

CHECK AGAINST DELIVERY



EMBARGOED AGAINST DELIVERY

PRIME MINISTER

ADDRESS TO THE AUSTRALIAN CONSTITUTIONAL CONVENTION BY
PRIME MINISTER, MR BOB HAWKE, ADELAIDE, 28 APRIL 1983

- . THE COMMONWEALTH GOVERNMENT SUPPORTS THE AMENDMENT PUT FORWARD BY NEW SOUTH WALES.

- . CONSISTENT WITH ITS BASIC PHILOSOPHY OF PROMOTING NATIONAL RECONCILIATION, MY GOVERNMENT IS HAPPY TO SUPPORT REFERENCE OF THE EXTERNAL AFFAIRS POWER TO A SUB-COMMITTEE OF THE STANDING COMMITTEE FOR CONSIDERATION AND REPORT, BUT WE CONSIDER THE REFERENCE SHOULD BE ON AN EVEN-HANDED BASIS.
 - THIS AMENDED MOTION WOULD ALLOW THE SUB-COMMITTEE TO PURSUE ITS WORK FREE FROM ANY FETTERS IMPOSED BY A PARTICULAR DELEGATE'S PREJUDGEMENT
 - IT IS APPROPRIATELY DIRECTED TO CONSIDERATIONS OF THE LEGISLATIVE POWER AS IS s.51 ITSELF
 - AND IT INVITES ATTENTION TO THE COOPERATIVE ARRANGEMENTS WHICH THE COMMONWEALTH, THE STATES AND THE NORTHERN TERRITORY HAVE DEVELOPED IN HANDLING INTERNATIONAL TREATIES.

- . ALTHOUGH PREFERRING TO HAVE REMOVED THE EMOTIVE LANGUAGE OF THE PROPOSAL BROUGHT BY QUEENSLAND TO THESE PROCEEDINGS, THE COMMONWEALTH RECOGNISES THAT THE QUESTION OF THE SCOPE OF THE EXTERNAL AFFAIRS POWER IS OF CONSIDERABLE CONCERN TO AT LEAST SOME STATES.

- . THE NEW COMMONWEALTH GOVERNMENT IS COMMITTED AS A RESPONSIBLE FEDERAL PARTNER TO APPROACH THE USE OF THE EXTERNAL AFFAIRS POWER, AS INDEED IT APPROACHES ALL COMMONWEALTH POWERS, IN A SPIRIT OF CONSULTATION AND CO-OPERATION WITH THE STATES WHERE APPROPRIATE.

- . I AM HAPPY TO ASSURE PREMIERS THAT ON THE PARTICULAR QUESTION OF AUSTRALIA'S APPROACH TO INTERNATIONAL TREATIES, WE GENERALLY AFFIRM THE PRINCIPLES AND PROCEDURES ENDORSED BY THE JUNE 1982 PREMIERS' CONFERENCE
 - I WILL BE IN TOUCH WITH PREMIERS AND THE CHIEF MINISTER WHEN THE GOVERNMENT HAS EXAMINED THE PRINCIPLES AND PROCEDURES IN DETAIL.

- . THE NEW GOVERNMENT WILL CONTINUE THE PRACTICE OF CONSULTATION DURING TREATY NEGOTIATIONS AND WILL RECOGNISE THE ROLE STATES HAVE TO PLAY IN IMPLEMENTATION OF TREATIES IN AREAS TRADITIONALLY GOVERNED BY STATE LEGISLATION.

- . BUT WE WILL ALSO MAINTAIN A RESPONSIBLE AND CREDIBLE INTERNATIONAL POSITION AND ENSURE THAT AUSTRALIA PLAYS ITS PART IN DEVELOPING WORLD WIDE PRINCIPLES ON SUCH FUNDAMENTAL ISSUES OF INTERNATIONAL CONCERN AS HUMAN RIGHTS AND THE ENVIRONMENT.
 - THIS CARRIES WITH IT THE OBLIGATION TO ENSURE THAT SUCH TREATIES ARE IMPLEMENTED EXPEDITIOUSLY THROUGHOUT AUSTRALIA, AND WE WILL NOT BE PREPARED TO SEEK TO QUALIFY THAT OBLIGATION.

- . I HAVE SOME DISQUIET, AS THE LEADER OF A RESPONSIBLE FEDERAL GOVERNMENT, WITH TWO ASPECTS OF THE MOTION MOVED BY QUEENSLAND.

- . THE FIRST IS THAT THE PREMISES LYING BEHIND THE MOTION APPEARS TO BE THAT AUSTRALIA CANNOT MEET ITS INTERNATIONAL OBLIGATIONS CONSISTENTLY WITH THE MAINTENANCE OF A FUNCTIONING FEDERAL STRUCTURE.

- . I TAKE STRENUOUS OBJECTION TO THIS PREMISE
 - THE RIGHT AND INDEED THE DUTY OF A FEDERAL GOVERNMENT TO ACT ON BEHALF OF ALL AUSTRALIANS IN MATTERS RELATING TO THE INTERESTS OF AUSTRALIA AS A WHOLE IS A FUNDAMENTAL AND NATURAL PART

OF FUNCTIONING FEDERALISM.

- . COMMONWEALTH ACTION IN RESPECT OF SOUTH-WEST TASMANIA IS CLAIMED BY SOME TO BE AN ABUSE OF THE EXTERNAL AFFAIRS POWER
 - BUT HERE AUSTRALIA HAS RIGHTLY ENTERED INTO AN INTERNATIONAL OBLIGATION TO PROTECT OUR HERITAGE AS ALL RESPONSIBLE NATIONS SHOULD
 - WE HAVE MADE EVERY EFFORT TO PERSUADE TASMANIA, AT WHOSE SUGGESTION THE WILDERNESS WAS NOMINATED FOR THE WORLD HERITAGE LIST, TO RESPECT THIS AREA OF NATIONAL AND INTERNATIONAL SIGNIFICANCE
 - LEGISLATIVE ACTION BY THE COMMONWEALTH SUPPORTED BY NEW SOUTH WALES AND VICTORIA IS AN ACTION OF LAST RESORT, BASED PARTLY ON THE EXTERNAL AFFAIRS POWER, TO ENSURE AUSTRALIA DOES NOT BREACH AN EXISTING INTERNATIONAL AGREEMENT NOR FAIL IN ITS DUTY TO ALL AUSTRALIANS TO PROTECT THE AREA.
 - THAT ACTION, IF UPHELD BY THE HIGH COURT, WILL BE SHOWN TO HAVE BEEN COMPLETELY IN ACCORDANCE WITH THE CONSTITUTION.

- . MY SECOND POINT OF CONCERN ON THE ORIGINAL MOTION REFERS TO WHAT I DISCERN TO BE A POSSIBLE MISREADING OF THE CONSTITUTIONAL SETTING.
 - IT NEEDS TO BE REMEMBERED THAT IT IS FUNDAMENTAL TO THE CONSTITUTION, AND LONG RECOGNISED BY THE HIGH COURT, THAT STATE LEGISLATIVE POWER IS NOT SPECIFIC, BUT CONSISTS IN THE UNDEFINED RESIDUE OF LEGISLATIVE POWER WHICH REMAINS AFTER FULL EFFECT IS GIVEN TO SPECIFIC CONSTITUTIONAL GRANTS OF POWER TO THE COMMONWEALTH, INCLUDING THE EXTERNAL AFFAIRS POWER.
 - THE APPROPRIATENESS AND VALIDITY OF PARTICULAR COMMONWEALTH LEGISLATION MUST BE JUDGED AGAINST THE FULL POTENTIAL OF THE CONSTITUTION AND NOT AGAINST WHAT IS OFTEN REFERRED TO AS THE 'TRADITIONAL' DISPOSITION OF LEGISLATIVE AUTHORITY.

- . THE COMMONWEALTH PARLIAMENT'S POWER TO MAKE LAWS WITH RESPECT TO EXTERNAL AFFAIRS UNDER SECTION 51(29) IS AN INTEGRAL PROVISION IN THE CONSTITUTION WHOSE IMPORTANCE WAS FULLY RECOGNISED AT THE TIME OF FEDERATION.
 - IN 1907 ALFRED DEAKIN STATED 'INDEED ONE OF THE PRINCIPAL REASONS THAT INDUCED AUSTRALIANS TO FEDERATE WAS THAT AS REGARD ALL PLACED OUTSIDE THIS CONTINENT THEY SHOULD SPEAK WITH ONE VOICE'.

- . WHILE CHANGES IN GLOBAL CONCERNS HAVE CONCENTRATED RECENT ATTENTION ON THE TREATY MAKING ASPECTS OF THE POWER, IT MUST BE REMEMBERED THAT TREATY MAKING AND OBSERVANCE IS ONLY PART OF THE GREATER WHOLE: THE LEGITIMATE CONDUCT OF AUSTRALIA'S INTERNATIONAL RELATIONS.

- . THE HIGH COURT HAS, OF COURSE, RECOGNISED THAT THE EXTENT OF INTERNATIONAL AFFAIRS HAS BEEN CONSTANTLY EXPANDING
 - BUT THE COURT REMAINS AS THE FINAL ARBITRATOR TO PROTECT THE AUSTRALIAN FEDERATION WERE THERE TO BE ANY ATTEMPTED CAPRICIOUS USE OF THE POWER BY A COMMONWEALTH GOVERNMENT.

IN SUMMARY, THE COMMONWEALTH VIEW OF THE EXTERNAL AFFAIRS POWER IS THAT IT HAS EVOLVED IN A MANNER APPROPRIATE TO PERMITTING THE COMMONWEALTH TO MEET AUSTRALIA'S OBLIGATIONS AS A RESPONSIBLE MEMBER OF THE INTERNATIONAL COMMUNITY.

- . BUT COMMONWEALTH GOVERNMENTS ON BOTH SIDES OF THE POLITICAL SPECTRUM ARE SENSITIVE TO THE NEED TO COOPERATE WITH THE STATES AND NOT UNDULY INTERFERE IN THEIR ROLES.

- . NEVERTHELESS, I COMMEND TO THE CONVENTION THE MOTION AS MODIFIED BY THE NEW SOUTH WALES AMENDMENT, WHICH WILL PROVIDE THE BASIS FOR A BALANCED REVIEW OF THE POWER.