

GOVERNMENT RESPONSE

TO REPORT 26 OF THE JOINT STANDING COMMITTEE ON TREATIES

In its Report 26, the Joint Standing Committee on Treaties considered an *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America to further extend in force the Agreement relating to the Establishment of a Joint Defence Facility at Pine Gap*.¹ During its deliberations the Committee sought a private briefing at Pine Gap. In response, the Minister for Defence offered a comprehensive briefing by Defence officials in Canberra.

COMMITTEE CONCLUSION

The Joint Standing Committee on Treaties concluded that it:

- ‘supports, in principle, the *Exchange of Notes constituting an Agreement between Australia and the United States of America to further extend the Agreement relating to the Establishment of a Joint Defence Facility at Pine Gap*; and
- with the limited evidence made available, finds no reason to object to the continuation of the Joint Defence Facility.’²

Government Response. The Government welcomes the JSCT’s conclusion.

COMMITTEE RECOMMENDATIONS

Recommendation 1

‘That the Minister for Defence authorise his departmental officials to provide the Joint Standing Committee on Treaties with:

- a classified briefing on the purpose and operation of the Joint Defence Facility;
- a copy of the classified agreement that gives operational effect to the *Agreement between the Australian Government and the United States Government relating to the Establishment of a Joint Defence Space Research Facility (1966)*;
- on-site access to the Joint Defence Facility at Pine Gap; and
- such other information as may be required to enable the Committee to determine if the treaty action is in Australia’s national interest.’³

Government Response

The treaty action referred for consideration was the extension of the non-termination period of a treaty that had been in force since 1966. The terms of the treaty provide that it continues in force unless terminated. It would have continued in force whether or not the proposed treaty action had been taken. The treaty action merely provided formal reassurance that neither party would terminate the treaty for another 10 years. While not necessary for the operation of the treaty, such a reassurance is significant to both the Australian and United States governments from the political and security perspectives.

In providing briefings by its officials, the Government believes that it acted in a transparent and accountable manner in relation to the proposed treaty action. The officials gave the

¹ The *Exchange of Notes* was tabled in Parliament on 30 June 1998

² Australia, Parliament, October 1999, Joint Standing Committee on Treaties Report 26, para 4.24.

³ *Ibid.*, para 4.21.

Committee background and insights that, while not classified, were sensitive and not publicly available. All of the relevant treaty texts are on the public record.

The practice of successive governments has been that the evaluation and endorsement of arrangements at Pine Gap as in the Australian national interest is the responsibility of the members of the National Security Committee (and its equivalents in the past). Pursuant to this practice, and the 'need to know' principle widely applied in the intelligence field, all the members of the National Security Committee are fully briefed on and have access to Joint Defence Facility Pine Gap. In addition, it has been customary to also brief the Leader of the Opposition and the Opposition spokesperson for Defence, who are also able to visit the site.

Recommendation 2

'That the Minister for Defence, in conjunction with the Minister for Foreign Affairs and the Joint Standing Committee on Treaties, develop a protocol for ensuring constructive parliamentary consideration of sensitive security-related treaties. The protocol should:

- identify the full range of sensitive security-related treaties and subsidiary agreements to which Australia is a party;
- recognise the legitimacy and importance of the reformed treaty making process;
- require that briefings provided to the Committee be comprehensive and at least the equivalent in terms of detail and depth as briefings provided to the ASIO and NCA Committees of the Parliament, provided such briefings be held *in camera*; and
- empower the Committee to request the relevant Ministers to be present during such briefings to assist the Committee.'⁴

Government Response

Should the Joint Standing Committee on Treaties be requested to review a sensitive treaty-level arrangement in the future, information necessary for the purpose will be made available.

The Government does recognise the legitimacy and importance of the reformed treaty making process. In response to two separate requests from the Committee,⁵ the Government did decide that the most detailed and sensitive information concerning Joint Defence Facility Pine Gap was not relevant to the treaty action under review. Beyond this, the Committee received the fullest possible assistance.

The Committee can already request the relevant Minister to be present during briefings.

DISSENTING REPORT

The dissenting report from four members of the Joint Standing Committee on Treaties⁶ offered three recommendations:

⁴ Ibid, para 4.22

⁵ On 8 July 1998 Mr Bill Taylor MP, the then Chair of the JSCT wrote to the then Minister for Defence, the Hon Ian McLachlan MP seeking an on-site private briefing at Pine Gap. The Minister replied by offering a comprehensive briefing in Canberra. On 10 December 1998 the present Committee Chair, the Hon Andrew Thomson MP, wrote to the Minister for Defence, the Hon John Moore MP, repeating the request. The Minister replied by again offering a comprehensive briefing.

⁶ By Senator the Hon Chris Schacht, the Hon Dick Adams MP, the Hon Janice Crosio MP and Kim Wilkie MP.

Dissenting Report Recommendation 1

'The Minister for Defence should authorise his departmental officials to provide the Joint Standing Committee on Treaties with:

- a full (classified level) briefing on the purpose and operation of the Joint Defence Facility;
- a copy of the classified agreement that gives operational effect to the Agreement between the Australian Government and the United States Government relating to the Establishment of a Joint Defence Space Research Facility (1966); and
- on-site access to the Joint Defence Facility at Pine Gap.

If the Government does not accept the recommendation to provide a full briefing to the Joint Standing Committee on Treaties, then the Government should move to establish a National Security Committee of Parliament to oversee the operation of Defence facilities, including the Joint Defence Facility, and other defence-related security and intelligence agencies.'⁷

Government Response

The Government's response to the first three points is contained in its response to Recommendation 1 of the main Report. The Government's response to the suggestion of a National Security Committee of Parliament is recorded at Dissenting Report Recommendation 2 below.

Dissenting Report Recommendation 2

'The Prime Minister, the Minister for Defence and the Attorney-General should move to establish a Joint National Security Committee of Parliament to oversee the operation of Defence facilities, including the Joint Defence Facility, and other Defence-related security and intelligence agencies.

The motion to appoint the National Security Committee of Parliament should provide:

- for a committee of seven members of parliament, comprising 4 members of the House of Representatives and 3 Senators, with a majority of government members;
- for the House members of the Committee to be appointed by resolution of the House on the nomination of the Prime Minister;
- for the Senate members of the Committee to be appointed by resolution of the Senate on the nomination of the Leader of the Government in the Senate;
- that the following members of Parliament are not eligible for appointment to the Committee – a Minister, the President or Deputy President of the Senate, and the Speaker or Deputy Speaker of the House of Representatives;

⁷ JSCT Report 26, Dissenting Report, para 7.

- that the Committee be empowered to monitor and review the performance of those agencies involved in gathering and analysing defence-related security and intelligence information; and
- that the Committee be empowered to report to Parliament on any matter pertaining to the performance of its duties, provided that the Minister for Defence certifies that nothing in a proposed committee report would jeopardise Australia's national security interests.'⁸

Government Response

The Government does not propose to take up this recommendation. The Government notes that present arrangements for oversight of Pine Gap already include provisions for identified Government Ministers as well as senior members of the Opposition to receive briefings on sensitive aspects of Pine Gap operations and related matters. It considers that these arrangements provide effective Parliamentary oversight of Pine Gap.

Dissenting Report Recommendation 3

'The first task of the National Security Committee of Parliament should be to review whether the continuation of the Joint Defence Facility at Pine Gap is in Australia's national interest. To enable the National Security Committee to form a view on this matter, the Minister for Defence should provide the Committee with:

- the full (classified level) briefing on the purpose and operation of the Joint Defence Facility;
- a copy of the classified agreement; and
- on-site access to the Joint Defence Facility.'⁹

Government Response

The Government does not intend to implement the recommendation that a Joint National Security Committee of Parliament be established. The identified Ministers and senior members of the Opposition are fully informed on the purpose and operation of the Joint Defence Facility, Pine Gap. They have been satisfied that the Facility serves Australia's interests.

⁸ Ibid, para 8.

⁹ Ibid, para 9.