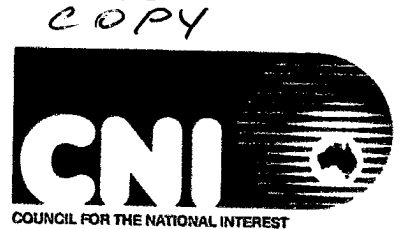


# Council For The National Interest

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17 August 2020

Hon Gladys Berejiklian MP  
Premier of New South Wales  
GPO Box 5341  
SYDNEY NSW 2001

*Dear Premier Berejiklian*

Two recent media disclosures should give cause for serious concern to all State and Territory leaders and to all Australians. Firstly, The Australian June 4, 2020, reveals that then Prime Minister, Mr Turnbull, in 2017 entered into the Optional Protocol to the Convention against Torture (OPCAT) without consultation with States or Territories or the Parliament of Australia. This UN Treaty gives United Nations Inspectors unrestricted access to prisons and places of detention with the requirement that States and Territories fund the multi-million dollar program.

Secondly, The Weekend Australian, July 25-26, 2020 reveals that Australia has a "secret deal" under its Free Trade Agreement with the US that requires Canberra to consult with the White House if it plans to reject a takeover offer by a US Company. This secret deal was a "side agreement" separate from the free trade agreement and still exists today although it was not generally known.

These two revelations expose the fact that there is a "democratic deficit" in that a Prime Minister or other Federal Ministers can sign and ratify a Treaty or Protocol without the approval of the Parliament. The Parliament is the body charged with carrying out the will of the people and the constitutional authority for the making of laws affecting people.

There is a "democratic deficit" when the executive Government can enter into treaties which can then become 'law' by a decision of a Court without the Parliament to allow or disallow the Treaty.

In 1992, CNI commenced lobbying for Treaties, Conventions, Protocols etc to be approved by both Houses of Parliament before they are signed, ratified and implemented. In Opposition, the Liberal Party leader indicated a willingness to support this policy but after election in 1996 with a change of leadership, the Coalition changed its approach and set up the initial Joint Standing Committee on Treaties (JSCOT).

Treaties, Conventions, Protocols etc are now 'laid on the table' for usually fourteen days and JSCOT then submits a report on the document leading to the situation where the Parliament has no power to approve, reject or alter the Treaty. As shown by OPCAT, these Treaties can have significant implications for States and Territories.

Accordingly, CNI recommends:

1. that States and Territories pursue changes to the Treaty Making Process so that JSCOT is required to consider all Treaty type agreements and make recommendations for Parliamentary approval or otherwise;
2. Where the Treaty has significant implications of national interest, public submissions are invited;
3. All Treaties, Protocols, Conventions etc. must then be approved by both Houses of Parliament before they are signed and ratified and can become law.

The Commonwealth Cabinet, currently occupied with the COVID-19 pandemic, could be an appropriate avenue for a united approach, by States and Territories, to bring about these changes. In the meantime we will continue lobbying at Federal level.

CNI will welcome your support and comments

*Sincerely*

*Denis J Whitely*

Denis J Whitely  
Executive Director

CC Secretariat, Joint Standing Committee on Treaties

*Sent to all State Premiers  
and Territory Chief Ministers*