



International Agreements Committee

Corrected oral evidence: Review of treaty scrutiny

Tuesday 3 June 2025

9.10 am

Watch the meeting

Members present: Lord Goldsmith (The Chair); Lord Anderson of Swansea; Lord Boateng; Lord German; Lord Howell of Guildford; Lord McDonald of Salford; Lord Stevenson of Balmacara.

Evidence Session No. 5

Heard in Public

Questions 35 - 45

Witnesses

I: Glenn Worthington, Clerk Assistant (Committees), Department of the House of Representatives, Parliament of Australia; Klara Fay, Secretary to the Joint Standing Committee on Treaties, Parliament of Australia; Julia Morris, former Secretary to the Joint Standing Committee on Treaties, Parliament of Australia.

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on [Parliamentlive.tv - International Agreements Committee](https://parliamentlive.tv/International-Agreements-Committee)

Examination of witnesses

Glenn Worthington, Klara Fay and Julia Morris.

Q35 **The Chair:** We should now be being broadcast, and I welcome everybody to this evidence session of the International Agreements Committee of the House of Lords on treaty scrutiny. If everything is in order, having warmly welcomed our visitors to this session, I will move to the first question. Is everything in order technically before I do that?

Glenn Worthington: We can certainly hear you and see you.

The Chair: Thank you very much indeed. I will get on with the first question. We understand that the treaty scrutiny process in the Parliament of Australia has evolved significantly since the mid-1990s. Can you tell us briefly what parliamentary concerns about treaty scrutiny led to the establishment of JSCOT, the Joint Standing Committee on Treaties? Could you help us with that, please, and a bit of the background?

Glenn Worthington: I am the Clerk Assistant (Committees) in the House of Representatives. The Joint Standing Committee on Treaties was established in 1996, following recommendations from a Senate committee. Its inquiry was referred in December 1994. The concerns raised in that inquiry went to a lack of consultation in treaty-making, the impact of treaty-making on Australia's federal system and also the roles of the Executive and the Parliament in treaty-making.

One of the issues that may accompany Australia, which the United Kingdom would not have, is our federal system of states and territories. There was considerable concern that there was insufficient monitoring of treaty actions on the state. Because the Australian constitution vests external powers in the Commonwealth, there was a concern that the treaty-making process may provide a basis for the Commonwealth to exceed its constitutional sphere of authority. Generally, there was also a concern about Parliament's ability to monitor the Executive in making treaties.

The Chair: Can you say a bit more about that? I understand the point about the relationship between the federal and other authorities. It is not entirely the case that we do not have a little bit of that ourselves. We have our devolved Administrations, and we spend a bit of time talking to them about how the treaty process affects them; obviously it does. Could you talk a bit more about the general points that you raised as well, because those may be more germane to what we are looking at?

Glenn Worthington: Certainly. The treaty-making process has been subject to parliamentary monitoring to various extents from the 1960s. The Government, through the 1960s and early 1970s, were tabling treaties before ratification. That fell into a bit of disrepair from the late 1970s and through the 1980s. When treaty actions were being tabled, some had already been ratified and there was a concern that Parliament

was not being given the opportunity to properly consider what actions the Government were undertaking to commit the country to.

The Chair: Why is it a joint committee? How do you think that works? That is two questions rolled up.

Glenn Worthington: The recommendation of the Senate committee was that it be a joint statutory committee. In fact, the Senate committee recommended that it be a statutory committee, and the Government response was that it be a joint committee established by resolutions of appointment moved in the House of Representatives and concurred within the Senate.

The Chair: Is that usual? Do you have many joint standing committees or joint committees of the two Houses?

Glenn Worthington: We do. Each House has a standing committee system that covers the portfolios of government. We also have joint standing committees—intelligence and security, foreign affairs, migration, the treaties, law enforcement. There is quite a number: over a dozen joint committees.

Q36 **The Chair:** We want to get a bit more into the detail of how you work, so I am going to pass the questioning over to Baroness Verma, who I hope is present and able to ask the question. I cannot see her, so let me ask the question. Can you outline the way that JSCOT operates, how it scrutinises treaties and at what point in the process it becomes involved?

Glenn Worthington: I will hand over to my colleagues. We have Klara Fay, who is the current committee secretary to the JSCOT, and also Julia Morris, a long-standing previous secretary to the committee.

The Chair: Welcome to you both, and thank you very much for being here.

Klara Fay: I will start and then Julia might jump in. The committee considers treaties. They are tabled in Parliament after signature but before binding action is taken. That is when the committee receives them. Once they are tabled in Parliament, generally with the national interest analysis document—

The Chair: We will talk about that, yes.

Klara Fay: They are generally tabled together, and at that point the secretariat is notified and proceeds to publish them on the website for the committee; they are made public. At that point—usually moments later—we call for submissions from the general public. That is generally given a two-week timeframe, but it can be extended longer if we think there is a need for it.

Consideration for that is given—probably similar to you—if there are public holidays or Christmas, or we just think the treaty is something that might have broader public interest. Sometimes we will extend the

deadline if we are asked to by submitters. That is standard. We do that for every category 1 and category 2 treaty. They are given a deadline, which is a sort of gentlemen's agreement. Category 1 treaties are given 20 joint sitting days to be considered by the committee and category 2 are given 15.

The Chair: Can you explain the categories briefly, please?

Klara Fay: Category 1 treaties are generally multilateral, large treaties. Category 2 tend to be more bilateral treaties that are considered, and then category 3 are the minor treaty actions. We do not run inquiry processes for category 3. They are generally things that are minor amendments to existing treaties—sometimes wording changes—and they are considered as they are received. They are not tabled in Parliament; they are given to us by a Minister. They are generally just reported on the back of an existing report, so they are a little bit different, but categories 1 and 2 are the major treaties and for each of those we run an inquiry process. That is the call for submissions from the public.

For each of those, the standard is that we will run at least one public hearing where we call for oral evidence. Generally, that will be guided by the nature of the submissions that are received. If there are no submissions from the general public, we will generally just have a hearing that speaks with the Department of Foreign Affairs and Trade—its treaties team and its legal division—the Attorney-General, people who have been involved in the treaty-making process and the relevant department and agency. We speak to those witnesses along the way, and they will put forward who they think is relevant and who has been involved in the process.

If we have received a number of submissions from the general public, maybe organisations, states and territories or academics, it is up to the committee at that point to consider whether it would like them to come to the public hearings and give evidence. If it is a really topical treaty—one of our most recent ones was the AUKUS agreement—we will run multiple hearings. We might travel. For that hearing we went to Adelaide and Perth and then ran two in Canberra. We heard from a range of witnesses: defence personnel, all the relevant departments, the general public and people who live in the areas that will be impacted by that treaty. It is very broad ranging.

At the initial commencement of the inquiry, the secretariat will do research to see if there are any academics or any other people who might need to be or should be invited to the hearing. That is given to the committee to then decide. It could be unions or anyone like that, perhaps sometimes people who are involved in the NIA consultation process who might have more to say. Once the public hearings are done, we table a report and it goes into Parliament. At that point it is generally in force or goes into ratification and in force. That differs a little bit depending on the nature of the treaty. Some treaties have a clause in them that once 15 parties have agreed to the treaty they will go into force, so the timeline can be impacted by that.

The Chair: That is in the terms of the treaty. Julia Morris, do you want to add anything to that?

Julia Morris: No, nothing in particular. I will mention, though, that it is a joint standing committee that is established with its resolution of appointment, which sets out those broad parameters. There is nothing exciting in that resolution, obviously. Committees appointed that way will have similar terms, but the intention has always been to give committee members the opportunity to have as broad a remit as possible to conduct those investigations. The decisions themselves about how an inquiry is conducted, how evidence is taken or how a timeframe might be stretched fundamentally become decisions for particular committees. Over time different committees have taken different approaches, as I am sure members will be aware of with your active committee service.

The Chair: Before turning to Lord Boateng for the next question, can I ask who makes the decision as to which category a treaty falls into? Is it something that is made by the committee or is it made by the Government?

Julia Morris: It is made by the Department of Foreign Affairs and Trade. The resolution and the committee practice set a broad remit, but some committees may choose to follow one path and other committees will choose to follow another. Sometimes, if DFAT has categorised a treaty based on the principles that Klara outlined, large treaties, which might be the first of their kind or might be significant multilateral treaties are given category 1 status, over time a successive and bipartisan approach, to make sure that there is an opportunity for decent consultation.

A treaty might be given category 2 and 15 days. If there is a huge hue and cry because those sitting days in practice mean that the calendar time for consideration is quite curtailed, the committee will likely advise the Government, the Minister or witnesses at a hearing that it does not intend to conclude this inquiry in 15 days and may seek to change the category or conduct its own business.

The point is that the category A, B and C treaties do not have any formal standing. There are no hard and fast rules as to what constitutes one or another. It was introduced as a practice that when treaties are tabled in Parliament and thereby stand referred to the committee—there might be three treaties, there might be 25—to give an indication and some kind of administrative certainty and for planning purposes, members and the secretariat can be aware of how many might need to be considered at any given time.

The Chair: Before I get to Lord Boateng, Lord Anderson wants to come in with a quick question.

Q37 **Lord Anderson of Swansea:** Presumably the committee remit has evolved since its inception. What have been the significant changes, and have we now reached the end of the process or are significant changes expected?

Julia Morris: Thank you for the question; I might answer that. It is fair to say that in large part the resolution has changed very little over the years. While there was some political sensitivity and consideration around the first formation of the committee, it has become widely accepted as general practice, by whichever parties may be in government, that they should retain a commitment at least to that transparent process where there is some kind of opportunity for review and public comment before binding action is taken.

The broad norms of the committee have not changed, and the broad resolution of the committee has not changed over the years. While the secretariat does not keep statistics or reasoned research for why members of a committee might have taken a particular view on a particular issue, different committees over time have highlighted different areas where they are particularly interested. That depends on the history of those members and the history of the chairs but is also potentially influenced by what the large public affairs or issues of the day might be.

Lord Anderson of Swansea: And the future?

Julia Morris: In the words of any parliamentary servant before me, I could not possibly comment. I would like to think, as a servant of the Parliament, that we will always have a role in the parliamentary administration to support committees in the way that they extend and continue their practice. But should that change, we would make adjustments accordingly. I would strongly encourage members to keep an eye on the work of the treaties committee as it is established in future Parliaments, should there be any major shifts, but my personal view is that that would be unlikely.

The Chair: I am sure we will.

Q38 **Lord Boateng:** Reference was made in your earlier response to the Australian Government's national interest analysis. What exactly is that, how is it drawn together and how important is it in the work of the Joint Standing Committee on Treaties?

Julia Morris: If members are happy for me to keep going, I will. Further to our earlier comments, there are no hard and fast rules or templates for such a document to be presented, but it has become an established norm of the committee to have an expectation of what a national interest analysis will include. That has been solidified over time. They have changed in their content at different stages. For example, there was a move at some point at least three Parliaments ago that treaty actions that may be seen to have a financial implication would need to include a regulation impact statement as part of that analysis.

I think it is fair to say that the NIA has been designed as a summary document to explain—in all cases but certainly, for example, if there were 20 treaty actions tabled—what the treaty is, why it was made, what it will do, whether legislation is going to be needed to implement it, what consultation has been held, whether there have been any concerns, and

how they might have been addressed at the process of the treaty negotiation. As Klara mentioned earlier, the idea is that all of that action happens. The Government are completely entitled under the constitution to make treaties, and all those things happen as part of their process. When that is concluded, it is referred to Parliament for the JSCOT to take a role in scrutiny or review.

One of the things that has been interesting is that at various stages different committees have highlighted that they are not happy with information in the NIA. Either it was not detailed enough or it left out parts that would have been helpful in the committee's consideration. The secretariat does not necessarily keep detailed statistics on each of these, but over time it has been an established practice and norm for the committee to make sure that those concerns are somehow included on the public record, maybe through a public hearing where a chair or a member might say, "Well, Department of X, I am not satisfied with the information you have provided".

Sometimes those views are also expressed in the dissenting reports to a committee report or in an introduction or a discussion of the report chapter: "The committee was generally satisfied with the information. The committee understands the need for this treaty. The committee notes the change of policy from X to Y". Those concerns are made known and generally those NIAs, those practices, will change accordingly. I am sure that members will understand that sometimes those changes can be incremental, sometimes they are sustained and sometimes they are less so. That is a potted history of what an NIA is and what it is designed to cover, if that is helpful.

Lord Boateng: Very helpful. Is the NIA drawn up by the department covering the subject matter of the treaty, not by the Department of Foreign Affairs or your equivalent of the Cabinet Office?

Julia Morris: That is correct, sir. It is fair to say that DFAT, the Department of Foreign Affairs and Trade—everybody has their own acronyms, and DFAT is one that I use; if I say "DFAT" without explanation, that is what DFAT refers to—has a co-ordination role in making sure that an agency or agencies, where the treaty might be in the subject area, will provide technical advice on the construction of the NIA. I know informally from colleagues in the department that they will say, "Yes, we had to send it back".

It is important to recognise that if you are a practitioner, an international lawyer or someone reviewing a large number of treaties across the subject area, you will have a general familiarity and commitment to what you expect to see that will help make a decision. But I suspect that for a desk officer in a department of agriculture, this might be the culmination of their whole work in a policy area. The treaty is one part of it. So assistance can be provided by DFAT and other agencies, should it be required, to help that agency ensure that the information the committee is likely to seek has been included in that NIA.

With the DFAT role, I understand that, through the course of the development of the treaty action—for example, if legislation is required to bring the Australian Government into line with the requirements or proposed requirements of the treaty—advice is sought at that earlier stage through the Office of International Law in the Attorney-General's Department, which might have prime responsibility for making sure that the legal aspects of any treaty ratification are able to be met.

- Q39 **The Chair:** Before we leave that topic and I turn to the next question, would you mind just summarising? You are being broadcast to the world. Summarise the main things that you expect to see from this national interest analysis. I appreciate that it will vary, but it would be very helpful to have the key things that Parliament is looking for in these.

Julia Morris: As I mentioned earlier—or I tried to mention, possibly not in a succinct enough manner, but I have some helpful notes now—they generally include information about the possible economic, environmental, social and cultural impact of the treaty, a description of the major provisions of the treaty and the obligations that they impose on Australia, the costs to Australia of compliance with the treaty, for example contributions to international organisations provided by the treaty, or the cost of establishing any new domestic agency as a direct result of the treaty, and a description of the measures that Australia intends to take or has taken to implement the treaty. They also set out something about the consultation, stakeholder involvement and state and territory impacts.

The Chair: It may be implicit in that, but does it tell the reader why Australia wants to make this treaty?

Julia Morris: Ideally. In my personal view—and I think it would be fair to say this for anybody who has worked on this secretariat for this committee—it is in the department's interest to ensure that it is included, because then the committee can understand. Why we have that process is that the committee offers the opportunity to explain to anybody who is listening what, in short, this treaty is about and why we are doing it.

The Chair: Thank you very much indeed; that is very helpful. I turn now to Lord Howell, who is on the screen but not visible.

- Q40 **Lord Howell of Guildford:** Sorry about the lack of visibility. It is something to do with my home screen. You very kindly explained to us about categories 1, 2 and 3 under the scrutiny process of the joint standing committee, but can we examine a little more carefully the scope of this process? You mentioned treaty actions as well as treaties. As a result of the information age, the world is awash with semi-agreements and new agreements.

The other day we struck an agreement with the United States, which is quite a tricky thing to do nowadays, for an EPD, an economic prosperity deal. Was it a treaty? No. Was it a treaty action? We are not sure. How are these things delineated in your case? Is it just treaties and things that are written down that are called treaties, or are you going into the

world—which we will discuss later—of memoranda of understanding and all sorts of other exchanges that are blossoming in this new information age?

Julia Morris: Thank you, Lord Howell. I will start and then Klara might make some comments as well. I apologise that there might have been some looseness in the language. We can discuss what constitutes a treaty. “Treaty actions”—which I have also used, and which has been used and arises in the literature and in evidence—might refer to the fact that the treaty is being withdrawn from. The proposed action is related to a treaty, but the treaty action might be that the treaty is being withdrawn from or there is a reservation being lodged. It depends on what action is proposed to be taken. It just broadens it out. In other words, the treaties committee can look at things related to treaties and/or treaty actions.

Lord Howell of Guildford: You have described the decisions on where all these things slot in and how they get into the process, but are they taken in the department? Are they taken by you in consultation with the department?

Julia Morris: In general terms, yes, they are. Just for members’ background information and for your secretary, we do have various resources on the committee’s website, including reviews that the committee itself has undertaken of the treaty-making process and the review of the process. The committee is celebrating—“celebrating” might not be the word—its 30th anniversary next year. The secretariat supported the committee’s decision to hold a 10-year review and a 20-year review. Both those reports on the website have a potted history of some of the changes that have been made.

As I said earlier, it is fair to say that the broad norms and resolutions of the committee are unchanged. I suggest that the changes that have been made over time relate more to administration and management of those treaties. When the committee was first established after the new Government was elected in March 1996, it was a brand-new area. As you know, new parliamentary committees do not come along every day.

Because there had been a degree of political discussions in the previous Parliament on whether a review process should be established, there was some uncertainty about what we would choose to do. At that stage everything was referred to the committee. If something related to a treaty, send it to the committee. We were finding—because I was there in those early days—that we would have referred an amendment to the schedule of the International Whaling Commission, which would change the name of a species in a list.

At that stage there were just category 1 and category 2 treaties for the sake of management: “Here are the big treaties that you want to look at”. Then the category 2 treaties were everything that was not a big treaty. Some time subsequent to that, the decision was made that really the committee was pretty aware of what the International Whaling Commission did. Similarly, there were amendments to schedules to, for

example, the CITES treaties—the Convention on International Trade in Endangered Species—some of the UN organisation-based treaties on human rights and discrimination against women, and some of the UNESCO-oriented treaties.

Where there have been changes made, some of them have been deemed to have been accepted by passage of time. These are massive treaties with a huge number of signatories globally. The committee and the department agreed that it really was not necessary to have all these actions tabled as individual treaties, so that is why the development of the category 3 treaty came in.

At that stage I do not think there was any reporting of the sort of lesser-than-treaty status. The Government decide to do something, and they are quite empowered to. But over time, it was, "Can we just include that information somewhere for transparency purposes?". That has become a norm. It is not a firm rule. It is not included in a standing order or a resolution of appointment, but over time—and regardless of who formed the Government—they became accepted norms that there would be some commitment to that sort of reporting.

Lord Howell of Guildford: Has your committee had any exchange on the lines of an EPD, as we seem to have with Washington at the moment, although it is a moving target? Have you had anything like that as well?

Julia Morris: Not specifically to my knowledge, Lord Howell. One of the things that I have been aware of is that there will often be a huge amount of public debate. Before anything comes to Parliament it is known in the community. There is some sort of public awareness of something happening. At that point the Minister might write to the chair and say, "There is something coming up here. We will table it because, regardless of what it is called, it is a treaty-related action". The committee might decide to consider it as correspondence; they might have an early warning about it or there might be some debate in the community. Again, the committee and the secretariat have established reasonably transparent practices. If we are aware that there is an issue fermenting, we will generally try to let the committee know so that it can make a determination as to whether it wants to do something in the public domain.

Q41 **Lord McDonald of Salford:** Could I pursue one of Lord Howell's lines of inquiry? You have described how category 3 came into being, which sounds like minor amendments to existing treaties. Does it also include non-legally binding international instruments? As Lord Howell mentioned, we are in an era of memoranda of understanding and they are very numerous. If you do look at these memoranda, how do you decide which are worth your attention and which to let go?

Julia Morris: Thank you for the question. There is no requirement to hold a public inquiry into anything of a less-than-treaty status, which is one of the phrases that is used commonly by practitioners in the area. But again, over time, where the committee detects that there is a new

process being developed, which might be seen to be becoming a practice, the committee does hold public hearings on most treaty actions, even if they are 20 minutes. There might be a three-hour hearing that covers six different treaties. Witnesses, including senior officers from the Department of Foreign Affairs, will attend a public hearing of the committee where they will be frankly asked, for example, "This is becoming a habit. What are you doing about it?".

There has been a proliferation of bilateral trade treaties, for example. Over time, if you look at trade agreements in the 1990s there was strong public interest in the operations of the GATT, the General Agreement on Tariffs and Trade. Obviously that has been superseded by practice and by other bilateral and multilateral trade treaties. It is fair to say that the hope for multilateral treaties was always high that they could be concluded. However, in practice it was determined by various Governments that they were not always able to be reached across the range of countries that might have been otherwise engaged. You can see that there is a change to a range of bilateral treaties: we will just establish bilateral treaties because we cannot get everybody to agree.

Those bilateral treaties then potentially lead to commentary among practitioners, the public and the Parliament: "This is a mess". You have overlapping treaties and there is uncertainty about which clauses might interact or might negatively impact the clauses in another treaty, which can be a political issue or an administrative issue. The secretariat will never have a say or a role in that. If the committee then wishes to seek evidence from the Department of Foreign Affairs, saying, "What do you propose to do here? Is there a process in train that you can tell the committee about?", the evidence from the Department of Foreign Affairs might be, "Yes, we are aware of this and we are endeavouring to do whatever". So there is at least an option for there to be advice on public record about what action is being taken.

Lord McDonald of Salford: Thank you. A quick follow-up, please. Is JSCOT in charge of its own agenda or is that determined by the Government and the department? Are they feeding you what they want or are you able to pull what you want?

Julia Morris: The JSCOT and the secretariat do not set the agenda for when treaty actions or treaties are being considered and will come to Parliament. But we can also see that, "We are aware that the Minister has been in such and such a country negotiating an agreement on such and such, and we are aware that at some point it will come to us". It might be in three months or three years, but these things might not be a surprise.

The secretariat or the committee do not have any role or ability to influence those timeframes. They are purely a matter for the Government under the constitution. But under the broad remit that I have referred to and the resolution of appointment, the committee has also chosen to investigate treaty matters or treaty-related issues without a particular treaty or proposed treaty action having been presented to the Parliament. So that way it has some control over its own agenda.

The Chair: Could you just give some idea of what those topics were? It is interesting to know that you have gone out and investigated some things without them coming in the treaty form.

Julia Morris: I am always hesitant to say explicitly what the committee or committees over time have or have not done. There is always the sense of: I have mentioned two, but I have missed the large one or the third one because I was just not aware. As an example, when the committee was first established it looked at a multilateral agreement on investment. It looked at an agreement about tuna stocks. These were treaty actions that might have been under way, but it also decided that it was time to look at what impact Australia's then long-standing commitment to the UN Convention on the Rights of the Child had in the community, and it had a huge inquiry into that.

Report 193, which was concluded in 2021, is where the committee decided it was time to have a look at trade treaties; it had an inquiry and sought referral from the Minister. It sought an inquiry into the treaty-making process around trade treaties, and that opportunity to get things on the record. At that stage we had a lot of trade treaties in a proliferating number. They are just two examples of where the committee said, "Well, we should probably ask some more questions about this", and it chose to do so.

Q42 **Lord Stevenson of Balmacara:** You have been very clear about how the system operates in terms of category 1, category 2 and the other categories. It is very similar to the problem that we have come up against, which is that in our view there is rarely enough time to do the job that we think we ought to be doing. Have you come across that, and could you explain what powers JSCOT has to ensure that it has sufficient time for scrutiny?

Klara Fay: We come up against the same problem. If you looked on our website, we have 11 lapsed treaties at the end of the Parliament that we have just concluded, which we will pick up again in the new Parliament. We generally try to adhere to the 20 and 15 sitting-day agreement, but by all means if the committee feels that it needs more time to investigate a treaty, it can do so. There is no binding agreement there. If it feels it can conclude an inquiry quicker because there is little public interest, it is a very standard treaty or it is very similar to other ones that we have had before, it can do it faster. It is in control of its own speed.

We do investigate every treaty that comes across Parliament, so the workload is high and it can be a lot for committees and for the members to get across. They probably do not get as much time with them as they would like, and it is just a matter of prioritising them. We work closely with DFAT to try to get an idea of upcoming treaties so that we know where we can prioritise them or group them up—maybe do a public hearing that involves more than one treaty, if it is the same agency. We try to find efficiencies where we can, but it is an ongoing problem.

Likewise, we often get a request from Ministers to try to do inquiries faster than the 15 or 20 sitting days, and the committee will make a call on whether it adheres to that based on its workload, the priority of the treaty or the reason given by the Minister. It is not uncommon for the members to say, "No, we can't. We don't have the resources. We don't have the time. It's not a priority for us". When they can, because there is a significant reason for Australia, they will try to do it quicker and it will bump to the top of the list.

Everyone who has worked on treaties would love to have more time to delve into it, and if we get a lot of submissions from the public it becomes very clear very quickly that we might need more time. The secretariat will raise that with the members, and they will decide whether there is a reason that we cannot give more time to the committee for that inquiry or whether we can.

Lord Stevenson of Balmacara: Sorry to interrupt. Who decides? If you get to the point where it would be great to have an extra couple of days, can you do that or do you have to go back and get permission for that?

Klara Fay: The secretariat will always raise that with the committee to make a decision, and we will give it as much notice as we can. If we are receiving very high volumes of submissions or we have had a lot of phone calls or things like that, we will raise it with the chair as soon as possible for discussion at the upcoming committee meeting. Ultimately, it is the committee's decision.

Often a chair will go and speak with the Minister or a relevant area to see what the implications of that are. That is not something that the secretariat will do, but we will mention it to DFAT just in case it has any information about why the treaty needs to be dealt with in time. Sometimes there are other things going on that we are not aware of—signings, publicity events, announcements by the Minister. That is felt out a bit more by the chair of the committee and the relevant Minister.

Lord Stevenson of Balmacara: I am drilling down a little bit on this. Who has the right to say that you cannot have any more time? Will the department say that or is it up to the committee?

Julia Morris: Parliament will do what Parliament will do—parliamentary powers. In practical terms there is a pragmatism that has been demonstrated by Parliament. They are matters that the secretariat would be aware might happen, but we would have absolutely no involvement in setting out. As members will be familiar, committees can operate in all kinds of wonderful ways, where decisions are made by members independently in caucus before a meeting and problems are solved or identified through those channels. The secretariat would provide any procedural or administrative advice, but the members who are involved have become quite agitated or quite engaged or agree to let something go.

I know that you have lots of questions, but in terms of examples that I can give from the public record, I know that the secretariat will provide advice, for example, on an amendment to a CITES convention—a different species of fish was listed or added to the schedule. We thought, “That’s easy. It’s a straightforward CITES convention. We’ve done about 4,000 of those”. We put it to the committee. As it turned out, none of us was a recreational fisher or living in that part of Australia where there were fish stocks of this particular species, and including that species on an endangered list had all kinds of implications for whether it could be taken from waters. It was an area, geographically and politically, where one of the committee members had a strong interest. He had a strong and engaged membership in his community who were recreational fishers and would have been affected by this change, so the committee decided to look into it in a lot more detail. Some witnesses from DFAT had to polish up their advice quickly because no one, including the secretariat, had seen it coming that it would be an issue.

The Chair: Forgive me for interrupting. Can I try a lawyer’s way of getting to Lord Stevenson’s question? If the committee thinks it needs more time but the department or the Minister wants to get on with it, can he just ratify or whatever the step is to bring the treaty into force without the committee having finalised its work?

Julia Morris: The committee has had experiences where binding action has been taken before an inquiry is concluded. It has not been met well by several chairs over time, and usually those comments are included in the report. There was an agreement—again, an informal agreement; the rules do not specify one way or another—that if a treaty was going to come into effect that required enabling legislation, for example, that legislation should not be introduced to the Parliament until such time as the committee has at least commenced its report, ideally until it has finished its report and reported to Parliament. But the Government have a legislative agenda that is not a matter for the committee to determine. Whether the committee wants to raise principles or hold up something is a matter for the Government and the committee of the day.

Lord Stevenson of Balmacara: To follow up on that, one other problem we have is that we might have a tight timetable to get through the work as required before the treaty comes into effect, but then there is getting time in Parliament to debate our report. Do you have that same problem?

Julia Morris: That is a reasonable observation. I do not think the committee members have necessarily taken a strong view about the timing of the tabling of the report, but it is certainly common that any Member of the House—including members of the committee—might want to avail themselves of the opportunity to speak about an issue, including a committee inquiry process. For example, I do not know whether that particular Member spoke about the fisheries issues, but he certainly might have taken the opportunity in an adjournment debate or whatever. Aside from the JSCOT formal processes of inquiry, Members have the

opportunity to speak in parliamentary debates on legislation or on the issues that JSCOT might have considered.

One of the things that is interesting—which again might be a consideration for you—is that if you have a chair of the committee who is a Member of the House, there are set times and expectations for when committees might table reports and chairs and other Members may speak. If it is a Senate committee and the chair of the committee is in the Senate, there are slightly different procedures. That might impact on which Members choose or do not choose to speak to the issues and reports. I have not drawn a clean line through to assess one way or the other, but that information is all on the record.

Q43 Lord German: To track back a bit to something you said at the beginning about external evidence, if I have it correctly—please correct me if I have not—for category 1 you will always take external evidence. For category 2 you might take external evidence. Could you confirm if I have that right or wrong? What do you do and how do you go about selecting, getting and ensuring that the public can submit evidence to you when you are collecting evidence?

Julia Morris: Thank you for the question, Lord German. I am quite happy to say a few things. There are no hard and fast rules. A category 1 treaty is a flag that it is a significant treaty or a new treaty. Therefore, the committees over time have felt that it is in everyone's interest to get as much evidence on the record as possible. But there is no hard and fast rule that a category 1 treaty might need a one-day hearing or three travelling hearings or whatever.

In fact, sometimes the issues that have been quite well ventilated in the public prior to the treaty being tabled in Parliament might mean the committee decides that there is plenty of information on the record and that we are just going to confirm with a government agency: "We know there are all these views. Can you confirm that all these issues have been ironed out?". So the department can be on the record confirming that everyone is happy with the treaty and we do not need to hear any more about it.

The committee or members might also decide, "I really want to hear more about this because it is a burning issue for my electorate. Therefore, I am going to insist that more hearings are held, or I am going to insist that we travel and visit sites". Years ago, we had treaties on maritime security and the committee held inspections of ports as to how that would work in a practical sense. The words of the treaty—which were significantly different from the prior set of rules by which ports were managed—necessitated the committee to say, "What does that mean in practice at this port?". There was an investigation, there was a report and there were public hearings. Site inspections are not public, but they are generally referred to in the committee's reports so that the committee can be informed by that process and say, "We concluded a site inspection and we were concerned, but we are assured", or whatever the subject might be.

Personally, I have found it disappointing that we have not been able to travel to France to meet with the people who do the vine and wine agreements that Australia is signatory to. I am sure there are parts of the world where we have had treaties where the secretariat is very pleased that the committee has not decided to travel and visit. Certainly, in the committee's history it has been known to travel around Australia.

It is probably a reasonable conclusion for many parliaments around the world that since Covid the committees have become more adept, and so have stakeholders, at holding hearings remotely. Members are more likely to be able to engage in a two-hour meeting when they can phone in, than travelling across our quite large country, which might take a couple of days.

Lord German: Can I pick up that point about travelling? My experience in our Welsh parliament was that the committees would go out and they would be operating as a committee when they were visiting a site, if you put it that way. When your committee visits somewhere, whether it be online or physical, is that considered an actual committee process? In other words, is it a public event?

Julia Morris: It is not a public event, but it will be recorded in minutes of meetings. It is an activity of the committee as a properly constituted meeting of the committee with a quorum and is minuted. It is covered by parliamentary privilege. All those things still attach, but for site inspections we tend not to drag a film crew and the *Hansard* operator around. It is the poor secretary who is scribbling notes about things. If there were issues that came up through a site inspection, the secretariat would likely recommend to make sure that those views could be repeated in a public forum where they could be recorded and transcripts could be provided, questions asked, et cetera.

Klara Fay: There may also be a public hearing in a remote location, not in Parliament here in Canberra. We just did them for AUKUS, where we did site inspections and public hearings on the ground with the local community. That way, people did not have to travel and could engage. You can do both.

Glenn Worthington: All those proceedings are proceedings of Parliament, where parliamentary privilege attaches.

Lord German: That is quite significantly different from the way that Westminster operates at the moment in terms of this committee. What would be the benefit of doing that? Significantly, you put things on your website and you invite people to submit evidence to you. What is the benefit of getting that on-site information? It interests me. It may be because there is a constituency interest, but is it because the committee feels that it ought to get under the skin of how a treaty would operate? Given your 15-day or 20-day limit, does that impact upon it? Obviously, getting all that fixed up in 20 days is not easy.

Julia Morris: Yes. All those comments are quite correct, and all those observations would also apply to us. Members are making all those decisions: whether it is worth travelling or whether there is a constituency covered by the action of the treaty that might be affected. As a completely hypothetical example, committees might decide to travel in order to see the impacts of transport solutions for the elderly or groups in the community who might not be as au fait, have access or be as comfortable with engaging with the committee's activities via electronic means.

There are still Members of Parliament and members of the community who put a lot of confidence in the need for the committee to physically be present outside Canberra, bearing in mind the sitting weeks for the Australian Parliament. Members are travelling significant distances to come to Canberra for meetings of the Parliament—except for the Covid period, which is a separate issue.

There are demands on Members in their own electorates. For a Member to go from Tasmania to Darwin so that they can participate in a committee meeting might mean them leaving a day or sometimes even more than 24 hours in advance of the hearing and making a similar journey home. Members might say, "There are 10 of us on this committee. Three of us are going to go to this outback location in New South Wales. Four of us will commit to going to Tasmania". From Members' perspectives, they might have other commitments in those cities or areas where they can do more than one thing. That is not a matter or decision for the secretariat; it is just something that we can be aware of when we are asking the chair whether they want to consider doing these things as part of reviewing this particular treaty action or treaty actions.

Klara Fay: I will add that in the last Parliament the treaties committee travelled only twice, so it is not a super common occurrence. When it really feels the need or it gets a number of submissions that suggest, as Julia said, that there might be witnesses who would prefer to give evidence in person, that is an option, but it is not an everyday occurrence.

The Chair: This is all really helpful, and I am very grateful to you all. We have to move because we have another meeting taking place shortly, so I will turn—as long as Lord German has the answers to his questions—to Lord Anderson for the next question. I ask everyone to keep it as brief as they can, consistent with giving a good answer.

Q44 **Lord Anderson of Swansea:** For time reasons, I will wrap my questions into one. The joint committee makes this report. Is it normal for that report to be debated in one or both Houses? What happens if the committee decides that the treaty should not be ratified, and how often does that happen?

Julia Morris: I will try to be brief in my response. Reports are able to be debated. I do not think it is practice that it happens regularly, but, for

example, on the issue that Klara raised about the AUKUS report, there has certainly been a lot of parliamentary debate on that and related issues that might not be specifically related to the committee inquiry but where parliamentary speeches may certainly refer to the work of the committee in that area, so there is not a linear progression. There is not necessarily a, "Here is the time that this committee report is going to be debated" or a regular time, but certainly those things can arise.

Klara Fay: Just to jump in quickly, the report is tabled in both Houses. As a joint committee that happens and members of the committee from both Houses are given the opportunity to speak during the tabling. It is not common that members will speak, other than the chair and the deputy chair, but that is an option.

Julia Morris: Members may also, at the time of tabling in the lower House, seek to have the report referred to the Federation Chamber for further debate, where any other member of the committee or any other Member of the lower House might get on the speaking list to speak about a report. That would not necessarily happen with all treaties' reports, but it might happen where treaties are inquiring into an issue of significant public interest, and it provides an opportunity for that matter to be discussed. It is not the only opportunity but it is an opportunity that might be available for members.

On the committee recommending that a report not be ratified, the secretariat's review of the 20th anniversary of committees mentions that sometimes that happens. It is fair to say that it is very rare.

The Government can seek to advise the committee that binding action has been taken without reference to the joint standing committee. Where something is deemed urgent or unavoidable, the department or the Government might advise the committee that it is seeking a national interest exemption. In other words, the treaty is exempt from scrutiny in cases where action had to be taken that was not covered by any of the sitting days or the sitting calendar.

The most recent example of this was the MH17 disaster, when a plane was lost in the skies. A treaty was concluded very quickly between the Australian Government and the Netherlands on access visa issues so that members of the relevant agencies in Australia could get to the Netherlands as quickly as possible and engage with international forces going in to investigate that tragedy. That is an example where the committee was advised by the Government that treaty action had been taken under this national interest exemption. I just wanted to make sure that we flagged that somewhere.

Glenn Worthington: We should be clear that the committee only recommends. The Government, the Executive, have the constitutional power under the external affairs clause to make treaties, regardless of what JSCOT may recommend, but obviously there are practical and political issues if the Government were to act in a way contrary to what a committee has recommended.

Q45 **The Chair:** Thank you. I will ask a final question. Have you considered whether or not Parliament should be approving the treaties? This is an issue that arises in some countries but very few actually do it. Have you considered that, or may you be considering that?

Julia Morris: I would not have a comment on that. I do not think that, as parliamentary servants, we would.

The Chair: I understand. I thought I would ask the question anyway. Let me thank all three of you very much indeed. It has been very helpful to us. We have similar questions and similar problems, and your answers will help us in our own deliberations. Thank you very much indeed. This concludes the evidence session.