAIR—Thank you. Would either or both of you like to make an opening statement?

Dr Booth—I think we both will, because we are not collaborating here. A number of environmentalists have said that environmental groups should drop everything else and look to fight this proposed MAI because it has such disastrous implications for the environment. Although we have not done that, I would have to agree that it has the potential to severely imperil the capacity of governments to regulate for environmental protection. Environment groups find it objectionable on a number of levels. One is the simplistic assumptions which underpin the MAI. I think you have to really examine the assumption that unfettered investment in the end leads to better environmental outcomes. I think there is a lot of evidence to show that that is not the case. We object to its intent, to the fact that it gives so many rights to international investors without extracting any obligations. At the very least, there have to be binding obligations to protect the environment. We object to many of the provisions. I will just briefly go through these objections and say why they are a problem.

As to the provisions about national treatment—the language is all about non-discrimination and a level playing field—we are not convinced that countries should not have the means to treat their own investors differently from foreign investors. For environmental reasons, there are often very good reasons for treating domestic investors differently from foreign investors. As it is, in many cases the proposed MAI discriminates

in favour of foreign investors. You can see that in some of the examples of actions that might be allowable under the MAI. We understand that seemingly non-discriminatory environmental regulations could actually be interpreted as discriminatory, because it is not the actual reading of the regulation that is considered; it is the actual impact. In some examples, the impact of a regulation could be seen in some readings to discriminate against foreign investors. For example, laws that place limits on the expansion of extraction industries could discriminate in their impact against foreign investors, because foreign investors could argue that they have not had the same opportunity as domestic investors to invest in those industries.

ACTING CHAIR—You would agree that the mechanism for them to protest that is our constitution and through the High Court, because of the way this foreign treaty would impact and be challenged through the High Court?

Dr Booth—They could challenge it beyond—

ACTING CHAIR—That would be a natural consequence of what you are saying?

Dr Booth—Yes. Then, of course, they would have other means to challenge through international tribunals.

New technology standards or stricter pollution restrictions may be challenged as de facto discrimination if they have a greater impact on foreign investors. Conceivably, foreign investors could challenge certain regulations as discriminatory if they were specific to industries which were dominated by foreign investors. If there are different environmental regulations in Queensland and New South Wales, there is also the question of whether investors could demand to have the best regulation apply to them.

In relation to performance requirements, there is also latitude in this provision for foreign investors to challenge certain environmental regulations. There was a proposed environmental exemption but that has been bracketed. It is said that most countries do not agree with that. There are a number of ways in which the prohibition of performance requirements might discriminate in favour of the foreign investors. For example, investors could make allegations about the requirements that certain extraction techniques or particular equipment be used as a performance requirement in certain conditions, the requirements to use a certain domestic supplier whose products meet high environmental standards, the requirements that place restrictions on the export of natural resources and the requirements to undertake a certain amount of research into improved environmental technology.

The expropriation and compensation provisions are very concerning. They represent the potential for foreign investors to challenge existing and future environmental legislation and demand compensation for any regulations or actions which reduce their profitability. We can imagine what impact the threats of such challenge to our regulations

might have on governments deliberating on certain environmental regulations. The problems with the expropriation provisions are in the very wide definition of 'expropriation'. It gives such scope that possibly changes to the conditions of a licence or permit could be deemed an expropriation and have to be compensated. The exceptions—for example, the exception that it has to be for a purpose that is in the public interest—will not necessarily preclude foreign investors from challenging legitimate environmental regulations, because, obviously, what is in the public interest is a very arguable matter. Measures that are taken under the precautionary principle may not stand up when challenged. The exception, which has to be on a non-discriminatory basis, might not preclude challenge in certain instances. For example, if a particular industry or subsector of an industry was dominated by foreign investors, they may argue that the measure affecting them was discriminatory because it was more difficult or expensive for them to comply with than domestic investors. We object to the dispute resolution mechanisms and also object very strongly to the whole approach to exceptions. We are very disturbed that there are not even any environmental exceptions proposed and also to the whole approach that they are subject to standstill and rollback. It does not offer any protection really. I will leave that there as my opening statement.

ACTING CHAIR—Professor Paterson?

Prof. Paterson—I wish to draw attention to just two matters where I perceive a particular danger for Australia should the MAI be agreed to. These are fishery management and quarantine against veterinary agricultural pests and pathogens. I believe that the dangers that I foresee arise from the desire of economists to free trade to the greatest possible extent. My plea is that no MAI be signed without comprehensive discussion with experts from the industries concerned. I will deal first of all with the fisheries management question.

The need for fisheries management arises from the desire to sustain the harvesting of marine animals and plants such as tuna, sharks, rock lobsters, et cetera. Management is most efficiently achieved by limiting the number of licences issued. This raises the possibility of one person buying up licences and so ending up with a monopoly of the whole industry if sufficient funds are available. That is a real danger when this is a multilateral or foreign investor. The management is most efficiently achieved, as I say, through the issue of licences. Quotas are nearly impossible to regulate. Net and fishing methods can be regulated and are useful; however, these methods are very difficult to implement even within our national limits. Under the provisions of the MAI they may be impossible because of the threat of litigation.

I draw attention to the current negotiations with Japan over the maintenance of bluefin tuna stocks. I also draw attention to the international attempts to limit the exploitation of whales in the face of concerted opposition from certain nations. I also draw attention to the pressure put on our navy to maintain the rules we have set to manage our fisheries. The threat of litigation under the MAI will considerably further hamper the

already very difficult task facing those whose duty it is to ensure sustainable exploitation of the sea. I may point out that freeing regulations and treating foreign companies equally with our own will affect other natural resources besides fisheries. I think my colleague has covered that, so I will not continue with that. Fish and other animal and plant populations do not recover readily when significantly set back. Many Atlantic fisheries are showing little sign of recovery after the exploitation of the recent past.

Under quarantine we have other sorts of pressures. Economic pressure for open and free trade has other dangers for our fisheries as well as agriculture and horticulture. I am referring to the economic pressures for the importation of chicken meat, fish, beef, mutton and grains as well as live animals without due quarantine cautions. There is a general and highly dangerous pressure to limit quarantine regulations by individual countries as these are perceived to be an obstacle to free trade. Without consultation with experts, the last federal government reduced the quarantine control at our ports as a cost-cutting measure in 1988. I am not sure how much money was saved by this, but the cost to the country of the recently imported papaya fruit fly is so far estimated to be $35 million. It is not yet eradicated. I draw attention to the very real danger of importing pathogens with meat and fish, pests with imported plant material and devastating weeds with grain that has been inadequately quarantined. I draw attention to the forced slaughter of millions of chickens and ducks in Hong Kong in relation to an influenza strain of these birds, which had the potential to transfer to humans. The importation of newcastle disease with chicken meat would be equally devastating. Then there is the recent case of the slaughter of cattle in Britain and a ban on the exportation of British beef incurred by the threat of the prion disease bovine spongiform encephalopathy, known as mad cow disease and thought to be related to the human Creutzfeldt-Jakob disease. There are also examples on record of the obligatory slaughter of thousands of horses following the importation of horse sickness into, for example, India.

As an island, Australia has kept out many diseases, weeds and pests through quarantine. No free trade agreement such as the proposed MAI should be agreed to without the most detailed consultation with agriculture, fisheries and veterinary authorities. No reduction in either our powers to manage our fisheries and other biological resources or our quarantine procedures should be considered. These rights are vital not only for our own welfare but for our responsibility to help feed the world's rapidly expanding population. The rights that we need to reserve must be permanently protected and not subject to sunset clauses. In the past, the benefits from management and quarantine have depended on the world-class expertise, which cannot lightly be dispersed and disbanded. It takes years to recover from such ill-informed actions, during which time we are wholly vulnerable. I am not an expert in these areas, but I am experienced and informed enough to know the dangers that relaxation of our present controls will lead to if we succumb to pressures other than scientific ones.

ACTING CHAIR—Thank you very much, Professor Paterson. You have probably taken the MAI to the absolute degree. I am certainly not here to defend it, but I suspect

that it is more about flows of money than produce. One would hope that, unless you feel otherwise, some of those things you have raised will never occur here in Australia.

Prof. Paterson—Yes.

ACTING CHAIR—Do you see, though, that the MAI as an investment mechanism, for example, a flow of money mechanism, would in fact cause some of those things?

Prof. Paterson—I can see our fisheries, for instance, changing very significantly from their present Australian owned position to total ownership overseas. I think there is a real danger. Most fishery companies are small, and entering into litigation is not an easy matter for them, unlike the situation for a large country. I can see pressure on governments to reduce quarantine regulations.

ACTING CHAIR—On the basis of saying, 'Investment won't come if you have these quarantine regulations'?

Prof. Paterson—Yes. For instance, we have seen the row over the right to import grains or chicken meat freely into the country.

ACTING CHAIR—As a second string to somebody's investment; is that what you are trying to say?

Prof. Paterson—Yes, some company overseas with an interest in expanding its market to include Australia. Bypassing the quarantine and the control mechanisms we have in place would be disastrous.

Senator COONEY—Dr Booth made the same point as far as litigation goes, that is, those who would be litigating against Australia would have a lot of funds.

Prof. Paterson—Exactly.

Senator COONEY—Dr Booth, thank you for your submission. It was very comprehensive. What is your background? What are your qualifications, Dr Booth? I take it that you have been with the council for a while?

Dr Booth—I am with the Queensland Conservation Council as the chair. I have been with it for a couple of years now. Before that I was a scientist, a journalist and an English teacher.

Senator COONEY—Okay. And you have taken a very deep interest in this area, and so has the council; is that right?

Dr Booth—We have had a Queensland election to fight recently so we have not given a lot of attention to it, no. But it is something that concerns a whole heap of environmental groups.

ACTING CHAIR—You have mentioned a GATT provision in your submission. To which particular provision in the General Agreement on Tariffs and Trade were you referring?

Dr Booth—Where was that?

ACTING CHAIR—I just had it in my notes to ask you which part of it you were referring to. You might like to come back to the committee on that. In the second paragraph on page 3 of your submission, which deals with the MAI and the environment, the words 'not that the GATT provision' are used. Perhaps you would like to clarify that with us at some point and take that on notice?

Dr Booth—Sure.

ACTING CHAIR—Are there any particular resources or industries that the QCC would want Australia to retain ownership of, apart from the obvious Australian national interest to retain ownership of all of our resources and industries? Are there any in particular in respect of which you would not like to see foreign investors having control?

Dr Booth—We have not approached it in that way, that is, by saying, 'Australia should retain ownership.' As a general principle, in many instances you have much greater control over resources if they are in domestic ownership. As it is, there is already a very liberal investment regime in Australia. I think we would be more concerned to have binding environmental legislation which means that whoever is investing is bound to abide by it. I think it has much greater implications for developing countries.

ACTING CHAIR—There are already some companies investing in Australia that have bad reputations overseas.

Dr Booth—Yes, and we should have the means to say, 'No, we don't want your investment here because you have a bad record.' We should have that means. With the MAI, there is no capacity for that at all.

ACTING CHAIR—This is assuming that this draft agreement were to go ahead. We have been looking at some of the exemptions being put forward. You say that no environmental exemptions or reservations have been submitted. What sorts of reservations should be submitted by Australia?

Dr Booth—A very general reservation covering existing and future environmental regulations. I would also encourage—

ACTING CHAIR—Are you saying that if it was too specific it could be challenged but if it is general—

Dr Booth—Yes. Also, if you do it by that means, as you know, it is subject to rollback, so it does not give us any security at all really. Also, it has been suggested by a number of groups that it should have binding exemptions for the environment which cover all environmental regulations in existence and those in the future, for example, those covered by the Rio declaration and agenda XXI. They should ordinarily prevail over the MAI.

ACTING CHAIR—Do you want to do some more work and come back to us to outline some of the provisions that are causing you some concern with respect to the existing multilateral environmental agreements, such as the Kyoto protocol, the Montreal protocol, the biodiversity convention and those sorts of things? Are those the sorts of matters that you would be concerned to see undermined by the MAI?

Dr Booth—Sure. Yes, that is one of the concerns.

ACTING CHAIR—If there is any additional work that you want to do on that, please come back to us later with that. I do not think the committee would be against receiving any supplementary submissions.

Dr Booth—I think a number of environment groups have done some work on that, even if I do not have the information.

ACTING CHAIR—The task of this committee is to try to gather the evidence to challenge the government, as in the bureaucracy, that has been negotiating this thing for umpteen years now without many of us knowing anything about it. We are discovering a lot of things ourselves through the committee process.

Dr Booth—Have you considered the environmental implications yet?

ACTING CHAIR—We certainly are considering all the implications. We are taking all submissions very seriously. Any additional evidence that you can give us will add to the strength of our arm in saying to the officials, 'Look, please explain. What's in it for Australia?' That would be of great assistance. The ACF will be appearing before us on 14 August when we hold public hearings in Canberra.

Dr Booth—One of the approaches I took was to put up a number of possible scenarios. I think it is up to the proponents of the MAI to say, 'No, these scenarios are not possible under the MAI.' We have to exercise a little imagination to come up with these scenarios. Maybe we should do a bit more of that.

Senator COONEY—Do I understand you correctly when you say that the

reservations ought to include a general one as far as the environment goes so that if this treaty were to ever come into operation and impact on the environment adversely in any way there could be a capacity by the relevant government to do something about it?

Dr Booth—Definitely.

Senator COONEY—So it is not the specific treaty that you are worried about; you have an overriding concern that this should not in any way impact on environmental preservation?

Dr Booth—It should not affect the capacity of governments to enact and enforce regulation to protect the environment. The proposed MAI certainly looks like it will inhibit that capacity.

ACTING CHAIR—I suspect that probably a lot of people, including a lot of people in this room, would suggest that you could substitute the word 'environment' for just about anything else as well.

Dr Booth—That is right.

ACTING CHAIR—Professor Paterson, in your submission you have raised a lack of protection for Australian workers. Are you suggesting that there are some grave implications because Australia is only one of four countries which has not noted the rights and protection of workers as being something worth noting as an exemption? Can you expand on that a bit? Are there other OECD countries which have not protected the rights of their workers as well?

Prof. Paterson—I am not sure of that. What I had in mind was—for instance, we saw this with the recent strike by dock workers—the mooting of importing foreign workers to run industry. I do not see why it would be limited to that and why it should not be a more general phenomenon. When local workers are concerned about something, why would they not be replaced with foreign workers? I am sure that could be argued under free trade. I am sure a case could be made for that. That is what I had in mind.

ACTING CHAIR—I do not expect you to be a constitutional lawyer. I am not a lawyer by trade; that is why I have such clear eyes. I am wondering why you are so fearful of that. Again, it comes back to our wonderful constitution and the fact that it is unique. If we sign up to international agreements, there is a mechanism in our constitution for people to challenge through the High Court.

Prof. Paterson—Yes. There have been a lot of problems in the past in the world. For instance, in Mauritius as soon as slavery was abolished the local sugar planters went to India and imported hundreds of people off the streets of India as workers to undermine the provisions. Under conditions of trade, I feel this sort of thing is not impossible in the

future.

ACTING CHAIR—Thank you both for appearing before the committee today. Your contribution is greatly appreciated.

Dr Booth—So Senator O'Chee is not interested in the environmental implications?

ACTING CHAIR—I think he had something that called him away for a moment. I am sure that could be a fair statement.

[11.11 a.m.]

HISCOCK, Professor Mary Elizabeth, Law School, Bond University, Gold Coast, Queensland 4229

McDONALD, Associate Professor Janet, Law School, Bond University, Gold Coast, Queensland 4229

ACTING CHAIR—Welcome, professors. It is nice to see you both here today. For the *Hansard* record, can you please state the capacity in which you appear before the committee.

Prof. McDonald—I appear in a personal capacity.

Prof. Hiscock—I appear in a personal capacity.

ACTING CHAIR—Would either of you like to make a brief opening statement?

Prof. McDonald—I think we will both make brief opening statements. I will commence, because most of my comments flow directly from the issues raised by the Queensland Conservation Council, and I do not wish to duplicate the comments that Dr Booth has already made. In my opening statement I will identify some of the changes that I think need to be made to the MAI in its current draft in order to address many of the concerns that have been raised. I will run through some of those briefly.

I have done a considerable amount of research in relation to some of the things that you were asking Dr Booth about. Subject to the approval of the publishers, I would be happy to provide the committee with the detailed report that I have come up with on some of those questions that have been raised.

ACTING CHAIR—All right. We look forward to receiving that in due course.

Prof. McDonald—The first point is that both the national treatment and most favoured nation obligations need to have some sort of clause inserted, perhaps in stronger terms than the current 1998 chairman's proposals on environment, that refers to the inclusion of 'in like circumstances' language in both of those clauses. There needs to be some recognition in both of those obligations that there may need to be a difference dealing with particular sectors that may be subject to more stringent environmental obligations than other sectors, and there also needs to be some accommodation of differences in environmental regulation at a subnational level. Those are the concerns raised by the QCC. I echo those concerns.

A clause needs to be specifically inserted into the national treatment and most favoured nation obligation. The problem with just putting in an 'in like circumstances'

clause is that it does not really tell you very much about what that means. It may require 'in like circumstances' language plus a couple of interpretive notes to say that sectors can be dealt with differently, they may call for more environmental regulation than other sectors, and subnational governments are entitled to regulate according to the environmental needs of that particular subnational jurisdiction. Some sort of special clause with an interpretive note that explains exactly why the clause is there and what function it is serving is essential.

The April Chairman's Proposals on Environment propose for the expropriation clause an interpretive note to the effect that the expropriations provision is not designed to impinge upon a government's normal regulations or normal regulatory powers. That is an unsatisfactory arrangement. It raises all sorts of questions about what is normal regulation and what is abnormal regulation. If a country decided to take a bold environmental protection initiative that furthered the precautionary principle and so perhaps flew in the face of prevailing scientific evidence but was nonetheless backed up by considerable scientific support, that may well be challenged as abnormal regulation and therefore subject to an expropriation claim.

The expropriation clause is one area in which there is a real risk of foreign investors being treated more favourably than local investors when you view the clause in the context of the dispute resolution provisions and in the context of current constitutional interpretations of what amounts to an expropriation or acquisition as a matter of domestic law. The expropriation clause needs to be much clearer about what it means when it says a government can still engage in normal regulation. That needs to be clarified.

The third change that needs to take place is that there be a broad environmental exception not in the country specific lists of reservations and exemptions but an exception that is actually embedded into the document. In particular, that exception needs to explicitly cover inconsistent measures that may be taken pursuant to a multilateral environment agreement, such as the Kyoto Protocol, the Montreal Protocol, the Basel Convention and so on. It needs to be made clear that that covers a situation where both disputing parties are parties to the MAI, but only one of them is a party to the MEA, and so the obligations are not necessarily equal. It is one of the most common complaints under the world trade regime. Where you have two parties that are parties to both the GATT and a multilateral environment agreement there is no problem, because they will resolve their difference; they will agree to the framework obligations. The real problem arises where both parties are parties to the economic instrument but only one of them has embraced the environmental obligations. That is where the real tension is created.

We need a very clear environmental exception that explicitly exempts multilateral environment agreements or gives them priority. An example of that can be found in the North American Free Trade Agreement. There needs to be a provision that creates a binding and legally enforceable provision requiring countries not to lower their environmental and labour standards in order to encourage investment, but there also needs

to be an exhortatory statement encouraging the upward harmonisation of environmental standards so that you do not just end up with a case of regulatory chill where nothing changes; that is, it does not go down, but it never goes up again.

The dispute resolution mechanism needs to include a provision for civil actions by members of international civil society to even up the balance of investor rights and obligations. I would very strongly propose the inclusion of a binding code of conduct for multinational corporations. At the moment the OECD guidelines are, firstly, non-binding, and even if they were binding they are so weak that they basically mean nothing. It seems to me that the MAI could be turned into quite a useful document for encouraging global environmental improvement if you could start getting the investors, or the actors—the ones causing damage in a country—to improve their overall global environmental performance. It seems to me that the code of conduct would be precisely the way to do that. Finally, special arrangements need to be made for the accession of developing countries, which stand to lose the most both economically and financially from the agreement and which so far have been excluded from the process.

ACTING CHAIR—Thank you very much. Professor Hiscock?

Prof. Hiscock—I would like to make a brief opening statement, which begins firstly by simply re-endorsing the remarks that I made in the submission that was put in to you at an earlier stage. This is simply by way of some focus on those remarks. I would like to begin by putting forward what may apparently be an unfashionable view and that is that I generally am a supporter of liberalisation of foreign direct investment. I really do believe that it does contribute to economic development in its wider sense. I would simply refer back to the OECD survey, which is published under the heading ‘Open Markets’ and which was made available last year.

I believe that what is necessary is that you have a properly crafted international instrument in order to improve the environment, particularly one which is sensitive to situations such as those of developing countries, economies in transition from socialism to a market economy and presently, of course, those that are undergoing reconstruction as a result of the recent currency and banking crises in the region. All of that really leads me to say that, whatever is going to help the liberalisation of foreign direct investment, I do not think it is going to be this. The reason is that I think, basically, the wrong people are doing the job. It seems to me that this is a task for the World Trade Organisation and not for the OECD. I would say that really probably for five principal reasons.

The first one is that the World Trade Organisation has an element of universality, which leads to some kind of international consensus and a willingness to be governed by the participants which, I think, is lacking in the present structure of the OECD. I say that despite the fact that the OECD has taken steps to widen those people who are involved in the negotiation process at present, but I do not think that that goes to the heart of the matter.

The second point is that, if the World Trade Organisation was running this task, it would fit into an established pattern. That would give you the kind of systematic infrastructure which is conspicuously lacking in the current draft of the MAI. It would avoid some of the serious problems of overlap that I see between our stance on the MAI and our existing multilateral and bilateral obligations where I think that there are some clashes and certainly evidence of a good deal of policy confusion among different government departments.

Thirdly, it would be based on the same principles as the present draft of the MAI, namely, most favoured nation, national treatment and transparency. I think those principles are transposed from the WTO to the MAI but they lose a lot in the translation.

The fourth reason, and one which I think is absolutely critical, is that the World Trade Organisation system recognises the position of developing countries. It accepts that, while there may be some consensus about standards of behaviour, some countries will take longer than others to reach them. There are mechanisms to, if you like, encourage the movement in that direction by setting some realistic time frames, maybe as long as 10 years or 15 years, for a country to reach a desired level but not necessarily to have some economically crippling pattern imposed upon it.

Finally, because the WTO is built on the concept of a balance of benefit and advantage, there is a correlation of right and responsibility which, again, I think is lacking in the MAI. I personally feel quite strongly that the Australian position is untenable because we are seeking to take all the benefits as far as we can without necessarily agreeing to any limits on our powers. I feel that that is not the kind of position that we normally hold ourselves out as having in international commerce.

For all of those reasons, I am not totally disturbed by the fact that I think the OECD process will fail. I think that it will follow the pattern of some of its earlier work in this effort: they will come up with a very complicated document that everybody will look at but nobody will ever actually put into force. Our difficulty, I suppose, as a member of the OECD is that, if despite the odds they do succeed, then we have an obligation to put it in force. We may find ourselves living with something very uncomfortable. I believe that we are not taking the possible benefits we could get and we are subjecting ourselves to a lot of disadvantage.

I turn now to two quite specific points and then I will be happy to talk generally with any questions you may have. I have a fundamental problem with the definition of investment, and that is that it does not distinguish between the pre-investment stage and the post-investment stage. I think at a pre-investment stage investors have expectations. They may be well founded; they may not be. If the information is appropriately published, then they should be sufficiently well informed to be able to make some decisions about the actions they want to follow. But once the investment comes into place—whether it is an Australian investment or a foreign investment—then those investors have rights. I think

that it is false to try to treat expectations and rights in the same way. A lot of the problems that we have with things like expropriation, dispute resolution and so on come up because we try to treat arguments about expectations in the same way as we treat arguments about rights. I think that is fundamentally unsound.

It leads then to a problem which is, I think, a legal, moral and political problem. We finish up by having Australians disadvantaged in the investment process in relation to foreigners because of this lack of precise definition of investment. Take the case of a single investor. Let me just give you two examples. One is the sort of policy confusion that arises or is exemplified in the existing draft. Australia is already a party to the ICSID—International Convention on the Settlement of Investment Disputes—and so we have a binding obligation to allow a foreign investor to take a complaint against the Australian government to arbitration under that convention. Yet in our exceptions, as they now stand, we have exempted from the MAI what appears to be a parallel kind of process. I do not really understand quite why on the one hand it is in, when it is something which is, in fact, an obligation that exists and yet if we are contemplating future obligations we say, 'No, it is out.' I would like to know the process of logic that justifies that sort of thing.

Secondly, I think we get into a difficulty with our own internal system in treating Australian investors or foreign investors within Australian law. As you are very well aware, the FIRB is excluded from the usual administrative review process; it is quarantined from that. But there are still avenues available within our legal system to take action in relation to inappropriate behaviour by Australian authorities for a prospective investor. I can give you an example later, if you like. What we are saying is that we are going to give in addition to all of that an international remedy, which is available to a foreign investor but which is not necessarily available internally to an Australian investor. Given that we are moving as a matter of policy, it appears, to limit even further merits review of administrative decisions within our own internal legal system, it is difficult to know how a government can consistently maintain that and yet protect the position of Australian investors.

I have a real concern that we have a sort of mishmash of procedures and standards depending on whether you are foreign or whether you are Australian—however you define that; I do not know how you do it—depending on whether you have already arrived or whether you are trying to get in and depending on whether a government has done something to you or you say a government has not done something to you. Again, I regard that as being, I suppose, both unacceptable in its substance and as a piece of legal machinery. We should be able to do better than that. Those are the particular points that I would focus on in this statement, but I would be happy to answer any questions anybody would like to raise.

ACTING CHAIR—Thank you for that. Before proceeding to questions, I notice that there are a number of people who are scribbling furiously around the room. I can save

you writers' cramp. This is a public hearing so you are welcome, of course, to take notes, but if you want to get a copy of all of the *Hansard* of today's proceedings, we have people here who are taking notes. All of the questions and answers will be accurately recorded, as only Hansard can. You should let Patrick at the door there know if you would like a copy of that. We will certainly make it available to you. Of course, if you are on the Internet, the *Hansard* will also be on the Internet as well. So that is worth knowing, because I think that some people think that a lot of these things are kept in secret, but everything is put onto the Internet. I do not know any more broad and open mechanism than the Internet. Everyone seems to find out everyone else's business off that device. So it is there for you. Take notes by all means, but do not feel like verbatim is necessary on your pad when we can do it for you. Senator O'Chee, do you have any questions?

Senator O'CHEE—I have a number of questions of Professor McDonald relating principally to section 9 of your submission. You referred to section 51 of the constitution—the bit about acquisition of property other than on just terms. You then go on to talk about international dispute resolution. Section 9 of your submission is a little unclear. What is the relationship that you are making between section 51 and international arbitral procedures, because it seems to me that they are two separate issues?

Prof. McDonald—The point that I am trying to draw out in relation to point 9 is that a foreign investor is given certain rights under the MAI, in particular the entitlement to compensation for expropriation of investment assets. What I am saying is that there will be certain environmental regulations that arguably constitute an expropriation as a matter of international law under the broad definition that is included in the MAI, because they may affect the profitability of that asset. That foreign investor will be entitled to pursue that claim for expropriation in a fast-tracked, international dispute resolution environment whereas an Australian investor, who is subject to the identical environmental regulation, will not enjoy those rights and will be required to pursue a remedy in an Australian court to have the compensation paid. Given that it is being heard in an Australian court, it will be subject to Australian domestic law, and Australian domestic law does not give compensation in cases affecting mere reduction in profitability or the overall asset value.

Senator O'CHEE—Leaving aside Ethyl for one minute—because that was dealt with under NAFTA and therefore, for various good reasons, may not, in fact, be a precedent for an argument in arbitral procedure—what other precedents would you have for the civil argument that you are mounting? I could think of Burmah Oil, but that was a different one because that related to the appropriation of the profit as opposed to changing the regulatory regime. Can you think of any other precedents?

Prof. McDonald—Both of the examples that spring to mind were determined under the virtually identical provisions of NAFTA. So it seems to me that they are a fairly useful example of what might happen. My concern is not so much that governments will actually be required to pay compensation; my concern is that international investors will use these fast-tracked dispute resolution processes to threaten governments who attempt to

initiate new environmental regulation. My concern is not so much with the specific requirement that you pay compensation—because I do not think that is going to happen. What will end up happening is that we see this onset of regulatory chill, or regulatory paralysis, whereby companies threaten compensation actions even in circumstances where it may ultimately be unsuccessful. But the government backs down, which is what appears to be happening with the Canadian government in the Ethyl dispute, anyway.

Senator O'CHEE—What do you think does constitute appropriation of property?

Prof. McDonald—That depends a great deal on what constitutional provision you are referring to. In Australia, we have a very specific reference to the acquisition of property. So I am respectfully entirely in agreement with the High Court of Australia, which says that in order to constitute an acquisition of property somebody else must actually acquire a property right. So a reduction in the profitability of an enterprise alone cannot constitute an acquisition because nobody acquires a correlative property right.

However, if you took the interpretations of the takings clause in the US constitution, they take a more generous view and say that where regulation reduces property value to zero, that may constitute a taking of that person's property calling for compensation on just terms. It seems, however—

Senator O'CHEE—Can I just interrupt you? In that provision of the US constitution where they talk about taking property, they are not necessarily talking about taking an earning stream, are they? They are not talking about taking the benefit of it; they are talking about taking it?

Prof. McDonald—No, they are talking about property very broadly defined. So anything, any sort of regulatory intervention that reduces property value or asset value to zero, would constitute a taking. But the US Supreme Court has not gone so far as to say a mere 50 per cent reduction in profit or land value will constitute a taking, although there are US Federal Court decisions to which I refer in the longer paper that I mentioned earlier that have taken a very broad reading of the US takings clause. They have said that denying a wetlands dredging permit over 50 acres out of 600 acres of land will constitute a taking of those 50 acres even though the remaining 550 are able to be developed.

Senator O'CHEE—Because they are severable.

Prof. McDonald—That is the interpretation that has been placed by the US Federal Court but not by the Supreme Court. As I said, my concern at this preliminary stage is not so much that there will be massive compensation payouts; it is more that cases like Ethyl and cases like the Metalclad decision, which is also under NAFTA, will be used as a threat—as what environmentalists refer to as a SLAPP suit—strategic litigation—against public participation.

Senator O'CHEE—So you would have a redrafting of the expropriation definition, would you?

Prof. McDonald—I would have a specific exemption of the kind that is currently being proposed by the chairman of the MAI negotiating group, who in April of this year proposed a suite of amendments or additions for the purposes of environmental and labour protection. His proposal was that you have some sort of specific acknowledgment that the expropriation clause is not intended to cover normal regulation. I think that that needs to be clarified.

Senator O'CHEE—But, if that thrust was there, it would take away much of your concerns?

Prof. McDonald—Yes, it would.

ACTING CHAIR—Is it a fair point to say that the MAI came out of the United States in a sort of post-NAFTA shock stress syndrome? This is the reaction—'Let us have the rest of the world tied up.' Is there a feel of it to that?

Prof. Hiscock—No, I do not think so. I think that it is much more a European drive than an American drive. I think that the Americans, in fact, are still very hostile.

ACTING CHAIR—But there is a common point between both of your submissions that essentially the law should become the last port of call for a bad investment. You would be concerned that, as it stands at the moment, this proposed convention, in fact, could become a mechanism by which the law and the use of our High Court, for instance, or an international tribunal is the last port of call for an investment gone bad?

Prof. McDonald—Or, indeed, it could be a first port of call. I think that it is particularly in the pre-investment phase that it actually becomes a weapon.

ACTING CHAIR—To guarantee that expectations are actually realised?

Prof. McDonald—Yes. My concern is less that the domestic legal system will be used and rather that the highly pro-investor, fast-track international mechanism will be used because it is cheaper, faster, the investor would at least get the choice of one of the three people on the panel, and so on. That is an infinitely preferable dispute resolution mechanism to the Australian legal system.

Prof. Hiscock—You get to choose anyone.

ACTING CHAIR—Essentially, the concerns that you are expressing about the environment could apply to umpteen other areas?

Prof. McDonald—I am sure they could. My expertise is in environmental law. I have chosen to base my submission on what I am competent to talk about.

ACTING CHAIR—I understand that. Professor Hiscock, do you have a view on the culture of the negotiators of this? It strikes me that there is a culture in Treasury that does not exist in, say, the Department of Foreign Affairs and Trade and, in particular, the trade people. This has been negotiated by Treasury. I have said it before on the record, so let me say it again: it struck me that this was the Treasury officials' place in the international diplomacy sun. They were travelling to Paris every six weeks to sit around a table and chat about this. That was happening some years before we all knew it was happening. Does that say something about the culture that is behind this particular agreement?

Prof. Hiscock—I would perhaps put it in a slightly different way. What it shows to me is that there is not a government participation in negotiation but a departmental participation in negotiation. What I think stands out very strongly, particularly from your interim report and what led up to that, is that there is no communication. There are very high fences between departments. If Treasury says that this is something of which we have the policy carriage and, therefore, it is all ours, and other departments that must be involved in the implementation—to say nothing of some federal entities—are not involved—

ACTING CHAIR—There is an actual conflict that could exist between what a trade based agreement is currently doing and a Treasury based agreement.

Prof. Hiscock—I am afraid that I would go even further and say that it is not just that there is a conflict; I think that there may well be no information about it at all. You have people beavering away in their own little cells in ways that are not really tuned in in the same way.

ACTING CHAIR—Do you think that there are a number of positions that should be reworked and rethought before we go down this path?

Prof. Hiscock—Yes, I would have thought that there would be a lot to be said for some pretty frank communication between departments. I imagine the existence of obligations that we already have, which may be contrary to the stand taken by Treasury on this matter, would come as a bit of a shock.

ACTING CHAIR—Do you have any additional information that you could offer to the committee in relation to the similarities and differences between the GATS and the MAI. I do not necessarily expect it now.

Prof. Hiscock—I would be happy to do that. In some ways, the GATS are the World Trade Organisation moving into a new mode of trying to negotiate. I think they are

moving very carefully. I think there are some very interesting parallels to be drawn. If a GATS type process were being used here, ultimately we would come up with something that might work and be beneficial.

ACTING CHAIR—What about regulation of foreign direct investment? Is our current regulatory regime good enough or, as suggested by a witness earlier, is it a case that it involves just a few per cent of knock-backs and is essentially a rubber-stamping mechanism?

Prof. Hiscock—It is obviously very limited. I think part of the problem is the recasting of the concept of what is in the national interest. That, I think, is a relatively recent development. Under a broader concept of what is in the national interest, one might have a more searching inquiry about investment. I think the problem is that the structure looks not really at the whole range of investments but is substantially concerned with only investment that results through mergers and takeovers and some minimal activities on the outside.

ACTING CHAIR—Essentially, it is a bit like immigration policy: if people are not happy with it, they will, perhaps, be very suspicious of it.

Prof. Hiscock—Yes. Basically, I am not opposed to foreign direct investment. We need capital from whatever source we can get it. It is significant to look at countries like the United States, which in the 1930s were heavily influenced by foreign investment by UK companies. That was the basis of their development at that particular time. I think it is rather childish in a way to say that we do not want to have foreign investment. I find it very hard to give a nationality to capital, anyway.

ACTING CHAIR—We, of course, have always had foreign investment in this country since 1788.

Prof. Hiscock—Yes, I suppose that in 1788 we were all foreigners.

Senator COONEY—You spoke about the disputes tribunal and said that people are a bit upset about it in relation to the MAI. You say that there is one already in existence. How does that work overall? I do not want a long explanation.

Prof. Hiscock—I will give two points. It does not pick up anything in the pre-investment phase. The same is true of the Energy Charter Treaty in Europe. Pre-investment stuff is all soft law; it does not give rise to any hard dispute settlement mechanisms. You are not comparing like with like. How is it worked? It shows its age a bit. It was drafted about 30 or 40 years ago. It has been slow. The upside of it being slow is that sometimes being threatened with it is enough to get people to settle. It has had far more settlements than decisions. The downside is that is has a very convoluted appellate process, which has meant that, if you want to, you can drag the thing on for 15 years. I

think the NAFTA process, for example, is a much better process as a result of the experience that people have had with ICSID. Its great advantage was that it got over the problem of sovereign immunity, because it also made people have non-retractable submissions to arbitration. If you got a submission to arbitration from a government, when you first established your investment you could be sure that you would always have a mechanism for prosecuting your dispute that would not be subject to political interference.

Senator COONEY—Have you been able to gain an impression as to how the one suggested under the MAI would work?

Prof. Hiscock—I do not think that is sufficiently coherent as yet. I share Jan's concerns about the composition of the tribunal. I cannot really see the point of establishing yet another series of tribunals when there may be existing tribunals that could already be used.

Senator COONEY—Professor McDonald raised a point that I thought we should explore. She said that we should not throw this idea away too readily because, if it was expanded to include, say, ILO conventions and environment conventions it might be an opportunity to bring some sort of order to international companies. Do either of you have any thoughts about that?

Prof. McDonald—I understand that at the end of 1997 the OECD Environment Directorate was asked to give their views on what an MAI with high environmental content would include. I have not been able to access that document, but I have read briefing reports of it. Their view is that a code of conduct that actually required foreign investors to undertake an environmental impact assessment of any foreign project, even if the host country does not require it; compliance with either World Bank or other recognised international best practice standards for that industry; and compliance with, for example, ILO convention obligations by the investor itself could be an appropriate mechanism. It seemed to me that relying on host governments, which is the standard response—'All of these things should be dealt with by the host government'—is a fairly ignorant view of the way that foreign investment works, especially in the case of developing countries where the investor has the power to decide whether to relocate in, say, Thailand or Indonesia. They are not going to start saying, 'We want really high environmental standards of you.' Really the onus needs to fall upon the investors to take that upon themselves. Since we cannot necessarily rely upon them to do that out of sheer altruism, I think there needs to be an enforceable framework for it.

Senator COONEY—Within the development of this treaty?

Prof. McDonald—Yes.

Senator COONEY—What about human rights conventions—would you include those?

Prof. McDonald—I am not a human rights lawyer.

Senator COONEY—You would certainly include the environment ones?

Prof. McDonald—I would certainly put environment in.

Senator COONEY—ILO ones?

Prof. McDonald—Once again, that is probably beyond the scope of my expertise. In a purely personal capacity, I would say that there are some minimum safeguards in International Labour Organisation conventions that should be addended to multinationals' obligations.

Senator COONEY—From the expertise of both of you, which is considerable, would you say that there is no principle that you can think of that would stop an international treaty containing those protections for the environment?

Prof. Hiscock—On the other hand, you know as well as I do that you can put something in a treaty; it is just words on paper. If you really want to make it work, I think you have to do it in an environment that is favourable to its working. UNCTAD has spent 30 years trying to develop a code of conduct for multinational corporations and conspicuously failed, because it was dealing with a particular sort of constituency which was, if you like, the exact converse of the OECD. I do not think the OECD can do it either, because it is on the other side of the fence. That is the reason that I think you need to come back to a body that is somehow or other in the middle to look at these issues in a slightly more detached way.

Senator COONEY—If you did come back to that middle body, there would be some reasonable prospects?

Prof. Hiscock—Yes, I think there would be great advantage in doing it. I think it would be done, perhaps, in the same way that things like GATS are being developed: 'We recognise that this is an acceptable standard of behaviour, but for all kinds of reasons we may not be able to reach that for two years, five years, 10 years, but we will now make a commitment that we will.' I think that kind of commitment is important.

Prof. McDonald—I will add one thing there; that is, the reason it seems so timely with the MAI is that, very often, countries complain that they cannot afford high environmental standards. But if you go directly to the actors—with something like 51 of the largest 100 economies in the world being multinationals—they do not have the same complaints about competing economic considerations. It seems to me that where the international community under the auspices of the OECD is negotiating an agreement—the benefits of which will flow almost entirely to those private investors—that is the appropriate opportunity to say that with those great benefits are going to come some

competing obligations.

ACTING CHAIR—With the greatest respect to everybody, I point out that I was elected to the Australian parliament and I do not control what happens in Thailand. I certainly do not want Thailand or any other country to control what happens here. The great fault with having an international mechanism is that, with our constitution, it can impact on our country's own domestic laws and determination. That is something that concerns me greatly. I think international agreements are important. I challenge you on this basis: are we better to say that these agreements set standards by which governments themselves and the people who elect or otherwise those particular governments can judge, rather than have some enforced mechanism from some outside entity judging whether or not we are doing the right thing?

Senator COONEY—I was referring not so much to the countries as the corporations. That is what we are talking about.

ACTING CHAIR—Either way, surely it is up to a country that is receiving foreign investment? If it creates sufficient barriers that it makes it difficult for a country to invest there, so be it. It is doing so because of a reason, a domestic and local imperative.

Senator COONEY—I think what Professor McDonald is saying—

ACTING CHAIR—I would like to hear what they have to say about it.

Senator COONEY—I think she was saying that there are Third World countries that would not be capable of enforcing standards.

ACTING CHAIR—On that point of incapacity, it is in a democracy that these things work. In an autocracy, in a dictatorship, in a country controlled by the military, these things might mean a piece of nothing.

Prof. Hiscock—Let us take an example from our own country. Let us go back to Fraser Island. That is pre-MAI. It is pre almost any of these things. What was the final decision? The decision was that the Commonwealth Government would not grant appropriate statutory permits.

ACTING CHAIR—That is right. That was 20 years ago under the Fraser government.

Prof. Hiscock—The Australian partner in that enterprise had no redress, but the Australian government paid compensation to the foreign joint venturer in that situation simply as a matter of a negotiated settlement. Again, that to me is really basically the problem. My view is that we should have a situation where you do not necessarily characterise investment—foreign investment or other investment. It is investment;

therefore, it should be treated in the same way.

ACTING CHAIR—As you say, again foreign investments have an additional advantage under this.

Prof. Hiscock—Exactly. It is worse than that: some Australian investment is disadvantaged, which I think is a further problem.

Prof. McDonald—Can I give you one example of the point that I was trying to make, that is, the case of BHP's involvement in the Ok Tedi gold and copper mine in Papua New Guinea. Papua New Guinea was not necessarily in a position economically to start imposing very rigid environmental requirements on BHP. Without wanting to debate the precise details of the environmental performance of BHP, most Australians took the view in that case that their performance was less than satisfactory. Had they been in Australia, their performance would not have been acceptable. What I am proposing is that we have something attached to the MAI that says, 'You do overseas as you would be required to do in your home country at least.'

ACTING CHAIR—Yes, so there is a citizenship nexus rather than a territorial nexus.

Senator COONEY—The United States has done that with some of its companies, has it not?

Prof. McDonald—They have attempted to.

Prof. Hiscock—There is a downside to that, that is, extraterritoriality.

ACTING CHAIR—We have done that with other legislation, though.

Prof. Hiscock—Yes, I know; but I think we will be open to more suffering than gain.

ACTING CHAIR—But would it not be better that Australian companies were known for good practice rather than bad?

Prof. McDonald—I would like all companies to be known for good practice rather than bad. That is why I think it should be an integral part of the agreement.

ACTING CHAIR—Touche.

Senator COONEY—That illustrates Professor Hiscock's point that it ought to be looked at by more than just Treasury.

Prof. Hiscock—I would like a government view, not a Treasury view.

ACTING CHAIR—I guess that is what this committee and this process that we are undertaking is about. If these matters that you talked about today are not addressed satisfactorily, what is Australia to do? Should we be signing this document as it is currently proposed?

Prof. Hiscock—No.

Prof. McDonald—No.

ACTING CHAIR—Thank you very much for your considered submission both on paper and verbally. I think we have received great value out of your time here today. I hope you have felt that you have imparted great value. Your expertise in the areas you have stuck to quite deliberately is greatly appreciated.

Prof. McDonald—Thank you very much.

[11.58 a.m.]

CARTER, Mr Matthew David, Welfare Vice-President, University of Queensland Student Union, 31 Chapman Street, Chapel Hill, Queensland 4069

ACTING CHAIR—I should note that Senator O'Chee has the job of representing the Minister for Veterans' Affairs, the Hon. Bruce Scott, at a meeting. He will be back presently. That is part of the reason he has had to leave. I welcome Mr Matt Carter, representing the Queensland University Student Union. Would you like to make a brief opening statement?

Mr Carter—The submission that the student union has presented to the Senate committee primarily pertains to the effect that the Multilateral Agreement on Investment would have on the higher education sector of Australia. I should state at the opening that our concerns are merely just those—concerns. There is no certainty with regard to this treaty that is being negotiated. We are also concerned that its ambiguity allows a whole spectrum of speculation—at one end that this is going to present some kind of nirvana where there will be jobs for everybody, and at the other end that it will result in one world government. It is shrouded in secrecy and mystery, and that is of concern. It has not been subject to a great deal of open debate in the past.

Our submission mainly deals with three points. The first is the effect that the Multilateral Agreement on Investment would have on the funding of higher education and universities. Currently, the public institutions that receive funding are listed in the Higher Education Funding Act 1988. These include universities such as the University of Queensland, the University of New South Wales and Monash University. Bond University and the University of Notre Dame are not included and therefore do not receive government grants. However, the act does include private institutions such as the Marcus Oldham Farm Management College and the Avondale Seventh Day Adventist College, which are eligible for public funding. Despite the fact that both of these colleges are run privately, specific courses that they offer, for example, agriculture, nursing and education, are seen by the federal government to be worthy of funding for the public benefit they provide; they should not be left to the vagaries of the market.

The implications of a Multilateral Agreement on Investment could be that this is seen as prejudice or bias favouring local private providers to the detriment of international providers. As recognised in the higher education supplement of the *Australian* the other day, Oxford University has now gone online and effectively will be providing education for students in Australia and all over the world.

We would speculate that it may be possible that universities such as Oxford or other universities providing education online may be eligible for public funding and the purse strings of the Commonwealth government must be open to them. This will have quite a dramatic effect, in our opinion, and the philosophy of public benefit and public

accountability would no longer prevail. In our view, this does nothing to promote equity or accessibility in tertiary education.

Our second concern pertains to the quality of teaching and research. Currently in Australia for an educational institution to become authorised to use the name 'university' it must be recognised by an act of state parliament. Naturally, when recognising universities state governments are able to exercise their discretion and will give priority to institutions based in Australia. We see this as inevitably changing with the signing of the Multilateral Agreement on Investment. We see this as highlighting a fundamental flaw in the treaty, that is, the myth of equal access in effect is inherently unequal.

As I said, those providers operating on the Internet or overseas will find it far easier to avoid the quality standards and requirements that would be forced upon the domestic providers. Under this treaty, the claim that there will be a level playing field for foreign investors is a myth. The OECD, in negotiating the Multilateral Agreement on Investment, therefore fails to acknowledge the leverage that multinational companies are already able to exercise. In practical terms, the Multilateral Agreement on Investment will dramatically increase the market power that these organisations will wield and will effectively remove tertiary education public accountability and the enforcement of standards.

Our third and final concern relates to research and development. For such an important role that university research and development has in benefiting the social, economic and environmental welfare in the community the consequences of the Multilateral Agreement on Investment are quite disturbing. More particularly, the treaty does not allow governments the right to demand of foreign investors that they satisfy certain specific performance requirements. For instance, new technology and research gained by foreign investors within the country would not have to be shared with local researchers, businesses, government departments or communities. They would be able to exclusively exploit any developments made in countries. Although the public may be providing the funds for providers to be undertaking research ventures, the public may not benefit from it. The OECD's agreement would also forbid governments from requiring foreign owned universities to achieve a given level of research and development.

To wrap up, the University of Queensland is extremely concerned about the effect that the Multilateral Agreement on Investment would have on the tertiary education system. It is a tertiary education system that is, in our minds, already in decline due to the steady trend towards a corporatisation and privatisation of our university system. We see the Multilateral Agreement on Investment as furthering that and removing our universities from any sort of control or regulation of the Commonwealth government. We would also advocate that in the event that the multilateral agreement does go ahead our tertiary education system is among the exclusion provisions that may yet still be subject to rollback.

ACTING CHAIR—Thank you, Mr Carter. I guess you would be aware that tertiary education is a growth export area in that we have a lot of students coming from overseas paying full fees to study here. It is quite a money spinner for the university sector now.

Mr Carter—That is right. It has been, and we hope it will continue to be. However, the effects that the One Nation Party has had could see that in decline as well.

ACTING CHAIR—Is it discouraging students to come from overseas?

Mr Carter—Yes, I believe so.

ACTING CHAIR—So we are losing that export industry?

Mr Carter—If Pauline Hanson has her way, I believe so, yes.

ACTING CHAIR—You probably would see greater pressure developing to have foreign investment in our education services grow. I do not want to put words in your mouth, but would you foresee people from other countries wanting to build and operate universities here, obviously because they see that as a money spinner?

Mr Carter—That is something that many people see as inevitable, but I do not see why private providers from overseas should have access to the purse strings of the Commonwealth government.

ACTING CHAIR—In other words, if there was foreign investment of any description in tertiary education, you are saying it should be based on their standing on their own two feet, not with government assistance?

Mr Carter—That is right.

ACTING CHAIR—You would see the proposed MAI as threatening that particular view?

Mr Carter—Yes, I do.

Senator COONEY—Have you looked at overseas campuses of Australian universities? For example, I think RMIT has a campus in Malaysia.

ACTING CHAIR—Kuala Lumpur.

Senator COONEY—That is right. Have you any thoughts about that? Are you worried?

Mr Carter—Malaysia is not part of the OECD, but I think it is quite well recognised that there would be pressure placed upon countries such as Malaysia to become subject to the Multilateral Agreement on Investment. I do not believe in principle that the RMIT should have access to the Malaysian government's purse strings, either, in terms of its tertiary education system.

ACTING CHAIR—So in one sense you are not really afraid of foreign investment in tertiary education providing it does not have access to the public purse; is that what you are saying?

Mr Carter—Precisely. There are already limited—and I believe it is being limited further by the present government—funds for universities. You would open that up to foreign investors who already have substantial backing from overseas. Therefore, that would dictate that universities such as the University of Queensland, the University of New South Wales and the public institutions would have less money.

ACTING CHAIR—I guess you could also argue that, if public funds were not needed for some of these private institutions, the private universities themselves would give some relief to the demand on the public funds for university standard education?

Mr Carter—Yes, but I have a fundamental belief, and so does the student union, in public universities and the benefits that provides. I believe that is why we have public institutions. There are advantages in public education that are not in private education. They provide courses that are not necessarily tangible in dollar terms for the economy. That is a fundamental role for our public institutions.

ACTING CHAIR—Are you talking about standards and quality?

Mr Carter—Standards, quality of teaching and research. Precisely, they would not necessarily be subject to that sort of regulation.

ACTING CHAIR—Would there not be a corrective effect from would-be employers in the marketplace; if the graduates and research are not quality, they will not hire or buy it?

Mr Carter—That is a theory. That is a theory that I have grave concerns about and I think it is quite flawed.

Senator COONEY—You mention in the submission Bond University and the University of Notre Dame. What do you say in that context about private universities? Do you have any concerns about those universities? Would you prefer not to talk about that?

Mr Carter—About those universities?

Senator COONEY—I thought you said to the chairman that you were a bit concerned about standards if you have private universities.

Mr Carter—Yes, that is right.

Senator COONEY—You have mentioned a couple in your submission. You do not make any adverse comment. I thought, given the chairman's question, you might want to make some comments, not about those specifically. Do you have any examples of where you feel standards have fallen because of private educational institutions?

Mr Carter—Not directly related to private educational institutions but perhaps to the lack of government funding.

Senator COONEY—So is the real issue the funding rather than the standards?

Mr Carter—No, I see them both as important and related.

ACTING CHAIR—I guess standards in public institutions are under pressure because of the dollars not being realised from exports at the moment?

Mr Carter—I think that standards in public institutions are not being realised because they are not getting the funding that should be coming their way from the federal government.

ACTING CHAIR—All right. We are going very broadly off the key agenda in front of us. If this MAI is signed and agreed to, there should be, as you said, exclusions or exemptions in relation to foreign providers of education. Do you have any suggestions as to how those reservations could be framed?

Mr Carter—No, I do not have any particular suggestions. I concur with the National Tertiary Education Union, which has also put forward in its submission that that should occur.

ACTING CHAIR—That is basically because your concern is that there would be a demand on public funds which, as you say, are limited?

Mr Carter—Yes, that is right.

Senator COONEY—You mention towards the end of the submission the problems of standstill and rollback. Do you have any comments on those?

Mr Carter—I can make suggestions that tertiary education would be exempt from the provisions of the treaty. As I said, this provision of rollback is something that I have heard varying degrees of opinion on as to whether it is really so binding or not and

whether or not it will be effective. But, if it is, this exemption is just buying time for our tertiary education, as far as I can see.

ACTING CHAIR—Thank you very much for your time today, Mr Carter. The committee will suspend for a luncheon break.

Proceedings suspended from 12.15 p.m. to 1.15 p.m.

GRAHAM, Mr Philip William, 28/341 Bowen Terrace, New Farm, Queensland 4005

ACTING CHAIR—I call to order the afternoon session of this hearing of the Joint Standing Committee on Treaties. This is a public hearing into a matter known as the Multilateral Agreement on Investment, or MAI. We have heard from a number of witnesses this morning. It has been, I think, a very deliberate and rewarding time that we have had with the committee. I now welcome before the committee Mr Philip Graham. For the record, could you please state the capacity in which you appear before the committee?

Mr Graham—I appear here as a private citizen.

ACTING CHAIR—Would you like to make a brief opening statement to the committee?

Mr Graham—I would. Firstly, I would like to thank the committee for giving me the opportunity to be heard on this matter. I consider myself to be very privileged.

Since being called to the hearing, I have been wondering which of the many great aspects of Australia which are threatened by the MAI I would focus on in this address. Yesterday, a writer for the financial press helped me decide. Ivor Vries, writing for the *Australian Financial Review* about the privatisation of Telstra, said:

> Telstra Chairman David Hoare and Chief Executive Frank Blount have made it clear that they want to get the dead hand of government off their back.

Apart from the fantastic imagery evoked by his phrase—the image of dynamic corporate champions restrained by the death grip of a rotting corpse—Vries's phrase also contains an unstated and, at least where many in the business community are concerned, a widespread assumption that government itself is dead where business is concerned; that it has no further use and no role to play in the business of the day. By itself, his assumption is contemptuous enough. But, looking at what underpins it, the Australian government—at least in theory—is the will of the people in action. If the government is dead then so, too, is the will of its legitimising constituency.

According to the likes of Vries, the government has the touch of death where business is concerned and so should withdraw from business if it is to survive. The MAI proceeds on similar assumptions. It assumes that government is detrimental to business and assumes that liberal investment is unquestionably good. It assumes that governments require external enforcement to ensure the security and stability of increasingly liberalised investment. It assumes that what is good for business is good for society. As increasing inequities both in Australia and throughout the world show, this is not necessarily true. I acknowledge the need for investment. I also note the need for scrutiny over the type of investment that we have in Australia. We need an investment that is as committed to us as

we are to it.

ACTING CHAIR—That is foreign investment, you mean?

Mr Graham—Yes.

ACTING CHAIR—As well as domestic investment?

Mr Graham—Yes. It needs to be socially responsible, especially if they pay tax here.

According to the ATO, of the 7,787 multinational interests operating in Australia, 50 per cent pay no tax whatsoever. On average, and depending on whose definition you accept, these multinationals account for between 60 per cent and 80 per cent of the profits being pulled out of Australia. They pay an average of 1.2 per cent tax. As a result, close to 70 per cent of the wealth generated in Australia accrues to the most wealthy one per cent. Here the case for a minimalist role for government completely unravels.

In postulating a dead hand for government, Vries insults the Australian constituency and its sole public institution, the Commonwealth government. If the Australian government has a dead hand, it is because government has either cut off its own hand or has stood by unconscious and anaesthetised by a fatalistic and insidious ideology while its hand has been surgically removed by interests outside those it is constituted to protect and uphold. But I do not believe that is the case. I do not believe in Vries, and I do not believe in his dead-handed government. I believe, rather, that the national interest is served by people who have its best interests at heart. And however tightly our government might feel its hands are tied, they are not dead yet.

So I argue for national, social and economic independence rather than subjugation to the needs of abstract, faceless foreign investors who have no stake in the welfare of the Australian people. I advocate for a fair and democratically elected legislature and against an internationally formed, unbalanced, undemocratic regime who are to enforce slippery and ill-defined international standards. I argue for a continued increase in the quality of life for all Australians and against a standstill or rollback of economic, environmental, labour and, most particularly, social standards. With this in mind, I hand over to you the discussion.

ACTING CHAIR—Thank you very much. I appreciate your opening remarks greatly. I guess that the role of this committee is all about putting a bit more power back into the hands of the average Australian, because we are exposing this treaty—this proposal—which has been negotiated by Treasury officials for a number of years prior to it being referred in a draft form by the executive of the government and which now, of course, is exposed further by the role of this subcommittee of the entire parliament. That is what the Joint Standing Committee on Treaties is all about. I guess that, with so many

people in the public gallery here this afternoon, the fact that we are able to talk about this and to put on record concerns such as yours ensures that the democracy and the principles that you have espoused are very much at the heart of what we are doing. I congratulate you on your opening remarks. Do you want to try to expand any further on that sense of national values and identity and that Australianness that you think might be put at risk by this proposed MAI?

Mr Graham—It is not any particular sense of values. It is not any particular value. It is the fact that the MAI overarches all the major political issues that are being addressed in the public forum at the moment. It overarches Wik, the privatisation of Telstra and any number of issues, because we cannot legislate for those things if this treaty is ratified. It removes our own determination.

ACTING CHAIR—You have suggested that perhaps there should be a referendum, which is normally a mechanism to change the constitution. But I guess you are looking for a national poll on this sort of proposal. Do you see that as an effective mechanism?

Mr Graham—I think a referendum is an effective mechanism. But, as you say, it was more an issue of democracy versus oligarchy—that we should allow people to have a say on these things with such a wide reaching treaty. If we are going to ratify something like this, everybody should have a say in it. Where are we going to be legislated from? Are we going to be legislated from internationally or from within the country?

ACTING CHAIR—I think I gave a great monologue about that a little earlier today when you were not here. I think that all of us on this committee are of the one mind: that we are elected to the Australian parliament, and what is in it for Australia is the operating rationale of the treaties committee, as it should be for all activities of the parliament. The concerns about entering into this treaty are great. This is meant to help smooth out some of the bumps that exist also for Australian companies operating overseas. It is meant to be—as treaties and arrangements tend to be—an agreement by which investment can take place between consenting states. Do you see the need for a raft of exemptions that we should put forward to ensure that our own particular standards and concerns are paramount?

Mr Graham—Under the agreement?

ACTING CHAIR—If this MAI was to go ahead, would you prefer to see it going ahead with a great raft of exemptions or exclusions?

Mr Graham—Of course, if it did go ahead. But I would obviously prefer that it did not. If you look at the end of the Uruguay Round of the World Trade Organisation, it produced one piece of paper—a single A4 piece of paper with agreements on it. I think it generated some 20,000 further pages to the middle of last year and onwards from there. I

guess that it has expanded even more from that point. This treaty is roughly 200 pages.

ACTING CHAIR—So, in other words, I guess it gets to the point where there are so many exemptions and exclusions that you wonder what the point is of signing the thing anyway?

Mr Graham—That is right. How many multilateral agreements and bilateral agreements are we attending to now?

ACTING CHAIR—Would you prefer, as somebody said this morning, a series of bilateral agreements? In other words, we quite deliberately have an agreement with another nation; we hammer out what is in it for us, they hammer out what is in it for them, and if we agree then we sign, and if we do not agree then we do not sign, rather than a multinational approach?

Mr Graham—I think that is a fair approach. But do we not have those already? Do we not have a lot of those in place already? Is our economy not liberalised to the point at which we are virtually saying, 'We want your investment. Just bring it in here and we will look after it. Australia wants to set itself up as a financial capital in the region.'

ACTING CHAIR—So you are not against foreign investment as such?

Mr Graham—No, not at all. I am against speculative investment. I am against the throwing together of financial institutions that have been separated since the 1930s, like banking, insurance and stockbroking, for instance—broking houses. What we are seeing now is invisible inflation. We are told that the inflation figures are quite low. But, if you have a look at these things, credit derivatives is the ultimate in that. It is the insurance on the notional capital raised on futures, I believe. I am not sure exactly what it is. But these are abstracted things that, all of a sudden, are supposedly produced, but nothing is actually produced. They are merely invisible money.

Senator COONEY—So you are saying that you want to see more than just money bought and sold?

Mr Graham—Certainly.

Senator COONEY—The exchange of capital has to represent real production in the sense of goods and services that we can use?

Mr Graham—Yes. At the moment, every three days more revenue is generated and more volume is traded in currency and financial instruments, if you like, than in the annual global trade in capital goods. If that is not hyperinflationary, I do not know what is.

Senator COONEY—Do you see any merit in having an agreement that controls that flow rather than simply looking at it in terms of investment; some international agreement that somehow makes the flow of capital more responsible?

Mr Graham—Oh yes, most definitely. I believe the Tobin tax has been put forward for some time. Trying to get that together has been a nightmare for people. The new technology has made this a huge issue, because it goes 24 hours a day around the clock at the press of a button. I believe that even the screen times come into issue, where people do not even push the buttons any more; the machines are programmed to make buying and selling decisions. This is counted as growth and production, but it is not.

Senator COONEY—How did you get interested in this? You have put yourself down here as a student. You have obviously gone into this fairly deeply. You have done a lot of reading on this?

Mr Graham—Yes, miles of reading on it.

ACTING CHAIR—At least you have been able to get access to information, which I suppose disproves the concept of secrecy.

Mr Graham—Yes, I guess so. You mean secrecy regarding the MAI?

ACTING CHAIR—Yes.

Mr Graham—I think that a lot of the inflammatory talk about the MAI has been unreasonable to some degree, but I think there are very real concerns in there. For Australian investors who want some security and stability in their investments, I think it is counterintuitive to expect to invest and be secure and stable. If you invest, you risk. That is the entrepreneurial code. If you want to take money and put it into, say, factories in Asia or wherever for whatever reason, then you are taking a risk.

ACTING CHAIR—So the MAI is more or less being seen as a mechanism to lessen risk, in other words, to guarantee speculation producing a result?

Mr Graham—It is like going down to the TAB and being sure you are going to win.

ACTING CHAIR—I think some people went to jail for that. Are there any further comments that you wish to make to the committee this afternoon?

Mr Graham—Yes. I think that these large-scale systematising instruments really should be looked at on an ongoing basis, because this overarching system of one system for one global economy is not going to work. We have a unique situation in this country. It is past value, not even present value, that we are looking at; it is the value that has gone

into the hundreds, thousands and millions of hours, lives and people who have put the infrastructure here, who have put this country together, and the government that has backed that. No-one is going to put lines out to Biloela. No private company is going to do that. No-one is going to provide infrastructure other than a benevolent government. I think that is what we should be looking at.

ACTING CHAIR—I think it has always been the role of government since 1788 to provide infrastructure in Australia.

Mr Graham—Yes. I do not see why that should not continue.

ACTING CHAIR—I think I have said that about 20 times on the record in the last two years. Essentially you are saying that there are some false assumptions being made about human behaviour?

Mr Graham—Huge assumptions. Economic theory is riddled with it. Perfect information, perfect competition, perfect rationality do not exist.

ACTING CHAIR—And, for that matter, the nationalism and the 'what's in it for Australia' sentiment that is obviously being expressed strongly about this particular treaty itself have not been assumed by those drafting the MAI.

Mr Graham—Certainly not. The national identity is part of what we are and who we are—not that I want to throw up a wall around Australia. That is generally the argument that is put to people like me who said that we should have more regulation. There can be a balance. There does not have to be fortress Australia, and we do not have to lie down and lay open our doors to everybody who comes along with five bucks and wants to throw it in the kitty.

ACTING CHAIR—In fact, based on all the work that you have done on this, would it be against Australia's best interests to have that fortress to shut out foreign investment?

Mr Graham—Of course. A socially responsible investment is the aim.

ACTING CHAIR—Thank you very much for your contribution this afternoon.

[1.35 p.m.]

LAMONT, Ms May Violet, National Representative—Australia, Soroptimist International, Suite 5, 8th Floor, Park House, 187 Macquarie Street, Sydney, New South Wales 2000

ACTING CHAIR—For the *Hansard* record, could you please state the capacity in which you appear before the committee.

Ms Lamont—I appear for Soroptimist International. For those people who do not know the organisation, it is a business and professional women's group. It is one of the oldest business and professional women's groups in the world and it is certainly the largest at the moment. As well as in service, it works in advocacy for others. It is really mostly in terms of the advocacy for others that our submission has been put.

We work at local, national and international levels. Because we felt that largely the national issues would be taken up by single issue groups here within Australia, a lot of the submission has been focused on developing countries. Generally, whilst we would not disagree with the need for international rules governing investment, we do take issue with the MAI because it is an agreement that has excluded the input of some of the major stakeholders in development: the developing countries, NGOs—particularly women's NGOs—and the general public. We feel that the negotiation process is clearly undemocratic.

We question the lack of protection that is offered to the environment in the MAI and the effect it will have on the priorities and policies of national governments, particularly the governments of developing countries, on labour standards and sustainable human development in general. As has been pointed out this morning and just recently, the MAI is based on the assumption that unbridled investment is good for everyone. I think that experience has shown that it is not. It can destabilise financial systems, lead to the lowering of environmental and labour standards and increase unemployment, and we have plenty of evidence of that in the world.

We would argue that the MAI needs to incorporate international regulations on things such as the environment and labour standards, and that was discussed this morning. We would certainly argue for that. We would argue that they need to be binding on investors, and this can only be done in negotiation with everybody concerned, that is, with all countries, the NGO community, trade unions and all people who are concerned. But our major concern in our submission is the potential danger of the MAI to the economic wellbeing of women, especially those women in developing countries. I would like to expand a little more on that.

ACTING CHAIR—Please do.

Ms Lamont—Women's NGOs have always hoped for change through democratic policy making powers of national governments to make laws and address their needs. There is plenty of evidence in Australia that that has worked very well for us and evidence is coming forward of that being so in developing countries. Our fear is that the provisions in the MAI would remove this power and actually place it in the hands of multinationals. For instance, we would think that beneficial laws that discriminate for women and assist women could be challenged by corporate investors under this agreement.

At the international level, the question of UN conventions and declarations has come up this morning, and there are many of these. The inference this morning seemed to be that in some ways they were country specific. We would argue that they have been well argued in the international community and many of them are there to address the disparities for women and their families. There is no recognition of these in the MAI draft. There is a recognition of Agenda XXI and one other agreement, but that is in the preamble and that would not be binding anyway. We would like to see this recognition binding, and I will say some more about that in a moment.

In 1995 there was a world conference on women, and from that world conference came the platform for action. There were 189 member states at that conference, and they agreed to the platform for action which emanated from the conference. There were reservations but, to the best of my ability to discover, there were no reservations in the area covered by the MAI. So a very public document has been agreed to, and I think it would be good to look at some of the things that have been agreed to within that document. It contains 12 critical areas of concern. The first of these is the persistent and increasing burden of poverty on women. For those of us who were at the conference, this was often looked upon by people as pertaining more to women in developing countries. However, I think there is plenty of evidence in Australia that this is not so. If we look at unemployment statistics and the statistics of poverty in Australia, we see that women are disproportionately represented.

The lead-up to the conference was an interesting one in that many of the organisations that were involved—and people like the World Bank were involved—brought forth figures, which I think was probably the reason why there was so much concern over poverty at that conference. According to those figures, women represent 70 per cent of the world's 1.3 billion poorest of the poor. Women represent 40 per cent of the world's work force in agriculture, a quarter in industry and a third in services. We would say that there are many hidden statistics within these figures because a lot of agreement is yet to be had on what counts as work within those statistics. But those statistics show that women are major players in this debate.

UN documents show that women farmers grow 50 per cent of the world's food—80 per cent in some African countries—and they contribute 60 per cent of hours worked. However, they earn only 10 per cent of the world's income and they own only one per cent of the world's property. This was the situation that was being addressed in the

platform for action. We feel and fear that the MAI will, in fact, affect the lives of all these women even more because they are excluded from the negotiating process and what, in fact, has been negotiated in that process.

If we look at the actions that were agreed to in that platform for action—and I would remind you that the 189 governments did agree to this, although we do recognise that this is not a binding document, but it was possible to get 189 governments to agree—those governments agreed that women in poverty and women in the economy were very closely linked as, in fact, they were with health and environment, but I will concentrate on those first two at the moment.

They agreed that policies and programs needed to address the structural causes of poverty and be directed at eradicating poverty and eliminating gender based inequalities. They agreed that it should be ensured that structural adjustment programs are designed to minimise negative effects on disadvantaged groups and to support financial institutions that serve low incomes, small scale and micro scale women, entrepreneurs and producers, and, where necessary, undertake legislative reform to ensure that women have equal access to economic resources and equal opportunity. That does not sit with the MAI. Because of that, we fear that, if the platform for action is not in any way acknowledged within this document, these hard-won actions that were agreed to will be lost.

When it comes to women and the environment, a decision was made to involve women actively in environmental decision making at all levels and to integrate gender concerns and perspectives in policies and programs. There was an agreement that the world would strengthen or establish mechanisms at the national, regional and international levels to assess the impact of development. We do not see any of this being addressed in that MAI as we know it has not been addressed, but we would argue that this needs to be addressed and we would argue further that it probably may have been addressed had the scope of the negotiation been much wider. The World Bank was not so much a part of the negotiations at the conference, but it agreed that it would examine grants and lending to allocate loans and grants for implementing the platform for action in developing countries, especially Africa and the least developed countries. We wonder how this is going to be able to come about under the MAI.

We feel that innovative policies are needed to address the disparity. I do not think that we can go down the same road that we have been travelling. There are programs that are looking at such things as innovative policies. For instance, the United Nations Development Fund for Women has programs that are funded through the UN and by member states to encourage sustainable economic development for the benefit of women. It has programs that are already under constant attack because they are being forced to compete with multinational investors. We would question how much worse this will be under the MAI because it will reinforce this competition and reinforce the notion of export manufacturing.

ACTING CHAIR—Could I invite you to make your remarks as brief as possible? Could you try to bring your opening statement to a close?

Ms Lamont—We feel that the MAI is not a viable strategy for sustainable environment development. We would argue that we should be aiming for sustainable human environment development. The MAI is, in fact, even less helpful in this respect. People have talked about what is already happening where there are less than perfect regulations. There are existing examples of what would happen under total deregulation that has been asked for under the MAI. We would argue that ultimately there is a lack of obligation on investors, and this came up this morning. We feel that investors must take responsibilities. We would even go so far as to argue that investor responsibility should take precedence over investor rights.

ACTING CHAIR—Could I suggest to you that, at the heart of your argument—and it comes through your submission well—is the fact that there was really one select self-interested group involved in the negotiation process, and that would be Treasury officials and people looking at the sorts of broad economic matters rather than the specific matters. Do you think that that perhaps accounts for why a lot of these other international matters that you have very well explained and brought out this afternoon as well were not even considered? In other words, from what you have said, the MAI conflicts almost wholly with a lot of other well established human rights arrangements.

Ms Lamont—I would agree with you, and I am sure that that is why this has taken place in this way. Unless we go back to the drawing board and unless it is renegotiated right from the beginning and there is much broader input, I do not see that it will change. I think a select group is now interested in this and I do not see that the select group will change, unless they are actually forced to change.

ACTING CHAIR—In relation to binding agreements on environment, labour, health, safety, human rights standards and those sorts of things, how do you then see investment arrangements between countries? I guess these days companies operating in various countries often do it internally beyond the gaze of government. How do you see those matters actually being monitored and enforced?

Ms Lamont—That is an alternative way of going, but in many ways we would argue that, if the negotiations are international, it gives it more teeth. We are particularly looking at where women are concerned because we feel that in many developing countries where there is no particular commitment to raising the status of women this is one instrument that women could actually use to assist in raising their own status. If things become the province of investors in countries, we do not think the outcome of that will augur so well for women.

Senator COONEY—You say Soroptimist International has branches all around the world.

Ms Lamont—Yes.

Senator COONEY—Are you able to help us with the attitude taken overseas by the branches there? Have you discussed this treaty with people overseas?

Ms Lamont—No, we have not.

Senator COONEY—But what you express is the Australian view?

Ms Lamont—Yes.

Senator COONEY—I see you refer to the south-west Pacific?

Ms Lamont—Yes.

Senator COONEY—Would your words include that or have you not had an opportunity yet to speak to the south-west Pacific?

Ms Lamont—No, we have not had an opportunity to do this. I am speaking as the national representative, so I am speaking on behalf of the Australian soroptimists.

Senator COONEY—Thanks very much.

ACTING CHAIR—So you obviously then would have a concern? This committee is set up to see what is in it for Australia. Because we are a key ingredient in what happens in the south-west Pacific, obviously we send signals to the south-west Pacific by our own attitudes.

Ms Lamont—And also, where our own organisation is concerned, I think one of the criticisms of this document has been what has been called its secrecy. It certainly has not been negotiated very openly. I think the lack of knowledge means that, in fact, what we have to do and have been doing is making women in the developing countries aware that the treaty actually exists. This is why we have no feedback as yet. This is something, though, that we will continue to pursue.

Senator COONEY—You are pursuing that?

Ms Lamont—Yes.

Senator COONEY—Thanks for that.

ACTING CHAIR—I think it is a matter that this committee will continue to pursue as well. If you have any further comments to make, please do so. Otherwise I would like to thank you on behalf of the committee for your time this afternoon.

Ms Lamont—Thank you.

ACTING CHAIR—Thank you very much. In view of the fact that the witness scheduled to be here for 2.30 is not here—and that is understandable, given that we are running about 37 minutes ahead of time, which assists the committee in its travel problems—we will hear from some individuals now in order to make sure that all of those who are coming to give brief statements of a few minutes each can do so, because there are a lot of people here. I suspect that limiting statements to about three minutes should be sufficient. If the committee needs to ask further questions, we shall.

I say firstly to all those individuals, as well as to those broader submitters, that we really do appreciate the time you have taken to come here today. I do not want you to think for a moment that the brevity that we are advising you of is meant to diminish the importance of your views on this. We appreciate the written submissions we have received; they are an important element in the overall complexion, the picture, that the committee is getting as we are conducting this open and accountable process of inquiry.

Before we do take some comments, I would like to note that, in fact even today in one of the Gold Coast newspapers, there has been some criticism about this committee's efforts to advertise, to make it obvious to all and sundry, that these hearings themselves are taking place.

For the record and for all those in attendance, I would like to state that the inquiry was in fact advertised in the national press at considerable expense, not just in the *Weekend Australian*. The committee also sent out hundreds of letters with terms of reference and background information deliberately inviting submissions from organisations right across the country. In fact, as a result of those efforts 850 submissions and 400 form letters were received. So, if you like, 1,250 people have responded to it. Everybody who has put in a submission in any of those forms has received a copy of the interim report, in which the committee recommended that no further action be taken by government while consultation continued and until the case of what is in it for Australia has been proved.

The inquiry and the hearings have also been advertised on the Internet. Whilst I submit that not every home has one, a lot of interested groups do have access to Internet technology. Overall, the committee has a modest budget, as is in keeping with all committees of the parliament. We do advertise all treaties that are under consideration. In addition, all treaties are tabled in the parliament for the viewing of all 224 members and senators so that they are under no doubt at all that the parliament and, through that, the constituents of each of those senators and members are advised and are able to contribute to discussion about those treaties.

With regard to the MAI matter, the committee decided that the issue was so important that it was necessary to advertise as widely as possible—given also the budget that takes place. To advertise in every newspaper, in every document that is published in

Australia, would cost not thousands but millions. I think the fact that the media have been reporting elements of our approach and our public discussions to date—there have been a number of articles in a number of different newspapers—proves that there is some coverage of this matter. I do not know whether anybody from the media is here today; they were certainly invited to attend. Nevertheless, I thought it was important for everyone to understand that we have certainly been keen to have as many people aware of this process as possible.

[1.57 p.m.]

CROLL, Mr Trevor Henry, 42 Pearse Street, Keperra, Queensland 4054

GREEN, Mr Gordon, Kentia Court, Elanora, Queensland 4227

PETERS, Mrs Eileen, Bundall, Queensland 4217

TIPLADY, Mr John, 26 Patrol Street, Jamboree Heights, Queensland 4074

ACTING CHAIR—I understand you are all appearing as private citizens. Mrs Peters, would you like to make your statement?

Mrs Peters—I am the lady who wrote the letter to the paper. I did so because, although you stressed in your letter that the general public was advised, I have found from asking people that they have never heard of the MAI or what it is about. They are just completely uninformed.

I have been in business for 50 years, 30 years in a retail business from which I retired at the end of the year. So I am a working person only recently retired. I sent the letter to the paper in exasperation because I was waiting for the press to take it up. You may have paid a lot of money for advertisements, but people do not always read the advertisements. They do read what they read in the paper and there was absolutely nothing in the papers at all.

Having written to the paper, they have put it in the *Bulletin*. Then I hope somebody will follow it up, because somebody should be writing about it and reporting on what you are doing today and what you have done. I have been interested in the submissions. They have all been well thought out and quite good statistically.

ACTING CHAIR—I appreciate your motivation. I think all committee members do.

Mrs Peters—The Multinational Agreement on Investment is something that people are not aware of. It concerns me that it will allow unrestricted international capital, which is the World Bank, to enter this country without any government control. That is the concern. We might sit here and say, 'Well, as long as you take notice of our little group, the Greens, or our little group, the Soroptimists, or somebody else, it will be all right.' But the fact is that it does not matter what the government decides. This Multilateral Agreement on Investment is to allow international investment in this country at their whim and without any resource of the government being able to stop them.

You can pass your regulations till you are blue in the face but, in fact, when it comes to the crunch, it will not help. Canada found this when a multinational overstepped

the mark and was wanting to pollute the countryside with some chemical. They actually took it to court and said, 'You can't do that.' The company said, 'Don't worry. We've got the power—your power. We override.' That is the real worry about this Multilateral Agreement on Investment. It is not only that; it is giving them open slather with the people of Australia.

Previous federal and Labor governments initiated the process. Somebody else mentioned GATT, but that was the beginning. Federal governments have continued the policy which they call economic rationalism—that is, the level playing field, political correctness and everything else—and it has not worked. As a result, Australia as a nation has continued to slide down. We have got mounting debt, massive unemployment, and an Australian manufacturing industry now the smallest of any developed country in the world. We used to be right up there on top.

Economic rationalism has not worked and is the reason for the collapse of small businesses everywhere you look—in the country and the cities. It has also resulted in family breakdowns, suicide, crime, drug taking and everything else. Economic rationalism has not worked, and certainly what the Multilateral Agreement on Investment is going to do will be worse.

Under the terms and conditions of the treaty, once signed it is going to be in force for 20 years, so you cannot even hold them up five years down the track when you find it is not working. All the money invested in this country will be on terms overriding every law, regulation, green ban, environment protection legislation and even safeguards relating to wages and conditions and methods of employment, and every part of our democratically elected government law or regulation will be superseded by the force of the drive for unrestricted freedom to the investor. This country will be a helpless victim.

Mr Tiplady—I would like to compliment the committee on at least fronting up and allowing us the opportunity to give some input to this whole massive problem as we see it. My submission was based on the premise that governments over a period of years have signed or entered into agreements without reference to the people. In fact, at this stage it is my understanding that over 2,500 international agreements have been signed. Probably not all of them are worthless, but certainly some would raise some concern—the Timor Gap treaty, for instance, of only a couple of years ago.

When I speak to people about this they say, 'MAI? What's that?' They seem to think it is the month before June. It is quite astonishing that something like this is not known. We have GST, which everybody understands. There is not a person in this room that has not heard the initials 'GST', and the people in this room are probably the only people aware of MAI, or it seems that way.

The problem I see with the MAI is that there has been a great deal of secrecy—I think it is undeniable—until very recent times. Why the secrecy? My view is that

governments are elected and their first charge is to set the country right and to organise it. The situation we find Australia in today is one which I think most politicians should be ashamed of—not 'would be', but 'should be'. We are delving into areas of so-called international input while at home the fires are burning—or virtually gone out, I should say. It is really a crazy sort of situation.

I am an engineer by profession. Yesterday I was at an engineering works at which some castings had arrived for machining. They were made from Australian pig iron, which we exported at $500 a tonne and imported back here for $1,250 a tonne. Yesterday I spoke to a greengrocer, who deals in the markets. He told me that at the markets were on offer imported mangoes, imported oranges and, of all things, snow peas from Zimbabwe. I think you are going to have a great deal of difficulty selling an MAI to any Australians right now while the present scenario exists in our country.

Mr Green—I made a submission to the original inquiry late in April and I covered two particular areas. I was concerned about one of the objectives of the agreement, which was to ensure that overseas investors were treated no less favourably within Australia than were local investors. I gave a couple of examples as to why I felt that that was wrong and then a history.

Mrs Peters made a point earlier with regard to our manufacturing sector in the past. It provided valuable and much needed employment and all that seems to be happening at the moment is that there are steps in progress all the way along the line destroying high volume work opportunities. I will not go into that further. It is on the record and I just wanted to touch on that briefly.

I also drew attention to and expressed concern about the provision allowing unhindered entry and stay in Australia of overseas based skilled advisers or technicians whose purpose it was to deal with the local interest of the foreign enterprises. My point was that that has not been necessary in the past. Overseas controlled companies have done very well with Australian people in the past and I see no reason that such a radical change should be made on that particular point.

I have handed in a fresh submission this afternoon, and I would like to quickly cover the points I have made there. Firstly, I have seen a reasonable amount of press coverage in recent weeks—or the last several months, I should say—about MAI, but the one thing that is missing from all the coverage is the benefits to Australia of participation in the MAI process. There needs to be identification of these benefits, just like anything else that we might get involved with if we are selling something. What are the benefits? There needs to be identification and explanation of why Australia should be, or in fact needs to be, involved in this process.

Secondly, I express genuine amazement at the apparent lack of awareness of MAI and its provisions by politicians at all three levels—Commonwealth, state and local. For

instance, the Gold Coast City Council was on the record early in May expressing some concern about the impact of MAI and 'would somebody please have a look at it'. I use that as an example because the Gold Coast City Council is the second largest local government authority in Australia. That is the politicians, and the wider community had no awareness—as did the politicians, it seemed—at the time of the originally proposed discussion deadline.

You did explain this at the start of this session, Mr Chairman, but I understood that the joint standing committee hearing was advertised in only one issue of the *Australian*. My point here is that for other things—legal issues, bankruptcy, company matters and the like; anything that could be regarded as important—it is usually the proper procedure that it is advertised in at least one newspaper in each state on several occasions. I would think when applications are being called for submissions that that should be the procedure that is followed.

ACTING CHAIR—The call for submissions certainly was advertised in each state's major newspaper, but if you lived in Cairns you could probably say, 'Why wasn't it in the *Cairns Post*?'

Mr Green—That is fine. I think it is very important that the advertising process is done in an equitable manner to ensure that the community has an opportunity to make submissions to the hearing. Those submissions are vital. Another issue I was concerned about when I read the initial report from the May hearing—I just put it this way simply—was: why was the joint standing committee hearing treated so disrespectfully by the bureaucrats from the principally concerned Commonwealth departments?

ACTING CHAIR—We wonder the same thing.

Senator COONEY—I think, to be fair, Treasury was the only one. I think Treasury is the one that has been conducting this, so I just correct any impression that it is spread throughout the government.

Mr Green—I think there were two main ones. I misplaced my copy of the report but, as I recall, it was the department of industry, science and technology, or whatever its correct title is today. There was much difficulty in getting information there.

ACTING CHAIR—We asked for a reason as to why they did not make a submission to us.

Mr Green—Surely that is the relevant department that should be making a major contribution. I think it really treats the community as well as the parliament with disdain.

ACTING CHAIR—That is a point that is not lost on us.

Mr Green—Following on from that, could I ask what action was taken by the joint standing committee with the relevant ministers to insist that, where a department was guilty as I described it, something was done about that? Can I also ask what action is the joint standing committee considering to ensure that members of the Australian community are given sufficient information on the MAI in future to be able to meaningfully discuss their views on this important matter with their parliamentary representatives? This would enable the will of the electorate to be considered by parliament and the serving bureaucracy. I emphasise the latter part particularly.

The MAI negotiations and the apparent secrecy surrounding them are, in my opinion, an excellent example of why Australians generally have lost faith in those who have been elected to represent them in parliament, together with a bureaucracy employed to serve both the government and the community. In my view, it is time for both to refocus on their responsibilities. My final plea today to the joint standing committee is to ensure that Australia retains its sovereignty and thereby controls its own future by recommending that Australia never becomes a party to the MAI as it is presently proposed. Thank you very much for the opportunity to speak to the committee.

Resolved (on motion by **Senator Cooney**):

That the document be received as evidence and authorised for publication.

Mr Croll—Big controlling government and big dominating business is fascism, and fascism is evil. Our moral heritage is based on: love thy neighbour as thyself; do unto others as you would have others do unto you; and provide goods and services to receive money in exchange with fairness and in an honest way. When you have a society where the population can no longer provide goods and services to receive money in exchange, that society fosters a criminal element. What I am saying is that there is more than wealth that can be stolen from people. Economic opportunity can be stolen from people as well. A country where people do not have an economic opportunity is a country that heads towards crime. That is what I say that this MAI is about. I am in small business and I have a fundamental problem, that is, that my customers do not have that much money. I need my customers to have money, because when they have money to spend I have some good excuses for why they should give me some. But, when my customers do not have much money to spend, no excuse will give me a chance of earning any income.

When you have a look at what has been happening in this country, there are wealth transfer mechanisms that are moving money away from ordinary people. They are moving economic opportunities away from ordinary people. We have a superannuation guarantee level that is moving almost six per cent of the gross domestic product into financial institutions, making ordinary people poorer and big business and multinationals wealthier. They use that money and take over and then they own this country. Ordinary people have less to spend, so their economic opportunities are down. Look at what happens with, say, supermarkets like Coles and Woolworths and the local greengrocer—the Coles fellow was

looking at the prices and dropping his prices, and the other guy gave up. That is happening right across Australia with supermarkets.

I was in business building computers in 1984. I had government and private enterprise multi-user mini computer systems. The Queensland government got conned by the Sperry computer company into the idea that Queensland could become the Silicon Valley of Australia. So what the government did, in its wisdom, was lump all its orders together into a period contract and Sperry got that contract. The local industry got no orders from government any more. That sent the local industry into a spin—a downward spiral. People who were building computers and the technology in this country got damaged. Sperry did not build computers in this country. The government spent one point something million dollars, built them a factory, and they had 12 people there who were screwing cash registers together. That is basically what the Queensland National Party government finished up with as a result of their grand plan to make Queensland the Silicon Valley of Australia.

We seem to see lies from our government. That was a lie told to the people of Queensland by the government, because this deal was going to do something great for Australia and for Queensland. But what it did was hurt those people in the industry who were doing the same thing and who were the competitors of that multinational. We see examples of this. You will see it here in my document. There are other things.

ACTING CHAIR—I will invite you to wrap this up, if you would.

Mr Croll—I will finish by saying that, if Australia goes into the MAI, this country will be fascist; it will be evil. Big business and big government, with the economic power that they have, will wipe out small business, like they have been doing for the past 10 or 20 years. We will not have the ability to earn incomes, except for those who are employed by multinationals. The rest of us will be left to social security or crime. If you really want to solve this country's problems, you should put in incentives for small business against big business. There is a morality issue here. It is okay for Coles to start selling groceries cheaper and deliberately send the local guy broke; they can subsidise that branch. Take Microsoft. He is giving his Internet Explorer away for the purpose of wiping out Netscape. It seems that this government would condone that type of behaviour.

ACTING CHAIR—He has got into a lot of trouble in the United States.

Mr Croll—Yes, I know. But this government in Australia would condone that sort of behaviour from the multinationals. It is those sorts of processes which are damaging this country.

ACTING CHAIR—On behalf of the committee, I thank all four of you for coming here today.

Senator COONEY—Mr Green, what do you do?

Mr Green—I am a business management adviser to small business.

Senator COONEY—You have discussed this with other people in small business. Do they all agree generally with what you say?

Mr Green—Yes.

Mr Tiplady—Yes. The general feeling is that if there is to be foreign investment—and we do need foreign investment in this country all the time—that it be on a restricted basis in as much as control always resides with Australia and we do not allow it to be totally taken over.

Mr Croll—Everyone knows that it is better to own your own home than it is to rent it. I cannot see how foreign investment that allows foreigners to come in and own this country and we finish up being tenants in our own country is good for this country. We have far too much foreign investment this is already making too many people tenants in this country.

Mr Green—Of major concern with this is that the present federal government is concerned about tax revenue collection. The community is concerned about tax revenue. I think that one of the things that we are concerned about as a nation is that the more overseas based companies that come into Australia the more likelihood there is through transfer pricing and other such devices that we finish up with a lot of big companies that are making no money at all and their net contribution to the tax pool is nothing. And who pays? All of us sitting here. That is one of the very critical things that must be considered before anything is done here.

ACTING CHAIR—I thank each of you for coming here today. One of the main ingredients to this committee is to hear from people such as you, because it acts as a prompt to all of us on this committee. I think that a lot of the questions and concerns you have raised could be the subject of a very long and lengthy discussion and debate. I think that they can all be typecast by one thing, that is, that the committee structure allows all of us, as members of parliament—and I guess that everyone in this room has a varying amount of faith in individual members of parliament to do their thing—to ask the types of questions you have raised today. Thank you very much for raising those matters directly with us. We will take four more statements.

Resolved (on motion by **Senator Cooney**):

That the document be received as evidence and authorised for publication.

[2.25 p.m.]

ALDRIDGE, Mr Edward Patrick, School Road, Veresdale, Queensland 4285

BIRCHLEY, Mr Alan, PO Box 7470, Toowoomba MC, Queensland 4352

MULLINS, Mr Norman, 12 Port Drive, Mermaid Beach, Queensland 4218

PICKERING, Mr John Edward Geoffrey, PO Box 38, Gympie, Queensland 4570

Senator O'CHEE—While we are waiting for the chairman, it might be helpful if each of the witnesses could give us the capacity in which they appear, if any.

Mr Mullins—I am appearing on my own behalf.

Mr Aldridge—I am appearing as a private citizen.

Mr Birchley—I am appearing as a private citizen.

Mr Pickering—I am here as a private Australian citizen on my own behalf and on behalf of anyone else in Australia who is worried about this country.

ACTING CHAIR—We might start with Mr Pickering.

Mr Pickering—Thank you for this opportunity to come here. I congratulate all of the previous witnesses. Indeed, I do not envy you your job, whichever way your decisions go. I am sure that all of us would like to think that everything is going to work out for the better. However, I do not believe that this is going to be the case when we look at the evidence around us. General Douglas MacArthur once said, when asked to sum up the history of the reasons for failure in war, that they could be summed up with two words: too late—too late the threat recognised, too late the enemy identified, too late resources gathered together and friends supported. I believe with no shadow of a doubt that we are in that situation now. The MAI is part of a package that is all tied to the money business. May I touch very briefly on nine points?

Mr Harry Dexter-White chaired a meeting in July 1944 at Bretton Woods. His technical secretary was a man called Frank Coe. They were both later exposed as members of the same Soviet ring. At that meeting the IMF was formalised. From 1946 until 1993, the position of Under-Secretary-General of the United Nations Security Council, with one exception, was filled by a Soviet citizen. People have already mentioned here today how, in 1954, the Australian government passed the Income Tax (International Agreements) Act, which has let foreign multinationals trade here tax free for over 40 years while people like us in this room each fork out an average of $11,000 a year in tax to make up the balance.

In 1974, Australia became part of the United Nations Declaration on the New International Economic Order. Parliament received the Senate's report on that, 'The New International Economic Order—The Implications For Australia', in 1980. For years its existence has been denied.

In 1975, Australia adopted the Lima agreement. I understand that many speakers before, in submissions to you, have mentioned the effect that it has had on our industry, both secondary and primary. In April 1975, parliament pushed through in record time the Common Informers (Parliamentary Disqualification) Act. It effectively neutralised section 44 of our constitution, which deals with disqualification of parliamentarians who have allegiance to foreign powers. Someone here—in fact a number, and I think Senator Cooney was one—expressed their concern about the treatment that your committee had received by public servants. The Treasury Department was highlighted as one perhaps needing attention. It is my understanding that, in the years 1989 to 1993, a gentleman called Edward Evans was the Executive Director of the International Monetary Fund in Washington. That may bear some significance on your problem.

In 1994, Liberal-National Party senators opposed violently Australia signing the United Nations Desertification Treaty. I congratulate them. I understand that we have not yet ratified that agreement. My congratulations on your courage and perseverance. I understand that on 1 January 1999, Papua New Guinea, at the encouragement of some external organisation, will take on a goods and services tax of about 10 per cent. Looking at past goods and services taxes that operate in over 20 countries in the world, whereas the people were all guaranteed, 'This is it. This is the percentage rate that will apply', the average increase up till now over those 20 countries is 42 per cent.

ACTING CHAIR—I might invite you to summarise your last few points.

Mr Pickering—Thank you very much. Solzhenitsyn was asked why the USSR's disaster cost 60 million lives. He summed it up very crisply by saying, 'Men have forgotten God. That's why.' God tells us a way out of our problems. If we look at 2 Chronicles 7:14—and other speakers have addressed our social situation in Australia—it states:

> If My people who are called by My name will humble themselves and pray, and seek My face, and turn from their wicked ways, then I will hear from heaven and will forgive their sin, and will heal their land.

I have no doubt at all that the prophet Jeremiah could well have been speaking to us when he said:

> Just as you have worshipped foreign gods in your own land, so you shall serve aliens in a land that is not yours.

That concludes my evidence.

ACTING CHAIR—Thank you, Mr Pickering. We will now move to Mr Birchley.

Mr Birchley—I thank you for this opportunity to appear before you. If brevity is the soul of wit, I will endeavour to be as concise as possible. We have heard a lot of negatives today. I would like to proceed to a positive suggestion. There has to be a solution to the dilemma in which this nation finds itself. I will go straight to that.

I suggest that this MAI draft is already outmoded and outdated, and the speed of events globally has brought this about. Technology is taking our global situation along at a frenetic pace. So I suggest that this treaty has to be renegotiated and redrafted. It has to be enlarged. We just cannot look at fiscal and financial imperatives to suit the purposes of multinational corporations. It is people who matter most, not dollars and cents. So for that purpose, how are we going to proceed?

The OECD is an agency of the UN, and it was charged with the original responsibility of this draft. I suggest that time is of the essence, and we do not have a lot of it. The UN is in some respects an ideologically compromised democracy, but it is the only credible global institution that we have to take the first halting steps. Let us use it.

Time restraints at this sitting preclude me from putting forward a scheme. I am simply suggesting that we scrap the present proposals, but Australia should be at the forefront of any enlargement of this agenda. I am sick and tired of hearing about Australia being only a small country and that we do not matter much. In the global scheme of things we matter a lot, because multinationals are coming here for a variety of reasons. The first one, I suggest, is the plethora of natural resources that this country possesses. Our global situation is unique. We are the only nation on earth that occupies an entire island continent. We should capitalise on that. The best resource this country has is its people. We have the intellectual talent in this country to retrieve the situation, I suggest, and I think we should set about doing so. I do not want to enlarge any further, gentlemen. Thank you.

ACTING CHAIR—Thank you very much. Mr Aldridge?

Mr Aldridge—I have many, many concerns about the MAI, most of which have been explored today, and I do not propose to go over them. There are a couple of matters that I do not think have been particularly considered. First of all, there is little evidence so far that the states have been consulted or considered in the deliberations concerning this matter. I have never heard a Queensland politician of either party in the state house or, indeed, in local government have anything to say about the MAI. I do not know whether they have said anything or even whether they have considered it. There is evidence in your own report that they have not been very well consulted. Yet the states can well be subject to the provisions of the MAI in this serious matter. Once again, it is a case of the Commonwealth through its external affairs power continually encroaching on the rights of the states and thereby inevitably destroying the federal system. They have done a fair job

on that so far.

While we are on the topic of international agreements, I know we make a lot of them, but the effect of international agreements is not always foreseen and they can have a serious effect on our own law making considerations in our own country. The effect would be obvious from the Rodney Croome appeal to the United Nations Committee on Human Rights. As soon as this committee—whatever it was—found in his favour, our federal government proceeded to pass a law to overthrow Tasmania's sodomy laws.

I think the Teoh case has been referred to where you come into apparent conflict with the convention on the rights of the child. Here is an undesirable, I think illegal immigrant, guilty of heroin trafficking and we want to throw him out, but the High Court rules that under our commitment to the rights of the child convention we have to consider his children and keep him here.

Every international agreement places limits on our freedom. It is the unforeseen limits that cause most of the trouble. As I said, every such agreement allows the federal government to use its external affairs power to further limit the powers of the states. The more agreements there are, the greater the opportunities for conflict of opinion and the greater the power to the people who draw a great deal from the public purse, the legal fraternity. Some of the problems that could arise lie in the lack of precise definition of things such as investment and expropriation. I would like to give a little quote from Marjorie Griffin Coen, chair of the Canadian Centre for Political Alternatives in making a report to the House of Commons:

One of the main problems with the MAI is that investment has been defined so widely that it covers a great many activities which go far beyond what are normally considered investments, that is, actions which acquire assets within the country. The MAI meaning of investment is inflated to cover all kinds of activity even when there is no commitment of capital. The wide scope of the definition means that understanding precisely what impact various parts of the document will have on public policy and economic activity will only really be known through challenges to existing law—

and that is where we run into a lot of trouble, do we not—

a process which will provide considerable instability in economic and social systems.

I will leave it at that.

ACTING CHAIR—Thank you very much. I will add one comment to the end of yours. Last week in Melbourne at public hearings we spoke with local government, and the point you make about the impact on the states and on the local government as an agent of the states regardless of whether the federal government wants to intervene or not was certainly there, and that has not been lost on the committee as well.

Mr Mullins—I will be brief. You already have my submission on the subject. I

simply want to make a couple of points here. You say that consideration of the agreement was publicly known. I was talking to about a dozen people yesterday and I was the only one who knew anything about it. They had no idea what I was talking about. Even though it might have been advertised, it has not got into the general public and I think the point has been made several times here today.

As I said, most of my concerns are in my submission and I will not elaborate on them except to say that I am opposed to world globalisation, that is, the world powers which this is attached to. I am aware that Renato Ruggiero, Director-General of the WTO, in Singapore in December 1976 said, 'We are writing the constitution of a single global economy.' This, of course, will include the Multinational Agreement on Investment.

If this agreement is adopted, it would undermine the ability of governments, that is, federal, state and local, to shape our economic and social policies for our own good and benefit. It would also give the multinationals and other large foreign investors the right to sue our governments, and the case of the Canadian government being sued has already been mentioned today. They attempted to sue that government—and I do not know whether that was successful—for $251 million because the government banned the toxin MMT.

I am concerned that, if this sort of things goes through and globalisation does occur—and it is heading that way—we are going to be governed by faceless people in foreign countries. It is happening already. There have been many agreements in which people from Africa of all places are telling us what we can do and what we cannot do. I will not give details here, but I think that most of the members of the committee and the public here are aware of what I am talking about. Many issues are involved and they have been mentioned here today. As a responsible citizen of Australia, I am fully aware of the necessity to urge that this agreement be rejected to protect our sovereign rights. Thank you.

ACTING CHAIR—Gentlemen, the contribution that you make to us in being here today again refreshes and keeps us focused on the task that we are trying to do for you. As I said, as a subcommittee of the parliament, we are a subcommittee of your representatives at the government level. Whilst I hear lots of concern about whether or not we have the focus on the right thing, you help to keep us focused on what we are already determined to do. To take up your point, Mr Mullins, I do not think anybody serving in the current Australian parliament wants to find their role perverted by, as you put it, faceless people outside the country.

I guess one of the great points in favour of this committee is also that all of the matters that you are raising, all of the comments that you are stating, are being recorded by Hansard and they will be on the *Hansard* record of the Australian parliament for all time. Even those people in the bureaucracy—and I am not singling out any individual public servant because individually, of course, there are a lot of tremendous people there,

but collectively—and systems are more about maintaining themselves than getting the right outcomes. I suspect that, if bureaucrats as a terminology are held to account directly by Australian citizens, I think, if nothing else, this committee is doing a good job. Thank you again for coming today. We thank Mr David Grace for his patience.

[2.44 p.m.]

GRACE, Mr David James, Level 22, Central Plaza Two, 66 Eagle Street, Brisbane, Queensland 4000

ACTING CHAIR—For the *Hansard* record could you please state the capacity in which you appear before this subcommittee?

Mr Grace—I appear as a private citizen of this country.

ACTING CHAIR—Would you like to make a brief opening statement?

Mr Grace—Yes, I would, thank you. I would like to say two things initially, make eight points and then I understand you will throw it open to your questioning. First, may I congratulate the government on having this process. For many years, this country has seen far too many treaties being simply signed off by ministers without the opportunity that you are giving the people of this country to comment. Whilst some people may find that the advertising has been a little less than they desire, the fact that I have been able to make it here today is at least a signal that you are providing at least some of the community with the opportunity to be here, and I appreciate that.

Secondly, I recognise the absolute necessity for foreign investment in this country to enable this country to grow and to develop to be the great country that it has been in the past and that it will be in the future. Thirdly, I would like to say that there have been difficulties in obtaining access to the documents that relate to the MAI. The submission that I made on 30 April was made without the ability to read all of the Treasury documents which I have since been able to find on the web site, and I will make some comments about that in a few minutes. It has, I think, led to some confusion and misunderstanding, and that has been referred to in the submissions. There is a message there for the government in the way in which it puts out these matters in the future.

My position, however, having seen the documents remains implacably that I am opposed to the Australian government adopting the MAI. I see no or any adequate justification in the Treasury submission, and I note that no other department of the federal government has put in a submission. I also note that, indeed, the interim report criticised one of the other departments for not having done so and one would have thought that, if it was a matter which was seen to be of benefit to this country, then it would have done so.

ACTING CHAIR—That department is in the process of putting a submission in.

Mr Grace—Maybe it could have done so earlier. The onus I say clearly lies on those who assert the benefit of it to do so. From the information that I have seen and from the Treasury submissions, I find no case that the MAI should be entered into.

Having considered much of the material on the web site, I am, however, better informed than I was when I wrote my submission, and I would like to make some comments as to the reasons why I have not changed my mind on reading those documents. One is that there is no proof of the necessity. The second is that, even if reasons exist for making these obligations on the part of the Australian parliament, why cannot they be done by statute rather than by being entered into as a treaty?

The third is that, if legislation was ultimately required or if a treaty was ultimately made, I take comfort in the statement that only six months notice is required to be given in respect of withdrawal, whereas the previous information suggested that that would be five years notice. I think six months notice was reasonable. However, I do not believe for the reasons stated in my original submission that five years is a reasonable period of time to be bound by the treaty at the start. I believe that three years is the maximum period of time, and I say that consistent with my concerns about the sovereignty of the nation; that is, if this government enters into this commitment, the subsequent government should have the right to withdraw from it within its term of office. The fourth is that, if again the treaty is signed, the period of 15 years within which those who have invested in the country are bound following the withdrawal is too long. I think a decade is, in most cases, a period of time within which corporations expect to get a return on their investment and that 10 years is therefore an adequate period of time in the circumstances. I believe that the national interest and national security should be an overriding factor in the applicability of any obligation on this country, and I believe very strongly that, if ultimately the document is signed or if a statute is created to provide these obligations unilaterally, it ought to be very clear that the national interest and national security is the overriding factor which entitles the government to resile from those without any consequences whatsoever.

I refer to the interim report, paragraph 1.51 and I note there that there was no reference to the six months notice. In that context, I say that that was part of the confusion that was caused about the period of time that countries were expected to give notice before they could withdraw. I am concerned—and I share the concern in paragraph 1.48 of the interim report—about the standstill and rollback provisions causing confusion. I do not believe that governments should be bound to stand still in relation to their own legislation or to roll back those ‘non-confirming’ measures which they find. Otherwise, there is interference with the sovereignty of the country.

I accept the fact that, having read all the exemptions, environmental issues and many other issues, including labour and those things which may be seen to be of a sensitive nature, are exempted. However, I make the point that others have made here earlier this afternoon, namely, that we cannot foresee all of the circumstances that will apply in the future and that the difficulty and, indeed, the danger of these types of treaties is that they will bring about circumstances which are not envisaged and which are to the detriment of the country.

I have concern over the meaning of 'non-discriminatory' in the context in which it is used, that is, member states of the treaty will be allowed to make regulations that are non-discriminatory. What does non-discriminatory mean? One could look to legislation in this country and see what discrimination means, but that normally relates to sex, race and other things. Is that the intended consequence or is it not? I believe that, again, any obligations whatsoever must be subservient to national interests and national security considerations.

Again, I support the comments of the committee in paragraph 1.54 as to the inadequacy of the Treasury submissions. They make reference to a most favoured nation, but if you go to the explanation of 'most favoured nation' it is far from clear. If that is one of the grounds upon which they say that we should become a party to this treaty, it leaves me quite hollow. They say, for example, that over the past 15 years or so Australian families have benefited on average by about $1,000, and that is at page 1309 of the report. But if that has happened without the benefit of the MAI, then why on earth do we need it?

Treasury further says on page 1294 of the report at paragraph 10 that the main benefits for Australia are not here. They do not expect any benefits to come from anybody investing here in Australia. Obviously, they see the regulatory scenario for investment in this country as satisfactory and, as a citizen of this country, I would agree with them. We have a reasonable framework of protective laws for investment and yet, if you look at what they are saying the commitment of this country ought to be, it is quite inconsistent with the policy laid down under the Foreign Acquisitions and Takeovers Act. How does a government sensibly stand up in an international community and say, 'On the one hand we support the restrictions which we have and we seek an exemption with respect to those restrictions, but on the other hand we favour entering into this obligation which suggests that all foreigners should be able to invest in this country on a non-discriminatory basis'? It is inconsistent and I really think it makes a goose of those people who recommend it.

Finally, we do not need—and I repeat what a lot of others have said here this afternoon—a fourth level of government. There is a lot of debate in this community about whether we need three, but whatever the merits of that debate, we certainly do not need four and far from a case where the fourth would be constituted by a body of people who are not elected by the people of this nation.

ACTING CHAIR—Is that what you mean when you suggest the democratic principle?

Mr Grace—Yes.

ACTING CHAIR—In other words, entities are not ultimately accountable to the people so then ultimately it is an undemocratic process?

Mr Grace—That is right. That is why the sovereignty must be protected.

ACTING CHAIR—You have also raised the matter of large scale foreign investments not being acceptable to the national security of the nation. It is interesting that some things may be targeted towards our own national sovereignty—our physical sovereignty as well as our economic sovereignty.

Mr Grace—Quite so. There has been concern in this nation—and I do not necessarily subscribe to it—that, for example, the Japanese invested here in the view that they would take over the country economically if they failed to do it militarily in the 1950s. I do not agree with that, but I do think—

ACTING CHAIR—It seems that the biggest investors in Australia are actually—

Mr Grace—Yes. I think there are countries who have made great contributions to the development of this nation, and Japan is one of them. However, I am concerned that, if you have this non-discriminatory approach and if you do not have the overriding consideration of national interest, then you run the risk that companies, other organisations or whatever they are called from other nations will come here and make investments which on the face of it might seem to be commercial but may, indeed, have subtle military undertones. That represents a threat to our nation. I think that the practices and the policies of the regimes that are in force at the present time should be adhered to, and there is no justification whatsoever on that basis to enter into the MAI.

ACTING CHAIR—I suspect that Senator Cooney wants to ask you about your curriculum vitae and your background.

Senator COONEY—Just so that when we are writing our report we can say, 'Mr Grace has done this, this and this.' You make another point which I just want clarified. You are saying that this would take away the flexibility that governments ought to have so that, if there is a change in the colour of a government, it should be entitled to legislate as it will without being bound by the agreement.

Mr Grace—I very strongly believe that that is a principle of democratic government, that no government can bind a successor. That is what I mean by that. I am a lawyer. I practise in Brisbane. I am a director of a number of public companies, one of which has invested overseas, as I said in my statement. I accept totally that when a company makes an investment overseas it must accept the terms of the political, cultural and economic regime in which it invests. It must respect that and must learn to operate in that environment, and others must do the same here.

Senator COONEY—In that context, could I get a comment from you on a statement made by a person who came along representing the Business Council of

Australia? He said that in fact what this is all about is not so much investment in Australia as giving us opportunities to invest overseas. He said that if we don't accept an agreement like this we are going to be denied investment opportunities overseas. Have you got any comment on that?

Mr Grace—I do. With respect, I think he's missed the point. In fact, I read an article in the *Financial Review* in the last two weeks which stated that one of the great criticisms of this government and its predecessors was that it had not necessarily addressed the tax treaties into which this country has entered and that, if we addressed the tax treaties to make the position of Australian companies in foreign states better and more equitable than the positions of companies from those nations in Australia, we would be better off. We talk about a level playing field, but we don't create a level playing field for our own companies in foreign nations. We would be better off doing that than worrying about the MAI, I can assure you.

ACTING CHAIR—Mr Grace, I think you made the comment before about statute rather than treaty. I guess that is probably at the heart of your suggestion in your submission—that just because the US is an ally and we are a member of the OECD, which is obviously developed nations, does not provide an absolute demand that we have to follow what they say as a notion. So you are saying that, if there are elements of the MAI which are good for Australian business and good for Australian workers and good for the Australian people, then we should look at that as domestic law, not as a treaty?

Mr Grace—Legislate it, and that provides comfort on the democratic principle that, if your successor in government does not agree with it, it can change it and you can change it back.

ACTING CHAIR—I instantly thought of the opposition parties in the Senate when you said something about your predecessor in government not preventing you from changing things.

Senator COONEY—You say the whole principle is wrong? This is not an agreement or a treaty that can be resurrected in any way?

Mr Grace—It is one that ought not be entered into for the reasons I have stated; that is, there is no adequate reason for it and there are plenty of good and valid reasons against it, and I think you have heard a lot of them in the course of these proceedings.

ACTING CHAIR—Mr Grace, thank you very much for your impressive presentation this afternoon. I think you have put matters very well. We really do appreciate you taking the time to come here today to offer us the verbal version of your written submission, both of which are very much at the heart of the treaties committee's ongoing deliberations on this matter.

[3.00 p.m.]

BOYD, Mr Gregory Michael, Coordinator, Global Learning Centre, 102 McDonald Road, Windsor, Queensland 4030

JEFFERS, Mr John Joseph, 5 Nystrom Street, Chermside, Queensland 4032

ACTING CHAIR—Mr Jeffers, I understand you are appearing as a private citizen. We have received a submission from the Global Learning Centre.

Resolved (on motion by **Senator Cooney**):

That the document be received as evidence and authorised for publication.

ACTING CHAIR—I invite you to make a brief statement.

Mr Jeffers—Having had the benefit of listening to the evidence of the preceding speakers, in particular Mr Downey, Professor Hiscock, Associate Professor McDonald and Mr Grace, I do not think I can add anything to what they have already said so competently and comprehensively. As a lawyer, I wish to endorse and repeat what they have said for the reasons they have advanced and to assert that the Australian government should under no circumstances become a party to the MAI in its present draft form.

Mr Boyd—Unfortunately, I have not had the privilege of being able to listen to a lot of the previous submissions this afternoon. I have only recently arrived and regrettably I cannot reflect on those, but I am sure I would support and applaud any concerns that have been made to the committee today that would be highlighting concerns about the possible impact of the MAI on Australia.

I guess what I very briefly wish to do is express concerns about the implications of the MAI on the developing world—developing nations particularly. I think it is quite appropriate to do so. We are as Australians concerned not only about ourselves but about our neighbours and, certainly in the case of a developing world, our near neighbours.

It may seem a slight tangent, but I think it was significant that as recently as last Monday our own Minister for Foreign Affairs, Mr Downer, released a media statement publicising the findings of a Newspoll which indicated that just over half of all Australians believe on a moral basis that Australians should provide overseas aid to developing nations and a further 33 per cent of Australians feel that it is in the long-term interests of Australia to provide overseas aid. So there is clear evidence that we have a large proportion of our population clearly concerned about the welfare of the developing world.

From the point of view of democratic process, it is of clear concern that the MAI is clearly excluding a large chunk of our world. As I understand it, only five non-OECD

nations have been included in the negotiation process, those nations being Chile, Argentina, Brazil, Slovakia and Hong Kong. From the point of view of global citizenship and global participatory democracy, it is of great concern that so many people who are going to be potentially affected and affected severely by the MAI are not involved in the negotiation process.

I highlight some of the recent findings of the United Nations. I am quoting here the United Nations Development Program's human development report from 1997. It has indicated from its findings that between the years 1995 and 2001 global income is set to increase from somewhere between $212 billion to $510 billion. This sounds like good news, but it is not so good news for the developing world, where the least developed nations in the same period will lose up to $600 million per year with sub-Saharan Africa, the poorest part of our planet, facing a loss of up to $1.2 billion in that same period.

In specific reference to investment, that same human development report notes that 90 per cent of foreign direct investment currently circulates only in North America, Europe, Japan and China, which represents only 30 per cent of the world's population, with the remaining 10 per cent of foreign direct investment going to 70 per cent of the world's population. So, while there is a lot of global rhetoric about the universal benefits of liberalising both trade and investment practices, in reality only a small proportion of the world is enjoying the benefits of that liberalisation.

I guess what I would be arguing is: that is a clear case for not going down the path of the MAI but for formulating a truly international agreement that includes not only Western and developed governments but all governments—and not just governments but representatives of a broad cross-section of the community, such as trade unions, human rights groups and community organisations, so that we come up with an authentically international agreement on what investment should look like.

Investment is not meant to benefit just multinational corporations. It is meant to benefit the people and it is government's responsibility to ensure that it does. So it is on the basis that we are here not only for ourselves but also for our neighbours, who are in far more dire straits than we are, that we do not support the Multilateral Agreement on Investment.

ACTING CHAIR—So it would be your contention that Australia provides leadership to its region and what we do is important to our region and also that the MAI in itself will further exacerbate this condition that you have identified that will see global capital concentrating more on the developed countries?

Mr Boyd—Absolutely. Here we are on 24 July 1998, long before the MAI is to be signed, yet already one in five people on our planet lives in absolute poverty. What are those figures going to look like 20 years from now if we sign the MAI? That is my concern.

ACTING CHAIR—I thank both of you for participating in this discussion this afternoon.

[3.10 p.m.]

SANDERS, Mr Richard David, National Coordinator, Stop MAI Coalition, 223 Logan Road, Buranda, Queensland 4102

ACTING CHAIR—Senator Cooney, we first met Mr Sanders in Canberra at our first discussion—the famous one, where we talked to Treasury officials. Mr Sanders can probably remember blow by blow our discussion with the Treasury officials. Mr Sanders, you have been here all day. You have obviously heard a lot of viewpoints. Would you like to give us a few minutes summary of your views now?

Mr Sanders—One thing I would like to do for the record is update people on the Ethyl Corporation case in Canada. I have a couple of newspaper articles from the *Globe and Mail*, one of the Canadian newspapers. They indicate that the Canadian government is now actually backing down under pressure on the legislation it introduced to protect environment and health in regard to this chemical, MMT, the petrol additive.

I think this substantiates the real concern that I think a lot of people have about governments losing sovereign control over the economy. Right now the Canadian government is backing down under pressure and under threat of a $250 million law suit, which it knows it is going to lose. Not only is it backing down; it is even making statements that 'this substance is in fact environmentally and healthwise safe'. So it has been forced to make those kinds of statements as well.

Another point I would like to raise, if I may, is that at the Canberra hearing Treasury's position was based ultimately on the OECD document *Open markets matter*. They were grilled by your committee and admitted that they had no empirical research behind their position, that it boiled down to the document *Open markets matter*. I have tendered as an exhibit two critiques of *Open markets matter*. They make it quite clear that *Open markets matter* talks about having all of this evidence that supports this position. When you actually look at the documents which are the evidence they use, you see that they do not actually have any substantive evidence either. So it is a very weak argument.

To add to a point that somebody else made, the thing that struck me from Treasury's submission to this committee in Canberra was its admission that in fact there will be no additional benefits to Australia by signing up to this thing, which I just find incredible. So why are we pursuing it?

Senator COONEY—I must confess, it would be useful to speak with some people who support the treaty. The Business Council of Australia seems to be the only one—out of those we have heard in Melbourne and Brisbane, in any event. I hope I am doing their argument justice, but the person from the Business Council of Australia said that it is not so much about investment coming into Australia but that we are given the opportunity to invest overseas. Have you looked at that argument at all?

Mr Sanders—As I understand it—again, Treasury's position I suppose backs this up—when it comes to investment within OECD countries the regime is already very liberal, and I think everybody is happy with it. The apparent benefits will come if Third World or less developed countries are opened up under this treaty. The concern I have then is about the welfare of the people in those countries.

They depend on foreign investment to get ahead and the way they do it is by having performance requirements on foreign investors so that there have to be joint ventures, the employment of a certain number of people, a guarantee that there are going to be exports and so on and so forth. They actually ensure that some benefit flows to those countries. Under the MAI as it stands, those countries will not be able to put in place those performance requirements. Essentially what will happen is that they will be mined of their wealth without retaining any benefits. I also table a further document for your information.

Resolved (on motion by **Senator Cooney**):

That the document be received as evidence and authorised for publication.

ACTING CHAIR—That concludes the program for today's hearings. On behalf of the Joint Standing Committee on Treaties and this subcommittee assembled here today, I thank all of the witnesses who appeared here today. The amount of time devoted to the preparation of submissions and the time taken to appear to give evidence here today is significant. The matters that have been raised have certainly not been lost on this subcommittee, and nor will they, because the transcripts will be made available to the broader committee and indeed to the parliament. Nor will they be lost on more people involved in these sorts of decision making processes. It is very much appreciated because, without the individual contributions of time and effort, this open process of scrutiny would certainly be the less.

Before closing, I would like to reiterate some of the comments I made this morning. The reforms to the treaty making process introduced by the coalition government guarantee that there can be no more secret treaties. Some today have emphasised their concerns that there have been matters negotiated without the full gaze of parliament and therefore the people of Australia. That is at the heart of the reason this committee came into being. In fact, the committee has already commenced a process, albeit a part-time process—I do not want to devalue it at all—of reviewing some of the matters that are in connection with this country, such as the convention on the rights of the child.

Our presence here today allows greater public input and parliamentary scrutiny of the treaty making process, which affects all of us as Australians. There will be further hearings in other capital cities before we finalise our consideration of this matter known as the MAI, and our final report will be tabled when that program of public hearings is complete.

Resolved (on motion by **Senator Cooney**):

That this subcommittee authorises the publication of evidence taken before it today.

Subcommittee adjourned at 3.15 p.m.