

Report 95

Treaties tabled on 4 June, 17 June, 25 June and 26 August 2008

Convention on the Rights of Persons with Disabilities (New York, 13 December 2006)

Australia-Chile Free Trade Agreement

Agreement between the Government of Australia and the Government of the United Arab Emirates Concerning Defence Cooperation (Abu Dhabi, 23 April 2007)

Amendment, adopted 1 October 2007, to Annex 1 of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) International Convention Against Doping in Sport of 19 October 2005

Headquarters Agreement between the Government of Australia and the Secretariat to the Agreement on the Conservation of Albatrosses and Petrels (Hobart, 23 June 2008)

Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women of 18 December 1979 (New York, 6 October 1999)

Agreement between Australia and the European Union on the Processing and Transfer of European Union-Sourced Passenger Name Record (PNR) Data by Air Carriers to the Australian Customs Service (Brussels, 30 June 2008)

Agreement between the Government of Australia and the Government of the French Republic Regarding Defence Cooperation and Status of Forces (Paris, 14 December 2006)

Agreement between the Government of Australia and the European Community on Certain Aspects of Air Services (Brussels, 29 April 2008)

Amendment to the Agreement on Social Security between the Government of Australia and the Government of the Republic of Chile of 25 March 2003

Amendment, Adopted at Rome on 28 March 2008, to the Agreement for the Establishment of the International Development Law Organization of 5 February 1988, as Amended on 30 June 2002 and 30 November 2002

Amendment to Annex 4.1 (Rules of Origin) of the Australia-Thailand Free Trade Agreement (TAFTA) of 5 July 2004

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Membership of the Committee

| | | |
|--------------|--|---|
| Chair | Mr Kelvin Thomson MP | |
| Deputy Chair | Senator the Hon Sandy Macdonald (until 30/6/08) | Senator Julian McGauran (from 1/7/08, elected Deputy Chair 2/9/08) |
| Members | Hon Kevin Andrews MP | Senator Andrew Bartlett (until 30/6/08) |
| | Mr John Forrest MP | Senator Simon Birmingham |
| | Ms Jill Hall MP | Senator David Bushby (until 1/7/08) |
| | Ms Belinda Neal MP | Senator Michaelia Cash (from 1/7/08) |
| | Ms Melissa Parke MP | Senator Don Farrell (from 1/7/08) |
| | Mr Luke Simpkins MP | Senator Scott Ludlam (from 4/9/08) |
| | Mr Chris Trevor MP | Senator Gavin Marshall (until 1/7/08) |
| | Ms Maria Vamvakinou MP | Senator Louise Pratt (from 1/7/08) |
| | | Senator Glen Sterle (until 1/7/08) |
| | | Senator Dana Wortley |

Committee Secretariat

| | |
|-------------------------|--|
| Secretary | James Rees (until 16/6/08) |
| | Siobhán Leyne (until 8/9/08) |
| | Russell Chafer (from 8/9/08) |
| Inquiry Secretaries | Kevin Bodel |
| | Sonya Fladun |
| | Julia Searle |
| Research Officer | Sophia Nicolle (from 2/9/08) |
| Administrative Officers | Heidi Luschinetz (until 6/6/08) |
| | Dorota Cooley |
| | Claire Young (from 2/7/08 to 12/9/08) |
| | Emma Martin (from 15/9/08) |



Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and

such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of abbreviations

| | |
|-------|--|
| ACAP | Agreement on the Conservation of Albatrosses and Petrels |
| ADF | Australian Defence Force |
| AFDO | Australian Federation of Disability Organisations |
| APEC | Asia – Pacific Economic Cooperation |
| API | Advance passenger information |
| CEDAW | Convention on the Elimination of All Forms of Discrimination Against Women |
| CFMEU | Construction, Forestry, Mining and Energy Union |
| CMS | Convention on the Conservation of Migratory Species of Wild Animals |
| CRPD | Convention on the Rights of Persons with Disabilities |
| DDLC | Disability Discrimination Legal Centre |
| EC | European Community |
| EU | European Union |
| FECCA | Federation of Ethnic Communities Councils of Australia |
| HREOC | Human Rights and Equal Opportunity Commission |
| ILO | International Labour Organisation |

| | |
|--------|--|
| JDCC | Joint Defence Cooperation Committee |
| NACLC | National Association of Community Legal Centres |
| NEDA | National Ethnic Disability Alliance |
| NIA | National Interest Analysis |
| PNR | Passenger name record |
| SCOT | Standing Committee on Treaties |
| UN | United Nations |
| UNESCO | United Nations Education, Scientific and Cultural Organisation |



List of recommendations

2 Convention on the Rights of Persons with Disabilities

Recommendation 1

The Committee recommends that the Government consider expanding the role of the Human Rights and Equal Opportunity Commissioner to enable the Commissioner to provide Parliament with an annual report on compliance and implementation of the Convention and, if also ratified, the Optional Protocol.

Recommendation 2

The Committee recommends that a review be carried out of the relevant provisions of the Migration Act and the administrative implementation of migration policy, and that any necessary action be taken to ensure that there is no direct or indirect discrimination against persons with disabilities in contravention of the Convention.

3 Australia - Chile Free Trade Agreement

Recommendation 3

The Committee recommends that, prior to commencing negotiations for bilateral or regional trade agreements, the Government table in Parliament a document setting out its priorities and objectives. The document should include independent assessments of the costs and benefits. Such assessments should consider the economic regional, social, cultural, regulatory and environmental impacts which are expected to arise.

Recommendation 4

The Committee recommends that the Department of Foreign Affairs and Trade undertake and publish a review of the operation of the Australia – Chile Free Trade Agreement no later than two years after its commencement in order to assess the ongoing relevance of concerns expressed about the Agreement, such as the maintenance of sanitary and phytosanitary measures, impact on the horticulture industries, intellectual property, 457 visas, and labour and environmental standards.

Recommendation 5

The Committee supports the *Australia – Chile Free Trade Agreement* and recommends that binding treaty action be taken.

4 Treaty between Australia and the State of the United Arab Emirates on Defence Cooperation

Recommendation 6

The Committee recommends that in any specific arrangement concerning the exchange of Defence personnel, the Australian Government seeks to ensure that Australian personnel are protected from corporal and capital punishment under United Arab Emirates law.

Recommendation 7

The Committee supports the *Agreement between the Government of the United Arab Emirates and the Government of Australia on Defence Cooperation* and recommends that binding treaty action be taken.

5 Headquarters Agreement with the Secretariat to the Agreement on the Conservation of Albatrosses and Petrels

Recommendation 8

The Committee supports the *Headquarters Agreement between the Government of Australia and the Secretariat to the Agreement on the Conservation of Albatrosses and Petrels* and recommends that binding treaty action be taken.

6 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women

Recommendation 9

The Committee supports the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women* and recommends that binding treaty action be taken.

7 Agreement between Australia and the European Union on the Processing and Transfer of European Union Sourced Passenger Name Record Data

Recommendation 10

The Committee supports the *Agreement between Australia and the European Union on the Processing and Transfer of European Union Sourced Passenger Name Record Data* and recommends that binding treaty action be taken.

8 Treaty between Australia and the French Republic regarding Defence Cooperation and Status of Forces

Recommendation 11

The Committee supports the *Agreement with the French Republic Regarding Defence Cooperation and Status of Forces* and recommends that binding treaty action be taken.

9 Treaty between Australia and the European Community on Certain Aspects of Air Services

Recommendation 12

The Committee supports the *Agreement between the Government of Australia and the European Union on Certain Aspects of Air Services* and recommends that binding treaty action be taken.

Report 92

Treaty Tabled on 4 June 2008

Recommendation 1

The Treaties Committee supports the *United Nations Convention on the Rights of Persons with Disabilities* and recommends that binding treaty action be taken.

Introduction

Purpose of the Report

- 1.1 This report contains advice to Parliament on the review by the Joint Standing Committee on Treaties of twelve treaty actions tabled in Parliament on 4 June 2008¹, 17 June 2008², 25 June 2008³ and 26 August 2008⁴. These treaty actions are:
- *Convention on the Rights of Persons with Disabilities*
 - *Australia-Chile Free Trade Agreement*
 - *Agreement between the Government of Australia and the Government of the United Arab Emirates Concerning Defence Cooperation*
 - *Amendment, adopted 1 October 2007, to Annex 1 of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) International Convention Against Doping in Sport of 19 October 2005*

1 Australia, House of Representatives 2008, *Votes and Proceedings*, No. 25, p. 343, Australia, Senate 2008, *Journal*, No.15, pp. 487-488.

2 Australia, House of Representatives 2008, *Votes and Proceedings*, No. 28, p. 389, Australia, Senate 2008, *Journal*, No. 15, pp. 487-488.

3 Australia, House of Representatives 2008, *Votes and Proceedings*, No. 33, p. 430, Australia, Senate 2008, *Journal*, No. 20, p. 613.

4 Australia, House of Representatives 2008, *Votes and Proceedings*, No. 35, p. 449, Australia, Senate 2008, *Journal*, No.22, pp. 674-675.

- *Headquarters Agreement between the Government of Australia and the Secretariat to the Agreement on the Conservation of Albatrosses and Petrels*
- *Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women*
- *Agreement between Australia and the European Union on the Processing and Transfer of European Union-Sourced Passenger Name Record (PNR) Data by Air Carriers to the Australian Customs Service*
- *Agreement between the Government of Australia and the Government of the French Republic Regarding Defence Cooperation and Status of Forces*
- *Agreement between the Government of Australia and the European Community on Certain Aspects of Air Services*
- *Amendment to the Agreement on Social Security between the Government of Australia and the Government of the Republic of Chile*
- *Amendment, Adopted at Rome on 28 March 2008, to the Agreement for the Establishment of the International Development Law Organization of 5 February 1988, as Amended on 30 June 2002 and 30 November 2002*
- *Amendment to Annex 4.1 (Rules of Origin) of the Australia-Thailand Free Trade Agreement (TAFTA) of 5 July 2004*

1.2 The Report refers frequently to the National Interest Analysis (NIA) prepared for each proposed treaty action. This document is prepared by the Government agency (or agencies) responsible for the administration of Australia's responsibilities under each treaty. Copies of each NIA may be obtained from the Committee Secretariat or accessed through the Committee's website at:

4 June 2008

www.aph.gov.au/house/committee/jsct/4june2008/tor.htm

17 June 2008

www.aph.gov.au/house/committee/jsct/17june2008/index.htm

25 June 2008

www.aph.gov.au/house/committee/jsct/25june2008/tor.htm

26 August 2008

www.aph.gov.au/house/committee/jsct/26august2008/index.htm

- 1.3 Copies of each treaty action and NIA may also be obtained from the Australian Treaties Library maintained on the internet by the Department of Foreign Affairs and Trade. The Australian Treaties Library is accessible through the Committee's website or directly at:
- www.austlii.edu.au/au/other/dfat/

Conduct of the Committee's review

- 1.4 The reviews contained in this report were advertised in the national press and on the Committee's website.⁵ Invitations to lodge submissions were also sent to all State Premiers, Chief Ministers, Presiding Members of Parliament and to individuals who have expressed an interest in being kept informed of proposed treaty actions. Submissions received and their authors are listed at Appendix A.
- 1.5 The Committee also received evidence at public hearings on 16 June 2008, 28 July 2008, 29 July 2008, 25 August 2008, 15 September 2008 and 22 September 2008 in Canberra, Melbourne and Sydney. A list of witnesses who appeared before the public hearing is at Appendix B. Transcripts of evidence from public hearings may be obtained from the Committee Secretariat or accessed through the Committee's website at:
- 4 June 2008
www.aph.gov.au/house/committee/jsct/4june2008/hearings.htm
- 17 June 2008
www.aph.gov.au/house/committee/jsct/17june2008/hearings.htm
- 25 June 2008
www.aph.gov.au/house/committee/jsct/25june2008/hearings.htm
- 26 August 2008
www.aph.gov.au/house/committee/jsct/26august2008/hearings.htm

5 The Committee's review of the proposed treaty actions was advertised in *The Australian* on 9 July 2008 and 3 September 2008. Members of the public were advised on how to obtain relevant information both in the advertisement and via the Committee's website, and invited to submit their views to the Committee.

Convention on the Rights of Persons with Disabilities

Introduction

- 2.1 Australia signed the *United Nations Convention on the Rights of Persons with Disabilities* (the Convention, otherwise referred to as the CRPD) when it opened for signature in New York on 30 March 2007.
- 2.2 The Convention entered into force generally on 3 May 2008 following the deposit of twenty instruments of ratification or accession.
- 2.3 In May 2008 the Attorney-General, the Hon Robert McClelland MP, wrote to the Committee seeking its prompt consideration of the Convention as without early ratification, Australia would not be able to participate in the election of the Committee on the Rights of Persons with Disabilities, which will oversee the implementation of the Convention. In accordance with Article 34(6), the election of the Committee would be called no later than 3 July 2008 and held no later than 3 November 2008.¹
- 2.4 The Convention was formally referred to the Committee on 4 June 2008.

¹ NIA, paras. 2 and 3.

- 2.5 The Human Rights Commissioner and Commissioner responsible for Disability Discrimination, Mr Graeme Innes AM, also wrote to the Committee in April 2008 urging early consideration of the Convention in support of Australia's participation in selection of the Committee on the Rights of Persons with Disabilities. A number of submissions to this inquiry also supported early ratification.²
- 2.6 Recognising the importance of Australia's participation in the selection of the Committee on the Rights of Persons with Disabilities, the Committee provided a report to Parliament on 19 June 2008 recommending that binding treaty action be taken, and committing to provide a further detailed report on the provisions and obligations of the Convention. This report is included at Appendix D of this report.
- 2.7 The Australian Government ratified the Convention on 17 July 2008. Australia was one of the first Western countries to ratify the Convention. The Convention entered into force for Australia on 16 August 2008 – the 30th day after ratification.
- 2.8 As of 30 September, there were 135 signatories to the Convention and 40 countries had ratified the Convention.³
- 2.9 Subsequently the Attorney-General's Department informed the Committee that:

Timely ratification has secured Australia's participation in the first Conference of States Parties and the inaugural election of the Committee on the Rights of Persons with Disabilities. The election of the Committee has been called by the United Nations. Nominations for membership on the 12-person Committee close on 3 September 2008.

While Australia complies with the obligations in the Convention, several views have been expressed regarding the position of the Convention on substituted decision-making and compulsory treatment. Australia has therefore made interpretive declarations to clarify Australia's understanding of its ability to continue our existing practices on substituted decision-making and compulsory treatment, which include the necessary safeguards. Making such declarations was

2 For example: Human Rights Law Resource Centre, *Submission 1*, National Association of Community Legal Centres NACLC and Disability Discrimination Legal Centre DDLC *Submission 5*, Australian Lawyers for Human Rights, *Submission 10*.

3 See <http://www.un.org/disabilities/>

recommended by the majority of the disability sector organisations that were consulted by the Australian Federation of Disability Organisations and the Australian Task Force on CRPD Ratification.

The Government has also made a declaration setting out Australia's understanding of the interaction between the Convention and Australia's immigration processes. The declaration clarifies that Australia's immigration processes are in full compliance with the Convention.⁴

- 2.10 The Committee notes that Australia has nominated Mr Ronald McCallum AO as a candidate for election to the Committee on the Rights of Persons with Disabilities.⁵

Background

- 2.11 Australia was an active participant in the United Nations discussions and negotiations leading to the Convention on the Rights of Persons with Disabilities. The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms for all people with disabilities and to promote respect for their inherent dignity.⁶
- 2.12 One in five Australians is currently living with a disability and it is projected that, with the ageing population, this figure is likely to rise.⁷ The Convention reflects and affirms existing protections provided to people with disabilities under Australia's domestic laws.

Obligations

- 2.13 The Convention does not create any new human rights. Rather it expresses existing rights in a manner that addresses the needs of

4 Additional information provided by the Attorney-General's Department, 22 July 2008.

5 Biographical details for Mr Ronald McCallum can be found at <http://www2.ohchr.org/english/bodies/crpd/crpd1.htm>

6 The Convention defines persons with disabilities to include 'those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'. National Interest Analysis (NIA), para.8.

7 NIA, para. 4.

people with a disability, including the practical obligations that Parties are required to implement.⁸

- 2.14 Parties are obliged to ensure and promote recognition of the fact that people with disability are entitled to all human rights and fundamental freedoms, without discrimination of any kind on the basis of disability (Article 4). Parties undertake to do this through appropriate legislation, policies and programs; by promoting research and development of accessible goods, services, facilities and technology; by promoting training for people working with people with disabilities; and through close consultation with representative organisations.⁹
- 2.15 Obligations within the Convention that stem from economic, social and cultural rights are subject to progressive realisation, which means fulfilling or achieving those rights over time, taking into account available resources (Article 4(2)).¹⁰
- 2.16 Parties are obliged to eliminate discrimination in:
- Marriage, family, parenthood and relationships (Article 23);
 - Education (Article 24);
 - Health (Article 25);
 - Employment (Article 27);
 - Standing of living and social protection (Article 28); and
 - Participation in political and public life (Article 29).
- 2.17 Parties must also recognise that women and girls with disabilities are subject to multiple forms of discrimination and take steps to ensure the full development and advancement of women (Article 6).¹¹
- 2.18 Parties must acknowledge the right of people to be recognised as individuals before law (Articles 5(1) and 12), and ensure that safeguards exist to prevent abuse where people receive support in exercising legal capacity (Article 12(4)).¹²

8 NIA, para. 9.

9 NIA, para. 10.

10 NIA, para. 12.

11 NIA, para. 16.

12 NIA, para. 17.

- 2.19 Articles 7(2), 7(3), 18(2), 23(2) and 23(4) set out provisions to protect children with disabilities, including ensuring decisions concerning children are made in the best interests of the child.¹³
- 2.20 People with disabilities must also be provided with access on an equal basis to the physical environment, transportation, information services and communications, and other facilities and services open or provided to the public, including in regional areas (Article 9).¹⁴
- 2.21 The Convention also includes obligations aimed at:
- enhancing the inclusion and participation of people with a disability in society (Articles 19, 20, 24, 26, 27, 28, 29 and 30);¹⁵
 - raising awareness, fostering respect and combating stereotypes, prejudices and harmful practices (Article 8);¹⁶
 - affording the inherent right to life (Article 10);¹⁷
 - ensuring liberty and security on an equal basis (Article 14) and preventing torture or cruel, inhuman or degrading treatment or punishment, including non-consensual medical or scientific experimentation (Article 15);¹⁸
 - ensuring liberty of movement and freedom to choose their residence and nationality, while not conferring any additional rights on people with disability in relation to immigration processes (Article 18);¹⁹ and
 - protecting against arbitrary or unlawful interference with privacy (Article 22).²⁰
- 2.22 Obligations are also imposed upon Parties in relation to implementation, monitoring and reporting, including collecting appropriate statistical and research data and reporting to the Committee on the Rights of Persons with Disabilities.²¹

13 NIA, para. 18.

14 NIA, paras. 19, 20 and 21.

15 NIA, paras. 22 and 23.

16 NIA, para. 24.

17 NIA, para. 25.

18 NIA, para. 26.

19 NIA, para. 27.

20 NIA, para. 28.

21 NIA, para. 29, 30 and 31.

Reasons for ratification

- 2.23 Australia has had a long-standing commitment to upholding and safeguarding the rights of people with disabilities. Ratification of the Convention reinforces this commitment and allows Australia's protections against disability discrimination to be promoted internationally. It also serves an important educative purpose by fostering a more inclusive society and further encouraging the participation of people with disability in the wider community.²²
- 2.24 The report from the CRPD Ratification Task Force outlined the impact of CRPD in Australia and concluded that:
- There was overwhelming support from the disability sector for ratification of CRPD;
 - There would be an extensive range of significant benefits in ratification;
 - Ratification of the CRPD will have significant positive economic, environmental, social and cultural impacts on Australia;
 - There are no disadvantages or negative impacts; and
 - There is no significant barrier to Australia ratifying the CRPD arising from any fundamental inconsistency between CRPS obligations and Australian laws, policies and programs.²³

Australian declaration

- 2.25 In ratifying the Convention on 17 July 2008 the Australian Government made a Declaration setting out Australia's understanding of a range of issues including substituted decision making, compulsory assistance or treatment of disabled persons, and Australia's immigration processes.
- 2.26 The text of the Declaration is as follows:

Australia recognises that persons with disability enjoy legal capacity on an equal basis with others in all aspects of life. Australia declares its understanding that the Convention allows for fully supported or substituted decision-making arrangements, which provide for decisions to be made on behalf of a person, only where such arrangements are necessary, as a last resort and subject to safeguards;

22 NIA, paras. 4, 6 and 7.

23 UN CRPD Ratification Task Force Members, *Submission 12* p. 1.

Australia recognises that every person with disability has a right to respect for his or her physical and mental integrity on an equal basis with others. Australia further declares its understanding that the Convention allows for compulsory assistance or treatment of persons, including measures taken for the treatment of mental disability, where such treatment is necessary, as a last resort and subject to safeguards;

Australia recognises the rights of persons with disability to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others. Australia further declares its understanding that the Convention does not create a right for a person to enter or remain in a country of which he or she is not a national, nor impact on Australia's health requirements for non-nationals seeking to enter or remain in Australia, where these requirements are based on legitimate, objective and reasonable criteria.²⁴

Some key issues raised in submissions

2.27 Submissions to the Committee were overwhelmingly supportive of ratification of the Convention, arguing that the Convention will:

- represent a shift to improve the recognition of persons with disabilities.²⁵ People with disabilities are among the most marginalised groups in society and at least one in five people in Australia has a disability;²⁶
- reinforce the status of people with disabilities as citizens with equal rights;²⁷
- educate people on the rights of persons with disabilities;²⁸
- promote human rights for persons with disabilities;²⁹

24 Australia's Declaration is published on the United Nations website www.un.org/disabilities/default.asp?id+475.

25 Australian Lawyers for Human Rights, *Submission 10*, p.1. and Final Report to the Australian Government Departments of Families, Housing, Community Services, and Indigenous Affairs, and Attorney General, *Exhibit 6*, p. 5.

26 NIA, para. 2.

27 Australian Lawyers for Human Rights, *Submission 10*, p.1.

28 Human Rights and Equal Opportunity Commission HREOC, *Submission 3*, p.2.

29 Human Rights and Equal Opportunity Commission HREOC, *Submission 3*, p. 2.

- have significant positive economic, environmental, social and cultural impacts on Australia;³⁰
- have no disadvantages or negative impacts for Australia;³¹
- require Australia to review laws, policies and programs relating to the rights of persons with disabilities;³² and
- provide Australia with the opportunity to participate in the inaugural election of the Committee on the Rights of Persons with Disabilities.³³

2.28 Notwithstanding the support for Australia ratifying the Convention, a number of submissions raised some concerns and issues about the Convention. These issues are discussed later in this chapter.

Implementation

2.29 The Attorney-General's Department has assessed that Commonwealth, State and Territory legislation, policies and programs comply with Australia's immediately applicable obligations and substantially implement the progressively realisable obligations in the Convention. These include: anti-discrimination legislation; disability services legislation; guardianship, administration and mental health legislation; the Commonwealth-State-Territory Disability Agreement; the National Disability Strategy; and other Commonwealth, State and Territory laws, policies and programs.³⁴ Accordingly, there were considered to be no significant financial or regulatory obstacles to ratifying the Convention.

2.30 Areas where it has been identified that the progressively realisable obligations can be enhanced are:

- General awareness raising;
- Education and training for people who work with, or in the course of their work interact with, persons with disabilities, particularly in the administration of justice;

30 UN CRPD Ratification Task Force, *Submission 12*, p. 2.

31 UN CRPD Ratification Task Force, *Submission 12*, p. 2.

32 NACLC and DDLC, *Submission 5*, p. 2.

33 Human Rights Law Resource Centre, *Submission 1*, p.2.

34 NIA, para. 32.

- Merit tested legal representation for persons with disabilities wishing to challenge guardianship and administration orders;
- More accessible signage in buildings;
- Encouraging the private sector to be mindful of accessibility issues and to adopt universal design in production, particularly by considering the needs of people with disability in the production of mobility aids and other assistive devices; and
- Improving access to services in rural and regional areas.³⁵

Consultation

2.31 A comprehensive consultation process was undertaken both during development of the text of the Convention from 2001 to 2006 and since July 2007, when the former Commonwealth Attorney-General wrote to his State and Territory counterparts and other relevant Commonwealth, State and Territory Ministers, informing them that the Government was commencing the process to ratification. The *Attachment on Consultation* to the NIA outlines the consultation process in detail. This process included:

- written and oral briefing to the Standing Committee on Treaties;
- consultation with States and Territories to ascertain that laws, policies, programs and services comply with the Convention's obligations;
- updates through the Standing Committee of Attorneys-General;
- consultation with Australian Government departments and agencies to ascertain whether Commonwealth laws, policies and programs comply with the Convention's obligations;
- consultation with the disability sector, industry and non-government stakeholders, which was also open to the public; and
- provision of funding to the Australian Federation of Disability Organisations (AFDO) to undertake consultation with the disability sector and report to the Government.

2.32 The Government examined the issues arising from the consultation process, including matters relating to the electoral acts, immigration,

³⁵ NIA, *Attachment on Implementation*, para. 12 and *Attachment on Consultation*, paras. 7 and 18.

non-refoulement³⁶, the right to life, mental illness, insurance, education policy, guardianship and administration, and sterilisation. It concluded that Australia complies with the relevant articles of the Convention.

- 2.33 The Committee also undertook its own consultation on the Convention, holding three public hearings in Canberra, Melbourne and Sydney and receiving 25 submissions.

Australia's policy towards migrants with disabilities

- 2.34 A number of submissions to the Committee raised the issue of reform to Australia's migration framework as it relates to migrants with disabilities, calling for a more balanced consideration of both the costs and benefits to Australia of migrants with disabilities.³⁷
- 2.35 As discussed above, the Australian Government has made a Declaration asserting that Australia's migration processes are in full compliance with the Convention. Nonetheless the Committee received a number of submissions and heard evidence highlighting the difficulties faced by migrants with disabilities in seeking entry into Australia.
- 2.36 On 29 July 2008, Mr Dougie Herd told the Committee of the difficulties faced by people with disabilities migrating to Australia:

I managed to migrate to Australia as a person with a disability despite all of the advice I was given that it was going to be impossible or nearly impossible. I think I was able to negotiate my way through the formal rights that I have because I am white, Anglo-Saxon, Protestant, middle class, was in a job, was confident to the point of arrogance, was a professional advocate, was trained to be someone who could negotiate their way through the mire of legal systems that they presented and have a 25-year history of working in the disability advocacy sector in Scotland, Europe and now in Australia. Not everyone comes with those sets of benefits. Many people who will come, particularly from a non-English speaking background, would find it more difficult to exercise

36 The principle of non-refoulement prohibits the expulsion or return (refoulement) of a person to a country where there are substantial grounds for believing they would face a real risk of torture, or arbitrary deprivation of their life.

37 For example: Mr Frank Hall-Bentick, *Submission 2*, p. 2. National Ethnic Disability Alliance NEDA and the Federation of Ethnic Communities' Councils of Australia FECCA, *Submission 4*, p. 2.

and realise their formal rights as a consequence of the secondary indirect discriminatory forces that play upon them – which is not to say that Australian law is bad or that it is inconsistent or that it is second-rate but that we simply engage with that process from our different experiences. I am more advantaged in it than others. It did not harm me as a potential migrant to find my way through a stream known as ‘distinguished talent’, of which there are only about 250 migrants a year.

It did me no harm whatsoever to be working in a field so that I could have a relationship with the then Premier of New South Wales and get his disability advisor to get Bob Carr to sign a letter to say it was a good idea to bring Dougie Herd to Australia. Nor did it harm me at all to have the Premier of Scotland write a letter, because I happened to go to university with him 20-odd years ago and he and I shared a political background that might have something to do with students believing that they could change the world. But if you are the 13-year-old daughter of a professor of English who wants to migrate to Australia and you happen to have cerebral palsy, you will find that you cannot do that.³⁸

- 2.37 The Federation of Ethnic Communities Council (FECCA) and the National Ethnic Disability Alliance (NEDA) in their joint submission argued for the need to establish safeguards against potential indirect discrimination as a result of medical condition tests and suggested that reforms informed by the CRPD would provide a fairer policy setting for potential migrants with disabilities.³⁹
- 2.38 The FECCA and NEDA also notes that Articles 4(1)(b), 5(2), 18 and 23(4) may present some inconsistency with existing migration law and practice, and that modest reforms informed by the CRPD, would provide a fairer policy setting for potential migrants with disabilities.⁴⁰
- 2.39 A submission by Dr Ben Saul, a barrister for the National Ethnic Disability Alliance (NEDA) proffered a legal opinion on:

38 Mr Dougie Herd, *Transcript of Evidence*, 29 July 2008, pp. 21-22.

39 National Ethnic Disability Alliance NEDA and the Federation of Ethnic Communities' Councils of Australia FECCA, *Submission 4*, p. 2.

40 National Ethnic Disability Alliance NEDA and the Federation of Ethnic Communities' Councils of Australia FECCA, *Submission 4*, p. 2.

- requirements under the *Migration Act 1958* (Cth), and the exemption of the “health test” of those provisions from the *Disability Discrimination Act 1992* (Cth); and,
- the ten-year waiting period for new migrants for the Disability Support Pension under the *Social Security Act 1991* (Cth), with Australia’s pending obligations under the *Convention on the Rights of Persons with Disabilities*. In short the advice concluded that:
 - Health requirements under migration law are permissible in principle under human rights law, to legitimately safeguard scarce medical resources in the community.
 - The current Australian health test, however, is not sufficiently restrictive so as to comply with the equal protection obligation under article 5 of the *Disabilities Convention*. The health test may give rise to unjustifiable indirect discrimination against some disabled migrants, because: (a) the threshold of the test is set too low, (b) the evidentiary requirements are not sufficiently strong, and (c) an applicant’s capacity to pay for the costs of their own disability care is not taken into account.
 - The ten-year waiting period for the *Disability Support Pension* under the *Social Security Act 1991* (Cth) impermissibly interferes with human rights to an adequate standard of living and to social protection under article 28 of the *Disabilities Convention*, the right to health of disabled persons under article 25 of the *Convention*, and in some circumstances may even amount to inhuman or degrading treatment contrary to article 16 of the *Disabilities Convention*.⁴¹

2.40 The Committee notes that the Attorney-General’s Department stated in evidence that:

[w]e consider that we do comply with those obligations under the convention. The process of immigration procedures apply equally to all applicants. They are also based on legitimate objective and reasonable criteria and our view is that they would not constitute discrimination in international law.⁴²

2.41 While the Government is confident that there is no inconsistency between the *Migration Act* and Australia’s international obligations,

41 Dr Ben Saul, Sydney Centre for International Law, *Submission 17*, covering page.

42 Mr Peter Arnaudo, Attorney-General’s Department, *Transcript of Evidence*, 16 June 2008, p. 5.

the Committee considers that in the light of the ratification of the Convention, it would be timely to carry out a thorough review of the relevant provisions of the Act and the administrative implementation of migration policy to ensure that there is no direct or indirect discrimination against persons with disabilities. Ratification of the Convention provides an opportunity to resolve any inconsistencies and effect positive reforms.

Right-to-Life

The Committee questioned the Attorney-General's Department in relation to Article 10 of the Convention which sets out right-to-life obligations and how this Article could be interpreted in relation to pregnancy terminations.

A number of concerns were raised during the consultations about Article 10, which sets out a right-to-life obligation. The right-to-life obligation in the disabilities convention is derived from Article 6 of the International Covenant on Civil and Political Rights, which is very much the same. The view that the government takes, and the general view, is that article 6 of the International Covenant on Civil and Political Rights was not intended to protect life from the point of conception but only from the point of birth. Given that that is clearly accepted by the international community that the disability convention does not create any new rights, the view we take is that the right to life in this convention would also carry the same meaning as it does in the International Covenant on Civil and Political Rights which we already are a signatory to.⁴³

Substituted Decision Making and Compulsory Treatment

- 2.42 A number of submissions raised concerns with Article 12 and Article 17 of the Convention which allow Substitute Decision-making and Compulsory Treatment as a last resort and subject to appropriate safeguards.⁴⁴
- 2.43 The issues of substituted decision making and compulsory treatment are controversial in Australia and internationally.⁴⁵ In broad terms Substituted Decision Making can be defined as a

43 Mr Peter Arnaudo, Attorney-General's Department, *Transcript of Evidence*, 16 June 2008, p. 7.

44 NACLC and DDLC, *Submission 5*, p. 3.

45 Mr Frank Hall-Bentick, *Submission 2*. p. 2.

process whereby decisions are made on behalf of people who are considered not capable of being able to make decisions for themselves.⁴⁶

2.44 Compulsory Treatment refers to medical treatment including measures taken for the treatment of mental illness, conducted without consent, or contrary to the wishes of the person receiving treatment.⁴⁷

2.45 The use of Substituted Decision Making and Compulsory Treatment are opposed by those who see coercive means as violations of a person's right to choose their medical treatments.⁴⁸

2.46 Claims that these interventions are only used as a last resort was disputed by Mr Frank Hall-Bentick who stated in evidence:

...recent figures certainly from Victoria tell us that in 2006-07, 10,500 people were actually on involuntary treatment orders.⁴⁹

This is by no means a last resort. For people to suggest that it is only being used as a last resort is really not portraying the real facts as they stand. These treatment orders are used to control people for the medical system, the institutional system, to get what they want done as quickly as they need doing, because the supported model of decision making does take time.⁵⁰

2.47 There was disagreement among some submissions about whether or not Australia should make a declaration at the point of ratification to interpret Australia's understanding of substituted decision making and compulsory treatment as they stand under the Articles of the Convention.

2.48 As noted earlier in this Chapter, the Government has now made a declaration. The Committee noted the Attorney-General's Department's evidence before the Committee (prior to a declaration being made):

During the process of consultations a number of views were expressed about the position in the convention on substituted

46 Australian Social Work, Volume 51, Number 3 September 1998.

47 NIA, (footnote) p.5.

48 Mr Frank Hall-Bentick, *Submission 2*, p. 2.

49 Mr Frank Hall-Bentick, *Submission 2*, p. 46.

50 Mr Frank Hall-Bentick, *Transcript of Evidence*, 28 July 2008, p. 46.

decision-making as well as compulsory treatment. Having regard to those views, the government proposes to make declarations setting out Australia's understanding of its ability to continue with its existing practices on substituted decision-making and compulsory treatment. The making of such declarations was also recommended by the majority of the disability sector organisations that were represented in the AFDO coordinated submission.⁵¹

Implementation of the Convention

- 2.49 Although the NIA states that assessment of Commonwealth, State and Territory legislation, policies and programs indicates that Australia complies with all immediately applicable obligations arising from the Convention, it was argued that the implementation of the Convention should be used as an opportunity to review existing laws, policies and programs.

The Australian government needs to undertake a national audit of laws, policies and programs in relation to people with a disability. Such a high-level review has not occurred since the 1980s, and would provide the basis for the formulation of a national action plan to ensure the realisation of CRPD rights.⁵²

- 2.50 The National Association of Community Legal Centres (NACLC) and the Disability Discrimination Legal Centre (DDLC) suggested that under the Convention there would be scope for a national review of laws, policies and programs relating to the rights of people with disabilities, to ensure the provisions of the Convention are reflected in service and practises which have a real impact on the daily lives of people with disabilities.⁵³ They called for a national audit of existing laws, policies and programs relating to the rights of peoples with disabilities, to ensure that the provisions of the Convention are reflected in the services.⁵⁴

- 2.51 The Committee was not persuaded that such a review is necessary as a stand alone exercise, but considers that an ongoing examination

51 Mr Peter Arnaudo, *Transcript of Evidence*, 16 June 2008, p. 4 .

52 Ms Therese Sands, *Transcript of Evidence*, 29 July 2008 p.17.

53 NACLC and DDLC, *Submission 5*, p.2.

54 NACLC and DDLC, *Submission 5*, p. 2

of laws, policies and programs could be undertaken by the Human Rights and Equal Opportunity Commission (see below).

Powers of the Human Rights and Equal Opportunity Commission

- 2.52 NACLIC and DDLC argued that human rights institutions play an essential role in protecting and promoting the rights of persons with disabilities, and the Convention provides an opportunity to review current structures with a view to broadening the scope and powers of the Human Rights and Equal Opportunity Commission (HREOC). Submission 5 by NACLIC and DDLC notes that this would require sufficient human and financial resources to enable HREOC to effectively monitor compliance and implementation of the rights stipulated in the Convention.⁵⁵
- 2.53 The Committee agrees with this view and suggests the Government consider expanding the role of the Human Rights and Equal Opportunity Commissioner, to enable the Commissioner to provide Parliament with an annual report on compliance and implementation of the Convention and, if also ratified, the Optional Protocol.

Optional Protocol

- 2.54 An Optional Protocol was adopted by the General Assembly as part of the overall package to the Convention. The Optional Protocol would allow the Committee on the Rights of Persons with Disabilities to receive and consider claims of violation of the Convention's provisions.
- 2.55 Many of the submissions to this inquiry urged the Committee to support the Optional Protocol arguing that it provides a mechanism whereby a remedy may be sought where domestic remedies are unavailable or ineffective. The Submission from the UN CRPD Ratification Taskforce stated:

Our report found that there was unanimous support for Australia to immediately sign and ratify the Optional Protocol to the CRPD, and that a failure to do so would reflect poorly on Australia's willingness to be accountable for the

55 National Association of Community Legal Centres and Disability Discrimination Legal Centre, *Submission 5*.

implementation of CRPD rights, and undermine its leadership in human rights in the international community.⁵⁶

- 2.56 As of 30 September 2008, 75 countries have signed the Optional Protocol and 24 countries have ratified it.
- 2.57 In the event that the Australian Government decided to ratify the Optional Protocol, the protocol would be referred to this Committee prior to binding treaty action being taken. At that point the Committee would conduct an inquiry into the question of ratification. The Committee urges the Government to consider the views expressed in submissions to this inquiry when developing its approach to the Optional Protocol.

State Reservations to the Convention

- 2.58 The submission from the Australian Lawyers for Human Rights noted that the Convention permits State parties to the Convention to enter reservations limiting the scope of the obligations they accept under the treaty.
- 2.59 The submission warns that experience with other human rights treaties suggests that there is a risk that some States may enter reservations which are incompatible with the object and purpose of the Treaty (and which are not permitted by international law).⁵⁷
- 2.60 The Committee agrees that this is a serious concern and urges the Government to carefully examine reservations entered by other state parties and to object to any reservations that appear incompatible with the object and purpose of the treaty.

Costs

- 2.61 The Government has assessed that the financial implications of the proposed treaty action are negligible given Australia already complies with the immediately applicable obligations and has substantially implemented the progressively realisable obligations.⁵⁸ However, Queensland has indicated that it considers full implementation of the progressively realisable obligations will carry significant resource implications.⁵⁹

56 UN CRPD Ratification Task Force, *Submission 12*, p. 2.

57 Australian Lawyers for Human Rights, *Submission 10*, p. 5.

58 NIA, para 34.

59 NIA, para 36.

- 2.62 There will be some costs involved in meeting reporting requirements and in travel to appear before the Committee on the Rights of Persons with Disabilities, which will be met from relevant agency resources.
- 2.63 The Committee is uncertain just how comprehensive the Australian Government's assessments of the cost implications for the Convention are. In this regard the Committee notes the submission by Mr David Heckendorf who observed that one of the biggest issues for the disability sector is access to limited public resources. Mr Heckendorf further commented that:
- I am concerned that, in the race to get a representative onto the Article 34 Committee on the Rights of Persons with Disabilities, Australia might be too optimistically eager in writing in the NIA that ratification would not lead to 'significant financial or regulatory implications.'⁶⁰
- 2.64 The Committee considers that the Australian Government, and the governments of the States and Territories, must be prepared to meet any implementation costs arising from the obligations of the Convention.

Conclusion

- 2.65 The Committee supports the Convention on the Rights of Persons with Disabilities and has recommended in Report 92 that binding treaty action be taken.⁶¹
- 2.66 In addition the Committee takes into account concerns expressed by witnesses to the inquiry and makes the following recommendations.

60 Mr David Heckendorf, *Submission 22*, p, 2-3.

61 Joint Standing Committee on Treaties *Report 92*, see Appendix D.

Recommendation 1

The Committee recommends that the Government consider expanding the role of the Human Rights and Equal Opportunity Commissioner to enable the Commissioner to provide Parliament with an annual report on compliance and implementation of the Convention and, if also ratified, the Optional Protocol.

Recommendation 2

The Committee recommends that a review be carried out of the relevant provisions of the Migration Act and the administrative implementation of migration policy, and that any necessary action be taken to ensure that there is no direct or indirect discrimination against persons with disabilities in contravention of the Convention.

Australia - Chile Free Trade Agreement

Background

- 3.1 The Australia - Chile Free Trade Agreement (the Agreement) is an agreement between the governments of Australia and Chile that will remove most barriers to Australia's exports of goods, and provide economic integration for markets through commitments in a range of areas including trade in services, investment, government procurement, intellectual property, electronic commerce, and competition policy.¹
 - 3.2 According to the NIA, the Agreement will also enhance Australia's economic and trade interest and reinforce Australia's commitment to global trade reform and liberalisation.²
 - 3.3 Bilateral trade with Chile is modest, involving \$856m in 2007. However Australia is the fourth largest source of foreign investment in Chile, with investments amounting to US\$3b in 2007.³
 - 3.4 Significant Australian private sector investors include BHP Billiton (mining), AGL (gas distribution), and Pacific Hydro (power generation).
 - 3.5 According to the Department of Foreign Affairs and Trade (the Department) the Agreement has been negotiated to underpin a
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1 NIA, paragraph 3.

2 NIA, paragraph 3.

3 NIA, paragraph 5.

number of aspects of Australia's relationship with Chile, and with South America in general. In particular the Agreement underpins:

- the fact that the Chilean economy is relatively open, transparent and stable in comparison to other South American economies;
- the common commitment of Australia and Chile to liberalising trade; and
- the common value to Australia and Chile in having a free trade agreement with a stable and open economy close to growing markets (Asia in Chile's case and South America in Australia's).⁴

3.6 The Department described the Agreement as a high quality agreement likely to be used as a model for other free trade agreements with APEC economies.⁵

Obligations

3.7 The Agreement will liberalise and facilitate trade and investment between Australia and Chile. Upon entry, each party will eliminate tariffs on the imports of most goods from the other party.

3.8 In addition, each party to the Agreement will grant market access, national treatment and most-favoured nation treatment to services and investment from the other party.

3.9 The Agreement also contains commitments in the areas of:

- government procurement;
- intellectual property rights;
- telecommunications;
- customs procedures;
- electronic commerce;
- competition policy;
- temporary entry for business persons;
- standards and technical regulations;

4 Ms Virginia Grenville, *Transcript of Evidence*, 25 August 2008, p. 13.

5 Ms Virginia Grenville, *Transcript of Evidence*, 25 August 2008, p. 13.

- sanitary and phytosanitary measures cooperation; and
- dispute settlement.⁶

Reasons for Australia to take treaty action

- 3.10 The NIA states that some of the benefits of the agreement are:
- the elimination of Chile's tariffs on 91.9% of lines covering 96.9% of trade;
 - a harmonised and simplified system of customs procedures;
 - a commitment by Chile to maintain an open and non-discriminatory market for Australian service suppliers including in education, professional services, mining, and telecommunication services;
 - non-discriminatory access to Chile's government procurement market;
 - the right of Australian investors to protect their investments through investor - state dispute settling procedures;
 - temporary access rights for business visitors to Chile; and
 - a framework for mutual recognition of professional qualifications.⁷
- 3.11 The NIA makes a particular point of the fact that the Agreement will enhance Australia's broader economic and trade interests in the region.⁸
- 3.12 Representatives of the Department advised that the Australian tariff lines that will not immediately be tariff free under the Agreement relate to the textile and clothing industry, and to table grapes.
- 3.13 In Chile's case the tariff lines that will not immediately be tariff free included textiles and clothing, and some manufactured products.
- 3.14 The tariff lines that will not immediately be covered by the Agreement amount to slightly more than 3% of bilateral trade between Australia and Chile.

6 NIA, paragraph 10.

7 NIA, paragraph 6.

8 NIA, paragraph 7.

- 3.15 All the tariff lines not immediately tariff free are projected to be tariff free in six years' time.⁹

Costs

- 3.16 The Treasury has estimated that the loss of tariff revenue to the Australian Government resulting from the Agreement will be approximately \$1.9m in 2008/09 and between \$4m and \$4.5m a year up to 2012. The estimates do not take account of:

- the additional loss of tariffs that might arise from trade from Chile displacing imports from other countries; and
- the potential economic growth that the agreement could generate.¹⁰

Consultation

- 3.17 As this Agreement will have an impact on the States and Territories, they were comprehensively consulted prior to and during the negotiations.¹¹
- 3.18 In addition, the Department of Foreign Affairs and Trade called for public submissions prior to the commencement of negotiations, and eighteen submissions were received.¹²

Submissions relating to the Australia – Chile Free Trade Agreement

- 3.19 The Committee received a number of submissions detailing a series of issues with the Agreement. The most significant issues for the Committee are: the potential effect of the Agreement on Australia's horticulture industries; the treatment of 457 visas; and compliance

9 Ms Virginia Grenville, *Transcript of Evidence*, 25 August 2008, p. 16.

10 NIA, paragraph 14.

11 NIA consultation attachment, paragraph 8.

12 NIA consultation attachment, paragraph 14.

with international human rights, labour and environmental standards.

Horticulture industries

- 3.20 Horticulture Australia made a submission to the inquiry outlining a series of concerns with Chapter Six of the Agreement, which deals with sanitary and phytosanitary measures.
- 3.21 Phytosanitary measures protect plant life in the territory of each party to a free trade agreement. Phytosanitary measures are usually considered in conjunction with sanitary (that is, animal related) measures.
- 3.22 Sanitary and phytosanitary measures are more commonly known as quarantine measures.
- 3.23 The objective of Chapter Six of the Agreement is to:
- facilitate bilateral trade in food, plants and animals while protecting the human, animal or plant life of each country;
 - deepen mutual understanding of the sanitary and phytosanitary measures adopted by each country; and
 - strengthen cooperation between the governments of Australia and Chile over sanitary and phytosanitary matters.¹³
- 3.24 The measures contained in Chapter Six are limited to improving cooperation and communication between Australia and Chile over sanitary and phytosanitary measures within the framework of the *Agreement on the Application of Sanitary and Phytosanitary Measures*, which is part of the WTO Agreement.¹⁴
- 3.25 In real terms, this means that the Agreement does not override Australia's quarantine barriers that prevent the spread of pests or diseases, whether in existence at the time the Agreement is made, or imposed during the life of the agreement.
- 3.26 Two matters are of particular concern to Horticulture Australia:
- consultation; and
 - the effect of the Agreement on the horticulture industry.

13 Australia – Chile Free Trade Agreement, p. 51.

14 Australia – Chile Free Trade Agreement, p. 51.

Consultation

- 3.27 Horticulture Australia is concerned about the lack of consultation during negotiation of the Agreement. Its representatives claim that free trade agreement negotiations are usually preceded by consultation between government and industry, but that in the case of this Agreement, consultation took place after the intention to negotiate an agreement had been announced.
- 3.28 Furthermore, Horticulture Australia claims that the negotiations moved quickly, implying that not enough time was devoted to consultation with business.¹⁵
- 3.29 The intention to negotiate a free trade agreement was announced in December 2006, and Agreement was reached in May 2008.
- 3.30 In response to these concerns, Department representatives advised that there is no set procedure for consultation for a free trade agreement.
- 3.31 In the case of the Australia - Chile Free Trade Agreement, while consultation in Australia commenced after the announcement of the intention to negotiate a free trade agreement, the degree and type of consultation was comparable to that undertaken for other free trade agreements.¹⁶
- 3.32 In relation to the timeframe for negotiating the Agreement, Department representatives noted that there is no set time frame for the negotiation of free trade agreements - the negotiations take as long as is necessary to reach an agreement.¹⁷

The effect of the Agreement on the horticulture industry

- 3.33 Horticulture Australia's submission points out that because Chile and Australia are both in the southern hemisphere, they share common seasons. This means that Chilean horticultural products can be imported to Australia at the same time as Australian horticultural products are on the market.
- 3.34 Horticulture Australia anticipates that the price of the Chilean products will be less than the Australian products because of the cheaper labour costs in Chile. Mr Peter McPherson, from the Australian Blueberry Growers' Association, advised the Committee
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15 Horticulture Australia, Submission, p. 1.

16 Ms Virginia Grenville, *Transcript of Evidence*, 13 October 2008, p 36.

17 Ms Virginia Grenville, *Transcript of Evidence*, 13 October 2008, pp 39-40.

that in the case of blueberries, Chilean labour costs are 40% of Australia's.¹⁸

- 3.35 Representatives of Horticulture Australia conceded that, table grapes aside,¹⁹ most horticultural products do not attract tariffs, and that consequently, the Agreement will not have a direct effect on the horticulture industry.
- 3.36 However, representatives of the Horticulture Industry argued that highlighting phytosanitary measures in the Agreement will encourage Chilean producers to seek access to the Australian market, and that the existence of the Agreement will mean that requests for access to Australian markets will be prioritised by Biosecurity Australia.²⁰
- 3.37 Representatives of the Department conceded that the inclusion of a chapter on sanitary and phytosanitary measures in the Agreement may have occurred at the insistence of the Chilean negotiators.²¹
- 3.38 Nevertheless, the Department's representatives assured the Committee that the existence of the Agreement will have no impact on the priority accorded requests by Chilean producers to access the Australian market.²²
- 3.39 The Committee was interested in whether the Department had conducted any modelling of the economic and social effects on the horticulture industry of the Agreement.
- 3.40 Representatives of the Department advised the Committee that no modelling had taken place because it was the view of the Department that the Agreement would have no impact on the horticulture industry.²³

457 Visas

- 3.41 457 Visas are visas that permit short term entry to Australia of workers employed by a particular employer.

18 Mr Peter McPherson, *Transcript of Evidence*, 13 October 2008, p 23.

19 Table grapes attract a tariff of 5%. The tariff will remain in place for six years following binding treaty action. See Ms Virginia Grenville, *Transcript of Evidence*, 13 October 2008, p 37.

20 Mr Robert Duthie, *Transcript of Evidence*, 13 October 2008, p 30.

21 Ms Virginia Grenville, *Transcript of Evidence*, 13 October 2008, p 40.

22 Ms Virginia Grenville, *Transcript of Evidence*, 13 October 2008, p 41.

23 Ms Virginia Grenville, *Transcript of Evidence*, 13 October 2008, p 41

- 3.42 The Committee received evidence from a number of organisations concerned that the Agreement may increase the number of people entering Australia on 457 visas.
- 3.43 John Sutton, National Secretary of the Construction Forestry and Mining Union, argued that the movement of temporary workers should not be included in free trade agreements for two reasons.
- 3.44 The first is the apparent lack of clarity as to whether domestic law or the trade agreements have precedence in relation to the treatment of workers in Australia on 457 visas.²⁴
- 3.45 Mr Sutton's second concern is that if the Agreement increased the number of 457 visa holders, it would expose more workers to the poor treatment he believed was associated with these visas. Mr Sutton described the following issues he had experienced when dealing with 457 visa holders:
- underpayment;
 - loss of income as a result of fees paid to employment brokers;
 - substandard accommodation charged at high rates of rent;
 - poor safety conditions when workers who do not speak English are placed in dangerous situations; and
 - long working hours.²⁵
- 3.46 Representatives of the Department noted that the Agreement doesn't contain a reference to 457 visas, and that it will not widen access to 457 visas.
- 3.47 Because the Agreement does not address 457 visas, representatives of the Department argued that Chilean nationals seeking 457 visas will have to meet the requirements that apply to all other applicants.
- 3.48 In addition, the Agreement will not limit Australia's scope to change or abolish 457 visas.²⁶

Compliance with human rights, labour and environmental standards

- 3.49 The Committee questioned Department representatives on a number of occasions about why ILO and UN labour standards were included

24 Mr John Sutton, *Transcript of Evidence*, 13 October 2008, p 12.

25 Mr John Sutton, *Transcript of Evidence*, 13 October 2008, p 14.

26 Ms Trudy Witbreuk, *Transcript of Evidence*, 13 October 2008, p 35.

in the Australia – United States Free Trade Agreement, but were not included in the Australia – Chile Free Trade Agreement.²⁷

3.50 Department representatives advised that ILO and UN labour standards were included in the Australia – United States Free Trade Agreement because of a requirement to do so by the United States, and that the inclusion of these standards in other free trade agreements negotiated by Australia is contrary to Government policy.²⁸

3.51 The issue of the inclusion of ILO and UN labour standards in free trade agreements was also raised in the AFTINET submission. That submission advised that:

Before signing any agreement there should be an analysis of the current state of compliance by both Australia and Chile with human rights, labour and environment standards, including the International Labour Organisation’s Declaration on Fundamental Principles and Rights at Work...²⁹

Other matters raised in submissions

3.52 Other submissions to the inquiry examined a number of other issues.³⁰ These issues are as follows:

- trade negotiations should be undertaken through an open and transparent process to allow effective public consultation – in particular, the submitters proposed the adoption of the consultation process recommended by the Senate Foreign Affairs, Defence and Trade Committee in its 2003 report *Voting on Trade*;³¹
- free trade agreements should include social, environmental and cultural impact statements, and these assessments should be independently conducted;³²
- commitments in services and investments should not restrict the ability of governments to regulate in the public interest;³³

27 Chair, *Transcript of Evidence*, 13 October 2008, p 34.

28 Ms Virginia Grenville, *Transcript of Evidence*, 13 October 2008, p 34.

29 AFTINET, Submission No 2, pp 5-6.

30 AFTINET, Submission No 2; Mr John C Massam, Submission No 5; The Stop MAI (WA) Coalition, Submission No 6; Ms Rosie Wagstaff, Submission No 8; and Construction Forestry, Mining and Energy Union (CFMEU), Submission No 9.

31 AFTINET, Submission No 2, p2.

32 CFMEU, Submission No 9.

33 CFMEU, Submission No 9.

- free trade agreements should clearly and unambiguously exempt public services from the scope of the agreement – submitters are of the view that the current definition of public service in free trade agreements is ambiguous in relation to public services in the health, education and utilities sectors;³⁴ and
 - the Agreement should not contain an investor – state dispute settling process on the grounds that such processes provide an opportunity for private corporations to overturn government regulation aimed at protecting health and the environment.³⁵
- 3.53 The Committee also received a comprehensive submission from Dr Matthew Rimmer concerning intellectual property and development.
- 3.54 Dr Rimmer’s principal argument is that the Agreement should not lock in the current standards of intellectual property protection for patents trademarks, geographical indications and copyright. The Agreement should instead take advantage of the flexibilities allowed under international intellectual property law.³⁶
- 3.55 In particular, the Agreement should adopt a flexible open ended defence of fair use in respect of well-known and famous trade marks.
- 3.56 Fair use permits the use of material for purposes such as: criticism; comment; news reporting; teaching (including multiple copies for classroom use); scholarship; or research, without infringing copyright.³⁷
- 3.57 Dr Rimmer is also concerned about the treatment of pharmaceutical drugs in the Agreement.
- 3.58 Because the Agreement adopts a similar approach to intellectual property as the Australia – United States Free Trade Agreement, Dr Rimmer argues that the agreement will limit the ability of either country to export generic-branded pharmaceutical drugs to each other.³⁸ Generic pharmaceutical drugs provide a significant health benefit by making such drugs more affordable for the community.
- 3.59 Finally, Dr Rimmer argues that the Australian Government should accelerate the protection of genetic resources, traditional knowledge
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34 AFTINET, Submission No 2, p7.

35 Ms Rosie Wagstaff, Submission No 8.

36 Dr Matthew Rimmer, Submission No 11 p5.

37 Dr Matthew Rimmer, Submission No 11 p22.

38 Dr Matthew Rimmer, Submission No 11 p5.

and folklore as embodied in the *Declaration on the Rights of Indigenous Peoples 2007*.³⁹

Committee comment

- 3.60 The Committee notes the criticisms of the Agreement made in submissions to the inquiry.
- 3.61 The Committee notes evidence that the Australia-United States Free Trade Agreement contains chapters that refer to ILO and UN standards on labour rights and the environment, whereas this Agreement does not, and that environmental and labour standards in the Australia-United States Free Trade Agreement were inserted at the insistence of the United States.⁴⁰
- 3.62 While the Committee would need to hear more evidence and conduct a broader inquiry in order to be in a position to make a specific recommendation, the Committee believes the Government needs to address these concerns in the context of negotiating any future Free Trade Agreements.

Recommendation 3

The Committee recommends that, prior to commencing negotiations for bilateral or regional trade agreements, the Government table in Parliament a document setting out its priorities and objectives. The document should include independent assessments of the costs and benefits. Such assessments should consider the economic regional, social, cultural, regulatory and environmental impacts which are expected to arise.

- 3.63 The Committee believes that such an arrangement would improve transparency in trade agreement negotiations, and address a number of concerns which were expressed by witnesses to this inquiry.

39 Dr Matthew Rimmer, Submission No 11 p. 6.

40 Ms Virginia Grenville, *Transcript of Evidence*, 25 August 2008, p. 15.

Recommendation 4

The Committee recommends that the Department of Foreign Affairs and Trade undertake and publish a review of the operation of the Australia - Chile Free Trade Agreement no later than two years after its commencement in order to assess the ongoing relevance of concerns expressed about the Agreement, such as the maintenance of sanitary and phytosanitary measures, impact on the horticulture industries, intellectual property, 457 visas, and labour and environmental standards.

Conclusion and recommendation

- 3.64 The Committee supports binding treaty action on the Australia - Chile Free Trade Agreement.

Recommendation 5

The Committee supports the *Australia - Chile Free Trade Agreement* and recommends that binding treaty action be taken.

Treaty between Australia and the State of the United Arab Emirates on Defence Cooperation

Introduction

- 4.1 The Agreement between the Government of Australia and the Government of the United Arab Emirates Concerning Defence Cooperation is designed to enhance bilateral defence engagement by facilitating cooperation in a range of mutually agreed fields including, but not limited to, military training and education, joint military exercises, defence materiel and equipment, security and defence policy and protection from weapons of mass destruction.¹

Background

- 4.2 Australia has a modest defence relationship with the United Arab Emirates which includes Special Forces cooperation, senior-level visits and training courses. Australia's interest in cooperation with the United Arab Emirates stems from Australian involvement in the Middle East and the developing potential for defence materiel cooperation.²

1 NIA, para 3.

2 NIA, para 4.

Obligations

- 4.3 The purpose of the Agreement, as outlined in Article 1, provides that each Party will encourage, facilitate and develop cooperation in the field of defence on a mutually beneficial basis.³

Joint Defence Cooperation Committee (JDCC)

- 4.4 Article 2 requires both Australia and the United Arab Emirates to create a JDCC that will establish mechanisms to implement the Agreement. Australia will be obliged to select one person to be head of its representatives to the JDCC.⁴

Security Procedures

- 4.5 Article 5 provides that each Party must protect and safeguard all information and material provided by the other Party under the Agreement in accordance with its security marking.⁵

Costs

- 4.6 Article 6 provides that upon the implementation of this Agreement, or any other activities arising thereof, unless otherwise mutually determined in the relevant Memorandum of Understanding or Protocol, each Party shall bear its own costs.⁶

Laws, Rules and Regulations

- 4.7 Pursuant to Article 7 of the treaty, personnel of one Party while in the territory of the host Party, will be subject to and shall observe the laws, rules and regulations of the host Party. As such, Australian personnel sent to United Arab Emirates under the proposed Agreement must observe the laws, rules and regulations of that country. However, if personnel violate military laws and regulations of their country while in host Party territory, they will be subject to the military laws and rules of their country.⁷

Disputes

- 4.8 Article 8 provides that the Parties will not refer any disputes concerning the Agreement to any third party, national or international

3 NIA, para 9.

4 NIA, para 10.

5 NIA, para 11.

6 NIA, para 12.

7 NIA, para 13.

tribunal for settlement. Any disputes that do arise shall be resolved through mutual consultations and direct negotiations between the two nations.⁸

Future treaty action

- 4.9 Under Article 10, either Party may propose amendments to the Agreement. Any amendments would be subject to Australia's treaty processes. Any revisions or amendments will enter into force once both Parties have exchanged written notification that all procedures for entry into force have been completed in accordance with their domestic laws.⁹
- 4.10 At present, the Australian Defence Department is not considering future Protocols. Future Memoranda of Understanding could cover areas such as counter-terrorism, education and training or information exchange.¹⁰

Reasons for Australia to take treaty action

- 4.11 The NIA states that this Agreement is significant to Australia as it will aid defence cooperation with the United Arab Emirates in a range of areas, including the special interest areas of defence materiel and counter-proliferation.¹¹ According to the Defence Department, the Agreement will also be of benefit to Australia by strengthening our overall bilateral defence relationship with the United Arab Emirates, which it considers to be a country located in an important strategic position, alongside sea lanes of significant importance to Australia.¹²
- 4.12 The establishment of a Joint Defence Cooperation Committee (JDCC) through this Agreement will both encourage and facilitate the

8 NIA, para 14.

9 NIA, para 18.

10 NIA, para 20.

11 NIA, para 5.

12 Mr Andrew Chandler, *Transcript of Evidence*, 25 August 2008, p. 29.

cooperation envisaged in the Agreement and serve to strengthen the bilateral relationship between the two nations.¹³

- 4.13 The Agreement also provides a legal framework for visiting personnel when Australia and the United Arab Emirates mutually arrange to send personnel to the other country.¹⁴
- 4.14 The Department of Defence suggests that the significant time, goodwill and effort invested in the finalisation of this Agreement by both Australia and the United Arab Emirates, as well as the high priority the United Arab Emirates has put on the Agreement, means that failure to ratify it would cause significant disappointment and could raise doubts about Australia's commitment to the bilateral defence relationship.¹⁵

Costs

- 4.15 Article 6 of the Agreement states that each Party shall bear its own costs with relation to implementation of the Agreement and any other activities involved, unless mutually agreed in the relevant Memorandum of Understanding or Protocol. Implementation costs to Australia are anticipated to be minimal, and will be borne by the Department of Defence, from existing resources.¹⁶

Withdrawal or denunciation

- 4.16 Under Article 9 of the Agreement, either Party may unilaterally terminate the Agreement by providing written notice to the other Party. Termination would become effective six months after written notice has been given.¹⁷
- 4.17 Termination by Australia would be subject to Australia's treaty processes, including tabling and consideration by the Committee.¹⁸

13 NIA, para 6.

14 NIA para 7.

15 NIA, para 8.

16 NIA, para 16.

17 NIA, para 21.

18 NIA, para 21.

- 4.18 Should the Agreement be terminated, Article 9 further provides that each Party shall be obliged to continue to fulfil all the obligations arising. Article 5 covers the continued protection of any shared information.¹⁹

Other matters

Capital and corporal punishment

- 4.19 The Committee received a submission from Dr Ben Saul of the Sydney Centre for International Law outlining concern that, under Article 7 of the Agreement, which states that personnel will be subject to the laws and regulations of the host Party, it is possible that Australian personnel will be subject to the death penalty or judicial flogging under United Arab Emirates law. This could be seen as incompatible with human rights law. Dr Saul suggests that the Agreement could be strengthened by:

... specifying (in Article 7 of this treaty) that the personnel of the sending Party shall not only observe the national laws in force in the host country, but also public international law (and in particular, those branches which directly concern the individual, including international humanitarian law, international human rights law and international criminal law).²⁰

- 4.20 In response to this, the Department of Defence suggested that the Agreement as it stands is a 'framework sort of Agreement', and that more specific arrangements would be made in relation to general personnel at the point at which personnel were to be exchanged.²¹

Conclusion and recommendations

- 4.21 The Committee notes the concern put forward by Dr Saul in his submission that there is a possibility that Australian personnel could
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19 NIA, para 21

20 Dr Ben Saul, Submission no. 1, p. 1

21 Mr Stephen Bouwhuis, *Transcript of Evidence*, 25 August 2008, p. 31

be subject to capital or corporal punishment for offences committed off duty when hosted by the United Arab Emirates as a result of this Agreement. The Committee also notes that the Department of Defence has indicated that more detailed stipulations would be made with regard to punishment in the event of exchanging personnel. The Committee considers that as part of these detailed arrangements every effort should be made by the Australian Government to ensure that Australian personnel are protected from the death penalty.

- 4.22 The Committee recognises the value of the Agreement with respect to encouraging and strengthening our overall bilateral defence relationship with the United Arab Emirates and therefore considers that this agreement will be in Australia's national interest.

Recommendation 6

The Committee recommends that in any specific arrangement concerning the exchange of Defence personnel, the Australian Government seeks to ensure that Australian personnel are protected from corporal and capital punishment under United Arab Emirates law.

Recommendation 7

The Committee supports the *Agreement between the Government of the United Arab Emirates and the Government of Australia on Defence Cooperation* and recommends that binding treaty action be taken.

Headquarters Agreement with the Secretariat to the Agreement on the Conservation of Albatrosses and Petrels

Background

- 5.1 The *Headquarters Agreement between the Government of Australia and the Secretariat to the Agreement on the Conservation of Albatrosses and Petrels* sets out the conditions for Australia to host the permanent Secretariat to the *Agreement on the Conservation of Albatrosses and Petrels* (ACAP). Australia has hosted the interim Secretariat, located in Hobart, since ACAP was signed in 2001.
- 5.2 ACAP was developed following the listing of all Southern Hemisphere albatross species on the Appendices to the *Convention on the Conservation of Migratory Species of Wild Animals* (CMS) in 1997. The CMS compels member states to protect migratory species of wild animals that live within or pass through their jurisdictional boundaries by concluding agreements to promote conservation and management action and research relating to those species.¹
- 5.3 There are 11 parties to ACAP: Argentina, Australia, Chile, Ecuador, France, New Zealand, Norway, Peru, South Africa, Spain and the

¹ NIA, Background information, p. 1.

United Kingdom. Brazil is a signatory to the Agreement and is expected to ratify in the near future.²

Obligations

- 5.4 The key obligations of the Headquarters Agreement are:
- The Australian Government shall arrange services for the Headquarters, including electricity, water, sewerage, gas, mail, telephone, telegraph, drainage, collection of refuse and fire protection (Article 5);
 - The Secretariat will have immunity from suit and other administrative or legal processes (Article 6) and exemptions from all direct taxes (Article 9), customs and excise duties (Article 10), and currency and exchange restrictions (Article 12);
 - Publications and other information material imported or exported within the scope of the Secretariat's official activities shall not be restricted in any way (Article 14);
 - Representatives at ACAP meetings, the Executive Secretary and staff members of the Secretariat and experts, where not Australian citizens or permanent residents, shall receive privileges and immunities (Articles 15, 16, 17 and 18); and
 - The Australian Government will facilitate the entry into, residence in, and departure from Australia, and freedom of movement in Australia, of the following persons: representatives at ACAP meetings; Secretariat staff members, their spouses and dependant children; and relevant experts (Article 19).
- 5.5 The immunities provided by this Agreement do not inhibit the Australian Government from taking reasonable measures to preserve security and applying laws necessary for health and quarantine or laws relating to public order (Article 21).

2 NIA, Background Information, p. 3.

Reasons for Australia to take treaty action

- 5.6 ACAP has been an Australian-led initiative since 1997. Australia played a significant role in the development and finalisation of ACAP, is the ACAP Depository, and has hosted the interim Secretariat since 2001.³
- 5.7 Successive Australian Governments have considered the conservation of albatrosses and petrels to be a high priority. The Committee was informed that:

Australia pursued the development of ACAP due to the threatened status of albatrosses and petrels globally. Nineteen of the world's 22 species of albatrosses and both species of giant petrels are endangered ... Five of these breed in Australia and another 14 species forage in Australian waters ... these seabirds which breed within Australian waters are highly susceptible to threats throughout their vast foraging range.⁴

It is tremendously important to us to use avenues, particularly working in the regional fisheries management organisations, and also bilaterally, to encourage other countries to take energetic conservation action.⁵

- 5.8 Further, the Government considered that hosting the permanent Secretariat would increase Australia's standing in international affairs and accord with its support for Hobart as an international Antarctic gateway city. It would also provide logistical simplicity and greater continuity in not having to move or interrupt the functioning of the interim Secretariat.⁶

Legal establishment of the Secretariat

- 5.9 The Committee received a submission that questioned the legal basis for the establishment of the ACAP Secretariat.⁷ It was argued that the

3 Mr Ian Hay, *Transcript of Evidence*, 25 August 2008, p. 22.

4 Mr Ian Hay, *Transcript of Evidence*, 25 August 2008, p. 22.

5 Mr Ian Hay, *Transcript of Evidence*, 25 August 2008, p. 24.

6 Mr Ian Hay, *Transcript of Evidence*, 25 August 2008, p. 22; NIA, paras 6 and 7.

7 Mr Andrew Serdy, Submission No. 4.

making of regulations under the *International Organisations (Privileges and Immunities) Act 1963* (the International Organisations Act) would not be sufficient for Australia to comply with its obligations under the treaty and that the Act itself requires amendment.⁸

5.10 The basis for this conclusion was:

- International secretariats are rarely given legal personality because the treaty that creates a secretariat usually also establishes a more appropriate body on which to confer personality, namely an international organisation.⁹
- ACAP does not create any international organisation within the sense of the International Organisations Act. As there is no organisation, the Meeting of the Parties adopted a resolution in 2006 giving personality to the Secretariat.
- An international organisation can only have privileges and immunities conferred on it if Australia and at least one other country, or persons representing the same, are members. The ACAP Secretariat by its very nature cannot have members in that sense.¹⁰
- There is no obligation on any State that has acceded to ACAP since the Meeting of Parties adopted the 2006 resolution to extend similar recognition to the Secretariat.¹¹

5.11 When asked for their views on the submission, representatives of the Department of Foreign Affairs and Trade and the Attorney-General's Department informed the Committee:

... we disagree with its conclusions ... I think the suggestion was made on the basis that the secretariat could not be declared an international organisation for the purposes of the act. Our team of lawyers examined the legislation and decided that the secretariat was an organ or a part of a head organisation, which is identified in the ACAP treaty, called

8 Mr Andrew Serdy, Submission No. 4, p. 1.

9 For example, Article VII of the Convention on the Conservation of Antarctic Marine Living Resources creates the Commission for the Conservation of Antarctic Marine Living Resources. Similarly, Article 6 of the Convention on the Conservation of Southern Bluefin Tuna creates the Commission for the Conservation of Southern Bluefin Tuna. Both conventions confer legal personality on the Commission. Mr Andrew Serdy, Submission No. 4, pp. 1-2.

10 Mr Andrew Serdy, Submission No. 4, p. 2.

11 Mr Andrew Serdy, Submission No. 4, p. 3.

the meeting of parties and that we would be able to designate the secretariat as an organ of a head organisation that could be declared such an international organisation for the purposes of the act.¹²

5.12 Further:

... section 5(1) of the privileges and immunities act ... says:

- (1) The regulations may declare an organisation:
(a) of which Australia and a country or countries other than Australia are members ...

... ..

to be an international organisation to which this Act applies.

So it is essentially up to the Commonwealth to declare, and then the definition within 3(1), which makes it clear that a subsidiary part of that organisation, such as the secretariat, can also have the privileges and immunities. So once that is declared it basically also flows through to the Migration Act, which picks it up as well. I guess the point is that the domestic legislation is wide enough to give these organisations privileges and immunities irrespective of their international status.¹³

Implementation

5.13 Office accommodation and other services for the Secretariat will be provided by the Tasmanian Government pursuant to a Memorandum of Understanding concluded in 2007. The Committee understands that there is no cost to the Commonwealth Government in relation to these services.¹⁴

5.14 Regulations will be required under the *International Organisations (Privileges and Immunities) Act 1963* to bring the ACAP Secretariat within the operation of that Act and ensure that the necessary privileges, immunities and taxation concessions are extended to representatives at ACAP meetings, the Executive Secretary and other

12 Mr Damian White, *Transcript of Evidence*, 25 August 2008, p. 25.

13 Mr Stephen Bouwhuis, *Transcript of Evidence*, 25 August 2008, pp. 25-26.

14 Mr Ian Hay, *Transcript of Evidence*, 25 August 2008, p. 21.

staff and their family members, and relevant experts.¹⁵ This will also enable the Department of Immigration and Citizenship to facilitate entry into, residence in, and departure from Australia of persons listed in Article 19(a), (b) and (c) of the Agreement.¹⁶

Costs

5.15 The Secretariat's budget of \$450,000 per annum is met by contributions from each party. The Committee was told that this 'modest' budget means:

... that the taxation concessions will also be modest and more than commensurate with the conservation and other benefits to be gained by Australia from the future success of ACAP.¹⁷

5.16 The Department of the Environment, Water, Heritage and the Arts has committed to meeting the cost of taxation concessions.¹⁸

Consultation

5.17 The Agreement received whole-of-government support at the Commonwealth level and was provided to the Standing Committee on Treaties in September 2007. The Committee notes that the Australian Government has worked closely with the Tasmanian Government, which has hosted the interim Secretariat for a number of years and indicated its willingness to host the permanent Secretariat.

Conclusion and recommendation

5.18 The Committee concurs with the Government's view of the importance of cooperative international action to conserve albatrosses and petrels. It supports establishment of the permanent headquarters to ACAP in Australia and recommends that binding treaty action be taken.

15 NIA, para 17.

16 NIA, para 18.

17 Mr Ian Hay, *Transcript of Evidence*, 25 August 2008, p. 23.

18 Mr Ian Hay, *Transcript of Evidence*, 25 August 2008, p. 22.

Recommendation 8

The Committee supports the *Headquarters Agreement between the Government of Australia and the Secretariat to the Agreement on the Conservation of Albatrosses and Petrels* and recommends that binding treaty action be taken.

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women

Background

- 6.1 The proposed treaty action is accession to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
- 6.2 Parties to the Optional Protocol recognise the competence of the Committee on the Elimination of All Forms of Discrimination Against Women (the CEDAW committee) to receive and consider written complaints about alleged violations of Australia's obligations under CEDAW.¹ These obligations include access to and equal opportunities for women in, political and public life, education, marriage, social security, health and employment.² The CEDAW committee is a body of experts elected by State Parties to CEDAW, who serve in their personal capacity.³
- 6.3 Australia has not previously signed the Optional Protocol, which was adopted on 6 October 1999 and came into force on 22 December 2000. It can accede to the Optional Protocol, however, as it is a party to

1 National Interest Analysis (NIA), para 4.

2 Mr Geoffrey Skillen, *Transcript of Evidence*, 15 September 2008, p. 2.

3 NIA, para 9.

CEDAW. There are currently 190 parties to CEDAW and 90 parties to the Optional Protocol.⁴

Obligations

- 6.4 There are two main facets to the Optional Protocol. The first is the complaints procedure (Articles 2 to 7) and the second is the inquiry powers of the CEDAW committee (Articles 8 to 10).
- 6.5 The Optional Protocol allows individuals or groups of individuals to make complaints (communications) to the CEDAW committee about discrimination once they have exhausted all domestic legal avenues.⁵ The CEDAW committee can then issue views as to whether a breach of CEDAW has occurred and make recommendations on methods to address this breach (Article 7).⁶
- 6.6 In relation to the exhaustion of domestic remedies, the Protocol provides the CEDAW committee with the power to consider a communication where, in its judgement, 'the application of such remedies is unreasonably prolonged or unlikely to bring effective relief' (Article 4(1)).
- 6.7 Articles 8 and 9 empower the CEDAW committee to conduct confidential investigations into alleged systemic or grave discrimination, as opposed to individual discrimination, by a Party unless that Party has made a declaration under Article 10 that it does not recognise the competence of the CEDAW committee to conduct inquiries.
- 6.8 Parties to the Optional Protocol are also obliged to:
- Ensure individuals under their jurisdiction are not subject to ill-treatment or intimidation as a consequence of communication with the CEDAW committee (Article 11);
 - Report annually on their activities under the Optional Protocol (Article 12); and

4 Ms O'Rourke, *Transcript of Evidence*, 15 September 2008, p. 6; NIA, para 1.

5 NIA, para 6.

6 NIA, para 4.

- Publicise CEDAW and the Optional Protocol and facilitate access to information about the views and recommendations of the CEDAW committee (Article 13).
- 6.9 The Committee notes that as findings are made against State Parties, this effectively means that if a complaint was made in Australia in relation to discrimination that has occurred in, for example, the workplace or private sector, the CEDAW committee's response would be directed at the Commonwealth.⁷
- 6.10 Government representatives informed the Committee that the views of the CEDAW committee are non-binding and can only guide Australia in its implementation of international law. Australia would not be obliged to conform to the CEDAW committee's views if it believed there was a better way to implement its obligations under CEDAW.⁸
- 6.11 Australia made two reservations to CEDAW in relation to maternity leave and combat duties for women in the Defence Force. Communication could not be entered into by the CEDAW committee on issues relevant to these reservations as Australia is not bound by the obligations in the articles to which the reservations relate.⁹

Reasons for Australia to take treaty action

- 6.12 Accession to the Optional Protocol would give women in Australia a greater opportunity to contest the implementation and application of human rights. It would also increase accountability in promoting gender equality and non-discrimination between men and women.¹⁰
- 6.13 The Government considered that the Optional Protocol would:
- provide women with an additional mechanism outside Australia's judicial and political context;
 - demonstrate the Government's strong commitment to promoting the elimination of discrimination against women and the standards enshrined in CEDAW; and

7 Mr Geoffrey Skillen, *Transcript of Evidence*, 15 September 2008, p. 8.

8 NIA, para 9.

9 NIA, paras 12 to 14.

10 Mr Geoffrey Skillen, *Transcript of Evidence*, 15 September 2008, p. 2.

- demonstrate the Government's priority to addressing global challenges such as the protection of human rights.¹¹
- 6.14 The Committee received a number of submissions supporting accession to the Optional Protocol. Many submitters considered that the Protocol was important to bring CEDAW into line with other major human rights treaties that contain complaint mechanisms, including the Convention on the Elimination of All Forms of Racial Discrimination, the Covenant on Civil and Political Rights and the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment.¹²
- 6.15 The Human Rights Law Resource Centre argued that Australia's experience as a party to the communication procedures under these treaties:
- ... makes it clear that international communication mechanisms do not undermine democracy or introduce a Bill of Rights 'through the back door'.¹³
- 6.16 The Committee was interested in the international scrutiny that accession to the Optional Protocol would provide and the example that would be set for other countries whose anti-discrimination measures may not be as fully established. The Attorney-General's Department and the Office for Women advised that the Government was prepared to have its domestic remedies critiqued at an international level and that:
- ... the government does see part of the justification for its becoming party to the optional protocol is to set just an example to other countries. The government engages other countries on a regular basis on a range of human right issues. It has a number of ongoing bilateral human rights dialogues with other countries in our region wherein human rights issues are raised with them, including the sort of issues that are dealt with under the convention. It would be fair to say that the government would regard its standing to do that to

11 NIA, paras 6 to 8.

12 Law Council of Australia, Submission No. 22, p. 1; Amnesty International Australia, Submission No. 10, p. 1; United Nations Association of Australia, Submission No. 16, p. 2; NSW Council of Civil Liberties Inc, Submission No. 18, p. 5; Human Rights Law Resource Centre, Submission No. 21, p. 10.

13 Human Rights Law Resource Centre, Submission No. 21, p. 14.

be enhanced by its becoming a party to the optional protocol.¹⁴

- 6.17 The Pacific region is one area where the Government is working to support countries to become a party to the Optional Protocol.¹⁵
- 6.18 A number of submissions provided support for the inquiry powers of the CEDAW committee.¹⁶ Amnesty International Australia argued that:
- [t]he inquiry procedure allows the Committee to focus attention on widespread practices affecting women such as lack of equal opportunities in education, politics or the work place; sexual exploitation; or abuses that cross borders and involve multiple governments such as in trafficking or violence against women in situations of armed conflict. It provides for an in-depth examination of the underlying causes of discrimination against women and can focus on abuses that would not normally be submitted to the Committee by means of the individual complaints procedure.¹⁷
- 6.19 In evidence, Government representatives indicated that the Government did not intend to make a declaration under Article 10 so would recognise the competence of the CEDAW committee to undertake inquiries.¹⁸
- 6.20 The NSW Council for Civil Liberties argued that there should be a statutory mechanism within Australia to ensure that CEDAW committee findings are addressed.¹⁹ This view was echoed by the Human Rights Law Resource Centre.²⁰
- 6.21 Accession to the Optional Protocol was also supported on the basis that the jurisprudence contributed by the CEDAW committee would

14 Mr Geoffrey Skillen, *Transcript of Evidence*, 15 September 2008, p. 6; Ms Sally Moyle, *Transcript of Evidence*, 15 September 2008, pp. 6-7.

15 Ms Sally Moyle, *Transcript of Evidence*, 15 September 2008, pp. 6-7.

16 Amnesty International Australia, Submission No. 10, p.1; Human Rights Law Resource Centre, Submission No. 21, p. 12; Law Council of Australia, Submission No. 22, Attachment p. 4.

17 Amnesty International Australia, Submission No. 10, p. 1.

18 Mr Geoffrey Skillen, *Transcript of Evidence*, 15 September 2008, p. 2.

19 NSW Council for Civil Liberties Inc, Submission No. 18, p. 6.

20 Human Rights Law Resource Centre, Submission No. 21, p. 16.

benefit and inform national courts and lawmakers as well as other international human rights bodies.²¹

- 6.22 The obligation under Article 13 to promote public awareness and understanding of CEDAW and the Optional Protocol was considered important:

For women to be able to claim their human rights and fundamental freedoms, it is important that they know what those rights and freedoms are.²²

Opposition to the Protocol

- 6.23 The Committee received a number of submissions from concerned parties opposing Australia's accession to the Optional Protocol.²³

- 6.24 The key issues raised in these submissions were:

- allowing complaints to be considered by a UN Committee could undermine Australian domestic law and legal sovereignty;
- the present mechanisms within Australia to protect women's rights and deal with complaints are adequate;
- the Optional Protocol could lead to increased liberalisation of Australian laws; and
- the CEDAW committee lacks neutrality and has a particular ideological focus.

- 6.25 One submitter argued:

Our democratically established laws are made and upheld by Australians, who take human rights abuse and the rights of Australian women very seriously. This treaty deals with matters which should be decided in the Australian

21 Amnesty International Australia, Submission No. 10, p. 1; NSW Civil Liberties Council, Submission No. 18, p. 3.

22 Human Rights Law Resource Centre, Submission No. 21, p. 11.

23 Mr John Gott, Submission No. 4; Mr J Slee, Submission No. 7; Mr Bruce Nickel, Submission No. 8; Ms Fiona Reeves, Submission No. 9; Mr P. Ariens, Submission No. 11; Mr Bridget Marantelli, Submission No. 12; Mr Laurie Marantelli, Submission No. 13; Mr Leon Voesenek, Submission No. 14; Ms Julianne Murphy, Submission No. 15; Ms June and Mr Robert Mears, Submission No. 17; Ms Siobhan Reeves, Submission No. 19; Family Voice Australia, Submission No. 20.

parliament and courts. There should be no final appeal to an United Nations tribunal/committee.²⁴

6.26 Similarly, another participant stated:

It would be imprudent for Australia to sign away the very serious issue of women's human rights to an external ideological committee with an unimpressive record.²⁵

Access to the CEDAW committee

6.27 The Committee questioned how realistic it is to expect that many women would be able to make a complaint to the CEDAW Committee without some form of assistance. The Committee was informed that complaints could be made by other parties on behalf of an individual, such as a lawyer or non-government organisation.²⁶ The Office for Women is also producing an information package on CEDAW, which will include information about the Optional Protocol.²⁷

6.28 The Government considered that as Australia has been a party to CEDAW for 25 years, it could expect that there would be relatively few communications from individuals or groups in Australia.²⁸

CEDAW committee investigations to date

6.29 The Committee notes that the CEDAW committee has considered 10 communications made against State parties in the last eight years with violations found in four cases.²⁹ In each of these cases, while the countries in question accepted some of the recommendations, available evidence suggests that none of the recommendations were fully implemented.³⁰

24 Ms Fiona Reeves, Submission No. 9, p. 1.

25 Ms Siobhan Reeves, Submission No. 19, p. 1.

26 Mr Geoffrey Skillen, *Transcript of Evidence*, 15 September 2008, p. 7.

27 Ms Sally Moyle, *Transcript of Evidence*, 15 September 2008, p. 7.

28 NIA, para 18.

29 Mr Geoffrey Skillen, *Transcript of Evidence*, 15 September 2008, p. 6.

30 Attorney-General's Department, Submission No. 23.

Implementation

- 6.30 The *Sex Discrimination Act 1984* implements Australia's obligations under CEDAW. As the Optional Protocol does not introduce any substantive new obligations, no implementing legislation or policy changes would be required.³¹

Consultation

- 6.31 Relevant Commonwealth Ministers and agencies and State and Territory Governments were consulted about the Optional Protocol and have provided support for accession. Submissions received by the Government as part of its public consultation process also supported accession to the Optional Protocol.³² This included the four women's secretariats funded by the Department of Families, Housing, Community Services and Indigenous Affairs, which represent 38 different non-government organisations.³³

Conclusions and recommendation

- 6.32 While the Committee concurs with the view that the Optional Protocol will provide an additional mechanism to protect women's rights outside the domestic remedies available through Australia's sex discrimination laws, the Committee has some concerns about how far the CEDAW committee can actually effect change given the relatively few investigations that have been undertaken in the past eight years.
- 6.33 The Committee considers, however, that accession to the Protocol will demonstrate Australia's commitment to human rights and allow international scrutiny of this commitment to take place. It therefore supports binding treaty action being taken.

31 NIA, para 11.

32 NIA, Consultation attachment.

33 Mr Geoffrey Skillen, *Transcript of Evidence*, 15 September 2008, pp. 2-3;

Recommendation 9

The Committee supports the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women* and recommends that binding treaty action be taken.

Agreement between Australia and the European Union on the Processing and Transfer of European Union Sourced Passenger Name Record Data

Background

7.1 Passenger name record (PNR) data is personal information collected by airlines on passengers travelling by air. The information is used by the Australian Customs Service to identify possible persons of interest in the context of counterterrorism, drug trafficking, identity fraud, people smuggling, and other serious crimes.¹

7.2 The Australian Customs Service described the use of PNR data in the following terms:

...On the one hand, we are able to identify persons of interest and conduct associated analysis before that person arrives into the country. Those people are then subject to intervention on arrival for questioning and examination. On the other hand, our ability to undertake that work in turn facilitates a freer flow of legitimate travellers through the entry and exit regulatory processes.

Assessment, in this sense, is made on the basis of advance passenger data, information and intelligence. The essential

1 NIA, paragraph 6.

pieces of data I am referring to are known as 'advance passenger information', or API, data, which is provided to Customs by the Department of Immigration and Citizenship, and 'passenger name record', or PNR, data, which Customs obtains directly from airlines. API data contains information about identity, passport details, visa details and flight details. Passenger name record, or PNR, data includes information about, for example, name and address, ticketing, check-in, seating, form of payment, travel itinerary, requested preferences or other requests and baggage.²

- 7.3 The Australian Customs Service started using PNR data in 1998, with airlines providing PNR data to Customs on a voluntary basis.
- 7.4 In 2002, the *Customs Act 1901* was amended to require airlines to provide PNR data to the Australian Customs Service.³
- 7.5 The Australian Customs Service advised the Committee that PNR data had, in the twelve months preceding the hearing, resulted in:
- the identification of 21 terrorism related matters;
 - the identification of 78 drug traffickers;
 - the identification of 25 people in possession of objectionable material; and
 - 37 people being denied entry to Australia because they were persons of interest in relation to serious crime.⁴
- 7.6 Prior to the negotiation of the Agreement between Australia and the European Union on the Processing and Transfer of European Union Sourced Passenger Name Record Data (the EU Passenger Name Record Data Agreement) the Australian Customs Service had access to the passenger information systems of 31 airlines, representing 91% of passengers travelling to Australia.⁵
- 7.7 The EU Passenger Name Record Data Agreement will permit the transfer to the Australian Customs Service of PNR data from airlines that process their PNR data in the European Union.⁶

2 Ms Jan Dorrington, *Transcript of Evidence*, 22 September 2008, pp. 2-3.

3 Ms Jan Dorrington, *Transcript of Evidence*, 22 September 2008, p. 3.

4 Ms Jan Dorrington, *Transcript of Evidence*, 22 September 2008, p. 3.

5 Ms Jan Dorrington, *Transcript of Evidence*, 22 September 2008, p. 3.

6 NIA, paragraph 5.

7.8 While the EU Passenger Name Record Data Agreement has not been notified by Australia or the European Union to date, it has been provisionally implemented since it was signed on 30 June 2008.⁷ In other words, airlines that process their PNR data in the European Union are already providing that data to the Australian Customs Service.

Reasons for Australia to take treaty action

- 7.9 The EU Passenger Name Record Data Agreement is necessary to overcome a conflict between the *Customs Act 1901* and European Union data protection laws.
- 7.10 The *Customs Act 1901* requires airlines to provide PNR data for all passengers before their arrival, while European Union data protection laws prevent the transfer of personal information from the European Union to other countries without a formal agreement that adequately protects that personal information.⁸
- 7.11 Airlines that process PNR data in the European Union for passengers travelling to Australia are therefore in breach of either Australian or European Union law regardless of what they do.
- 7.12 Nine per cent of travellers to Australia arrive on airlines that process PNR data in the European Union. However this is expected to increase to 30% of travellers following a decision by Qantas Airways to transfer its PNR data processing to Europe.⁹
- 7.13 The EU Passenger Name Record Data Agreement will require some changes to PNR data administration. PNR data that is not sourced in the European Union is accessed by interrogating airline databases. This is colloquially known as 'pulling' the data. European Union sourced PNR data will need to be provided by the airlines to the Australian Customs Service, or 'pushed'.¹⁰

7 NIA, paragraph 4.

8 NIA, paragraph 8.

9 Ms Jan Dorrington, *Transcript of Evidence*, 22 September 2008, p. 3.

10 NIA, paragraph 15.

Obligations

7.14 The EU Passenger Name Record Data Agreement obliges Australia to impose certain restrictions on the use and storage of European Union sourced PNR data. The key obligations as highlighted by the NIA and treaty text are:

- restrictions on the purposes for which European Union sourced PNR data and personal information derived from it can be used;
- applying Australian privacy and freedom of information laws to European Union sourced PNR data;
- restrictions on the disclosure of European Union sourced PNR data amongst Australian Government agencies;
- a requirement to filter out sensitive European Union sourced PNR data such as racial or ethnic origin;
- a requirement to provide information to the public on Customs' processing of PNR data;
- a limit of three years on the retention of person records obtained through European Union sourced PNR data, with a further two years' limit on European Union sourced PNR data that has had the personal identification removed;
- a comprehensive range of physical and electronic security measures on European Union sourced PNR data; and
- an obligation to advise the European Union of the passage of any legislation that directly affects the safeguards application to European Union sourced PNR data.¹¹

Privacy matters

7.15 Because the European Union is the only jurisdiction with data protection laws that prevent the transfer of PNR data, this is the only agreement Australia has had to negotiate of this sort.¹²

11 NIA, paragraph 13.

12 Ms Joan Sheedy, *Transcript of Evidence*, 22 September 2008, p. 6.

7.16 The Privacy Commissioner advised the Committee that she was involved in the negotiation of the EU Passenger Name Record Data Agreement. From her perspective:

...I am quite happy with the outcome that is being negotiated. I really do think people's personal information is going to be accorded the appropriate privacy protections, and, most importantly, there are many mechanisms in place to ensure that people are told about it, they have access to that information and there are opportunities to have the processes reviewed. My office is going to be undertaking two privacy audits a year of the way Customs handles the passenger name records, and we think that is a really good outcome because that will go to identifying any possible problems – we do not see any at the moment – and helping improve outcomes for individuals within Australia.¹³

Costs

7.17 The EU Passenger Name Record Data Agreement will require the Australian Customs Service to reconfigure its PNR system to ensure it can accept and process 'pushed' PNR data from airlines that process their PNR data in the European Union.

Consultation

7.18 The NIA indicates that the States and Territories have been notified of the proposed Agreement through the Standing Committee on Treaties' (SCOT) Schedule of Treaty Action and no comment has been received to date. The Agreement does not require State or Territory cooperation for its domestic implementation.¹⁴

7.19 The Departments of Prime Minister and Cabinet; Foreign Affairs and Trade; Immigration and Citizenship; and Infrastructure, Transport Regional Development and Local Government; the Attorney General's Department; the Office of the Privacy Commissioner; and

13 Ms Karen Curtis, *Transcript of Evidence*, 22 September 2008, p. 6.

14 NIA consultation attachment, paragraph 25.

the Australian Security and Intelligence Organisation were consulted in the negotiation of the Agreement. All agencies cleared the text of the Agreement.¹⁵

Recommendation 10

The Committee supports the *Agreement between Australia and the European Union on the Processing and Transfer of European Union Sourced Passenger Name Record Data* and recommends that binding treaty action be taken.

15 NIA consultation attachment, paragraph 26.

Treaty between Australia and the French Republic regarding Defence Cooperation and Status of Forces

Introduction

- 8.1 The purpose of the proposed Treaty is to facilitate a range of defence cooperative activities between Australian and French visiting forces through the establishment of standard conditions on issues such as legal jurisdiction, legal claims, immigration requirements, customs duties, carriage of arms, and communications.¹

Background

- 8.2 Australia and France have an active Defence relationship, focussed on practical cooperation in the Pacific and Southern Oceans. France, in cooperation with Australia and New Zealand, contributes to maritime surveillance and humanitarian disaster relief assistance and also supports regional defence and policing in the Pacific and Southern Oceans.²

1 NIA, para. 4.

2 NIA, para. 5.

- 8.3 Australia and France are also both engaged in international security efforts, including in Afghanistan where Australian forces will work alongside a small French Operational Mentoring and Liaison Team in Oruzgan Province from late 2008. France is believed to be a valuable interlocutor and potential future coalition partner for Australia, due to its capability to undertake coalition expeditionary activities.³
- 8.4 Australia and France also have a notable defence materiel relationship including several major acquisition projects as well as research initiatives.⁴

Obligations

Cooperative Activities

- 8.5 Article 2 sets out the requirement that the Parties shall facilitate defence relations through mutual participation in cooperative activities to be determined by mutual agreement by the Parties.

Logistics Support

- 8.6 Article 4 creates a mutual obligation on the Parties to facilitate logistics support on the basis of either reimbursement, exchange in kind or exchange for equal value.

Laws and Regulations

- 8.7 Annex 1 Section 1 states that the members of a Visiting force, members of the Civilian Component and Dependants of the Sending State when in the territory of the Receiving State, shall be subject to the laws and regulations of the Receiving State.

Disciplinary Matters

- 8.8 Annex 1 Section 2 provides that the Sending State will have exclusive competence regarding disciplinary matters, in accordance with the Sending State's laws and regulations, over Members of the Visiting Force and Civilian Component when in the Receiving State.

Criminal Jurisdiction

- 8.9 Annex 1 Section 3(1) & (2) provides that Authorities of the Sending State have criminal jurisdiction over its Visiting Personnel in the
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3 NIA, para. 6.

4 NIA, para. 6.

Receiving State and are subject to the law of the Sending State, with respect to offences punishable by the law of the Sending State. Likewise, Authorities of the Receiving State have criminal jurisdiction over the Sending State's Visiting Personnel with respect to offences punishable by the law of the Receiving State.

- 8.10 Annex 1 Section 3(4) requires the authorities of both Receiving and Sending Parties to assist each other in the arrest of members of Visiting Personnel and handing them over to Authority with jurisdiction as stipulated by the Agreement.

Entry and Departure

- 8.11 Annex 1 Section 4 of the Agreement obliges each Party to take specific steps to expedite the normal entry requirement into their territory.

Importation and Exportation

- 8.12 Annex 1 Section 5 provides that official documents under the seal of the Sending State shall not be subject to customs inspection. Section 5 of Annex 1 also stipulates that a member of a Visiting Force, a Member of its Civilian Component or a Dependant, may import, free of duty, reasonable quantities of personal effects and the like.

Carriage of Arms

- 8.13 Annex 1 Section 6 allows the Visiting Force to possess and carry arms in the Receiving State when they are authorised to do so under orders issued by the Sending State and in circumstances which must be approved by the Receiving State.

Training/Exercises

- 8.14 Annex 1 Section 10 provides that Parties may determine to undertake join or unilateral activities for the purposes of training and exercises in each other's country.

Security

- 8.15 Annex 1 Section 11 stipulates that Authorities of both Receiving and Sending States shall cooperate to protect the security of the installations made available to the Visiting Force.

Requests

- 8.16 Annex 1 Section 12 provides for the Sending State to submit requests to the Receiving State for use of any facilities or related services necessary for the visiting force to fulfil its commitments under this

Agreement, and the Receiving State shall make reasonable efforts to meet such requests.

Future Treaty Action

- 8.17 Article 11 provides that either Party may amend this Agreement at any time by mutual agreement in writing.

Reasons for Australia to take treaty action

- 8.18 This Agreement will facilitate cooperation between Australia and France with respect to military and defence operations by providing a legal framework for visiting personnel sent to the opposite Party to pursue cooperative activities.⁵
- 8.19 In evidence to the Committee, representatives of the Department of Defence stated that the Agreement will build on Australia's already significant linkages with France, providing a framework for closer defence bilateral cooperation in our region.⁶
- 8.20 The Committee also heard from the Defence Department that ratification of this Agreement will 'send a strong signal of our commitment to our strategically important defence relationship and our broader bilateral relationship with France.'⁷

Costs

- 8.21 Article 8 of the Agreement states that each Party shall bear its own costs with relation to activities undertaken pursuant to this Agreement.
- 8.22 According to the NIA, the Agreement will not impose any direct financial costs or benefits for Australia.⁸

5 NIA, para 8.

6 Mr Peter West, *Transcript of Evidence*, 15 September 2008, p. 15.

7 Mr Peter West, *Transcript of Evidence*, 15 September 2008, p. 15.

8 NIA, para. 36.

Withdrawal or denunciation

- 8.23 Article 11 allows for either Party to unilaterally terminate the Agreement by providing the other Party with 180 days notice. Both Parties may agree in writing to terminate the Agreement with immediate effect.
- 8.24 Withdrawal of a Party from the Agreement will have no effect upon any other agreements or arrangements entered into between the Parties unless mutually agreed otherwise.⁹

Other matters

Policy Differences

- 8.25 The Committee was interested in whether there are any defence policy differences between Australia and the French Republic that may present problems into the future. Representatives of the Defence Department noted that while there are two particular divergences in defence policy between the two nations – France’s membership of NATO and its status as an independent nuclear power, neither should be seen as problematic. The Department stated that:
- ...at the moment, in part due to the recent change of government in France, there are no substantive policy divisions between Australia and France.¹⁰
- 8.26 It was suggested that the most significant problem in the defence relationship between the two nations has been French nuclear testing in the Pacific. However, it was noted that France has now signed the Comprehensive Test Ban Treaty.¹¹
- 8.27 The Defence Department stated that rather than arriving out of any particular problems or differences in defence policy between the two Parties, the treaty was motivated by a mutual desire to carry out more activities together:

9 NIA, para. 40.

10 Mr Peter West, *Transcript of Evidence*, 15 September 2008, p. 17.

11 Mr Peter West, *Transcript of Evidence*, 15 September 2008, p. 17.

The fact is that we are both interested in doing more together. I think you could say that perhaps Afghanistan was a catalyst. It pushed us over the edge and we realised it was not just a bilateral thing of going to each country and that there were broader bilateral things we could be doing together.¹²

Conclusion and recommendation

- 8.28 The Committee notes the active defence relationship between France and Australia and considers that ratification of this treaty will send a strong message of Australia's commitment to this strategically important relationship.
- 8.29 The Committee recognises the value of the Agreement to strengthen and build upon our linkages with France and allow greater bilateral cooperation in our region. Both nations' commitment to international counter-terrorism operations is significant and this Treaty will allow for greater cooperation in those vital activities.

Recommendation 11

The Committee supports the *Agreement with the French Republic Regarding Defence Cooperation and Status of Forces* and recommends that binding treaty action be taken.

12 Mr Peter West, *Transcript of Evidence*, 15 September 2008, p. 16.

Treaty between Australia and the European Community on Certain Aspects of Air Services

Introduction

- 9.1 The proposed treaty, known as the Horizontal Agreement, was devised after the European Court of Justice found, in 2002, that certain provisions regarding ownership and control of European Union (EU) airlines within bilateral agreements between EU Member states and third party countries were incompatible with European Community (EC) law.
- 9.2 Australia holds air service agreements with fourteen Member States of the EC¹, which comprise similar clauses to those which had been deemed inconsistent with EC law. The purpose of the Horizontal Agreement, therefore, is to address these inconsistencies, and as such provide security from legal challenge for these air services agreements.²

1 Austria, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Poland, Sweden and the United Kingdom.

2 Mr Iain Lumsden, *Transcript of Evidence*, 15 September 2008, p. 10.

Reasons for Australia to take treaty action

- 9.3 Within the EU, any EU Member State can designate any EU airline as an airline of its member state, even when that airline's original place of ownership is another Member State. The agreement clarifies these ownership and control stipulations within the EU.
- 9.4 The EC has prevented its Member States from negotiating further air services agreements with Australia until inconsistencies in the existing agreements are resolved through the negotiation of a Horizontal Agreement. The Committee notes that several EU Member States made it clear that signature of the Horizontal Agreement by Australia was required for negotiation of a comprehensive air services agreement with the EU.³ Such an agreement would replace and go beyond bilateral agreements Australia currently has in place with EU Member States.
- 9.5 The Horizontal Agreement was initialled in 2005, prior to which, Australia negotiated three conditions:
- that Australian carriers not be disadvantaged vis-à-vis European carriers;
 - that Australia could recommence bilateral negotiations with Member States; and
 - that the European Commission would seek a mandate from Member States to commence negotiations with Australia on a comprehensive air services agreement with the EC.⁴

Obligations

- 9.6 The Horizontal Agreement obliges Australia and relevant EU Member States to recognise the existence of a single EU market for air services between Australia and the EU.
- 9.7 Articles 2, 3 and 4 outline the stipulations with regards to designation, regulation and tariffs of air services of EU Member States, based on their EU status rather than Member State nationality. No new

3 NIA, para 9.

4 NIA, para 8.

legislation will be required to implement the amendments in Australia.

Designation

9.8 Article 2 of the Horizontal Agreement provides that an EU aircraft be designated according to its EU status, instead of its Member State nationality, allowing Member States access to rights under any air services agreement between Australia and an EU Member State.

9.9 While there are not reciprocal rights for Australian airlines under Article 2, it does however allow for Australia to stop EU airlines accessing rights that Australian airlines would not have.⁵

Regulatory Control

9.10 Article 3 states that, where one Member State designates an air carrier that remains under the regulatory control of a second Member State, the safety provisions of the Horizontal Agreement between Australia and the first Member State will equally apply to the air carrier of the second Member State.⁶

Tariffs

9.11 Article 4 stipulates Australian carriers are subject to EC law with respect to the air fares that can be charged on routes entirely within the EU.

Future Treaty Action

9.12 Under Article 6, the Horizontal Agreement may be amended or revised by Contracting Parties by mutual consent. Any amendment or revision will be subject to Australia's treaty action procedures and only enter into force once the Parties have notified each other in writing that domestic procedures have been completed.

5 NIA, para 13.

6 NIA, para 14.

Costs

- 9.13 Implementation of the Horizontal Agreement is not anticipated to have any direct financial costs for the Commonwealth Government. There are likewise no predicted financial implications for the States or Territories.

Withdrawal or denunciation

- 9.14 Annex I lists the air services agreements between Australia and Member States of the EU which had been concluded or are applied provisionally at the time of signature of the Horizontal Agreement.
- 9.15 Article 8 provides that at the time of termination of any agreements listed under Annex I, all provisions of the Horizontal Agreement which apply to the Annex I agreement are also terminated. Furthermore, should all Annex I agreements be terminated, the Horizontal Agreement itself is also terminated.⁷
- 9.16 Withdrawal from the agreement by Australia will be subject to our domestic treaty action procedures.

Other matters

Safety Regulations

- 9.17 The treaty has ramifications as to which Member State will be responsible for the safety oversight of a particular airline. The Committee heard in evidence that the treaty requires that the *designating Member State*, rather than the original origin Member State becomes responsible for the safety regulations of a designated airline.⁸

7 NIA, para 25.

8 Mr Iain Lumsden, *Transcript of Evidence*, 15 September 2008, p. 12.

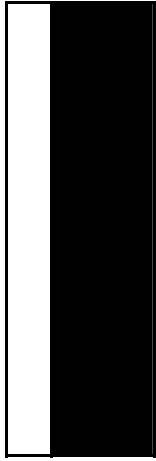
Conclusion and recommendations

9.18 The Committee notes the necessity of this treaty to address inconsistencies in certain air services agreements between Australia and EU Member States and provide security from legal challenge. The Committee also recognises that the treaty will allow the negotiation of further air services agreements with EU Member States. The Committee therefore supports ratification of the Horizontal Agreement.

Recommendation 12

The Committee supports the *Agreement between the Government of Australia and the European Union on Certain Aspects of Air Services* and recommends that binding treaty action be taken.

Kelvin Thomson MP
Chair



Supplementary Statement — **Mr John Forrest MP**

Australia – Chile Free Trade Agreement

The Member for Mallee expresses strong reservations in regard to the recommendation to take binding action on the Australia-Chile Free Trade Agreement at this stage. However, recognising the majority position of the Committee he is at least grateful for the cooperation of the Committee in the inclusion of recommendation 3 & 4 of the report and wishes the following supplementary statement to be given due regard by the Government in the need for such recommendations.

Opposition to this Free Trade Agreement with Chile has a lot to do with its timing and its potential damage to the horticultural industries of regional Australia. This Australia-Chile agreement has been processed hastily and the interests of an important commodity sector ignored as a result.

The signing of an Australia-Chile FTA has the potential to force fast tracked negotiation for phytosanitary access for fresh Chilean horticultural produce into Australia (particularly table grapes). Australian horticulturists have to spend an enormous amount of time arguing their case against every instance where another Nation seeks to have their phytosanitary requirements relaxed.

Indeed, the submission by Horticultural Australia expresses this concern. 'It is the firm expectation of the Australian Horticulture Industry that signing of the Australia-Chile FTA will bring considerable pressure for Australia and Chile to negotiate and subsequently grant phytosanitary access for Chilean fresh horticultural produce in Australia. This view is supported by direct advice provided by the Chilean horticultural industry and traders.'

The context of this issue is covered in article 6 of the text of the agreement but there is a distinct difference in the text to other FTA's. In regard to phytosanitary consultations, all this text requests are the identification of contacts. In this context under article 6.5 (1) the SPS contacts shall be

- (a) In the case of Australia, the Department of Agriculture, Fisheries and Forestry, or its successor; and
- (b) In the case of Chile, the General Directorate of International Economic Affairs, Ministry of Foreign Affairs, or its successor.

Whereas, for example in the text of the Australia - US FTA the parties establish a Committee on Sanitary and Phytosanitary matters. The writer considers this difference to be a significant weakness in the capacity for transparency in the Australia Chile FTA because it constrains the exchange of significant information to the bureaucracy and the writer considers this a vital omission in the capacity to keep domestic horticultural players in the information loop and lessens their confidence in the transparency of the process. This omission is obviously as a result of the haste in which the agreement was prepared and the lack of consultation identified in evidence.

All our fruit industries, table grapes, apples and pears, summerfruit, cherries, strawberries, blueberries, avocados, prunes, dried grapes, citrus, kiwifruit, fresh berries and currants, would be impacted adversely by accidental introduction of pests and diseases currently not in Australia.

It is a regional development issue. These industries have 6700 growers and a gross value product of \$1.5 billion and a significant proportion is generated in the Federal Division of Mallee along the Murray Valley. They have to prosper in our regions if farming communities are to remain strong. Our horticulturists have all become tremendously efficient in very competitive world markets, but it is doubtful they could hold out against the cheap labour available in Nations such as Chile.

The Australian table grape industry has about 1200 growers, a gross value product of \$300 million, and employs 12,000 at the peak of harvest.

Last harvest, Australia produced 100,000 tonnes of table grapes. In contrast, Chile produces a million tonnes of the same varieties. We are in direct competition in international markets and that also has an impact. Chile exported 435,000 tonnes to the United States alone last year, mainly from December to April during Australia's peak production time. It is clear that Chile will try and seek a tentative placement of this fruit next harvest in the light of global financial uncertainty and the economic hardship currently being experienced in the US.

This will occur in a period of depleted Australian domestic supply reduced by severe irrigation water shortages. Chilean exporters will be flooded with requests

from Australian fresh fruit importers wanting to satisfy Australian domestic demand because of reduced supply due to the drought.

Summerfruit, comprised of peaches, plums and nectarines, are mainly grown in the Swan Hill region and in New South Wales. There are about 1500 growers. The industry has a gross value product of \$300 million and employment peak season of about 10,000 workers (6000 in the Swan Hill area alone).

Of great concern to our summerfruit growers is plum pox, which is said to be spreading through Chile and other countries, but not found in Australia. The impact of exotic diseases was epitomized when citrus canker infected parts of Queensland recently. Such a disaster must be prevented in Australia's fast growing stonefruit industry.

Chile is a powerhouse of production and the cost of labour in Chile is extremely cheap (as low as 40% cheaper than Australia) compared to Australia where 70% of our cost of production is labour. Our seasons are the same and Chile could flood our domestic fresh fruit markets with significant impacts on Australian horticulturalists already devastated by water shortages. Horticultural free trade with Chile will be very much in Chile's favour, and Chilean fruit could take up to 40 per cent of Australian domestic market share, and eventually render local production unsustainable because Chile can sell at prices well below the Australian cost of production.

If more consultation had occurred in the development stage of the Australia-Chile FTA, the horticultural industry sectors would have suggested a number of more lucrative markets for Australia to target in the National interest.

The writer supports FTA's with counter seasonal countries like China, Japan, Korea, Indonesia, India, South East Asian nations, and the Gulf nations of Bahrain, Kuwait Oman, Qatar, Saudi Arabia and the United Arab Emirates.

Australia needs to spend more, not less, on accessing these worthwhile markets for horticultural exports.

Chile is not a major trading partner for Australia, and industry is cynical about all this effort being made to secure a FTA which has minimal benefits for Australian horticulture. Finance, mining and the services sector are beneficiaries but this is occurring anyway. This agreement is very much a one way affair in the interests of Chile in regard to horticulture.

The haste at which this agreement has been prepared has shades of the late 1980's and early 1990s, when Australia drastically reduced tariffs on horticulture and the tariff on imported frozen orange juice concentrate. In particular the world's biggest producer of frozen concentrate of orange juice, Brazil, retained its own 30 per cent tariff but flooded the virtually unprotected Australian domestic market - our fresh and concentrated juice market, and our growers of Valencia oranges have never recovered and have virtually disappeared as a result.

That is not fair trade. The knock-on effect was that our citrus industry was forced into enormous restructure with few resources and insignificant Government support. In many cases, growers just walked away. It was ironic that Brazil was using FCOJ technology developed by Australia to help maximise returns to Australian citrus growers.

There are times when we have to examine reality and make decisions on how our Nation moves forward, especially in primary production.

In the light of this, it is essential that our Government agencies, as a priority, negotiate and finalise free trade agreements with our principal trading partners, China, Japan, Korea, Malaysia and increasingly, India. Horticulture is owed this much at least.

This must be done as a matter of urgency in the National interest before expending valuable resources on one-sided trade agreements with Nations where there will be a detrimental impact on so many good Australian farming families.

It appears to the writer that the government has cynically agreed to sign and make itself look better in the face of its DOHA failure and not given due regard to domestic horticulture. The timing is completely cynical when all these industries are already on their knees due to drought and poor commodity prices. This FTA with Chile could deliver a devastating blow to their already very low morale. The timing of this FTA is all wrong and it would be of little benefit to regional Australia.

Department witnesses acknowledged that there was no social impact statement, and the Government has certainly given no indication that any assistance will be given for these horticulturists if their domestic market is suddenly flooded with fresh fruit from such a large producer as Chile.

The lack of a public cost benefit assessment and the lack of industry consultation leads to the inclusion of recommendation 3 which has the writer's strong support for the consideration of any future FTA's.

In a regional development context, if the Government keeps making decisions on trade and other matters so adverse to our Australian horticulturists, there will soon be no-one in the regions capable of producing food. The preparation of social impact statements are therefore vital and recommendation 3 is strongly supported.

In addition, any attempts by Chile to fast track phytosanitary changes should be staunchly resisted. Chile has already indicated to Biosecurity Australia they would like the current protocol conditions requiring fumigation of table grapes, to be relaxed (the fumigation is for the various exotic pests and diseases in Chile that Australia does not have). Verbal advice amongst Chilean table grape growers indicates that, at the commencement of this agreement, priority consideration will

be requested by them as they will argue strongly that the special status of an FTA warrants such a consideration.

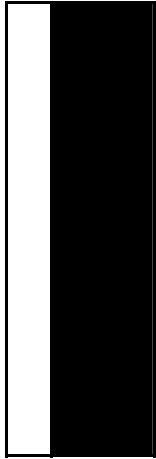
A review as recommended in recommendation 4, particularly in regard to phytosanitary issues, is vital to ensure Australia's National interests are protected.

Whilst the writer prefers that this agreement not be ratified at this stage, he does argue strongly that the advice contained in recommendations 3 and 4 be strongly supported by the Government.

John Forrest

Member for Mallee

15 October, 2008



Dissenting Report — Senator Julian McGauran (Deputy Chair), The Hon Kevin Andrews MP, Senator Simon Birmingham, Senator Michaelia Cash, Mr John Forrest MP, Mr Luke Simpkins MP

Coalition Senators and Members dissent from the majority recommendation to accede to the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women (Convention).

Background

In 1983, Australia ratified the United Nations Convention.

As a party to the Convention for over twenty five years, successive governments, both Labor and Coalition, have implemented the necessary policy and legislative changes to uphold Australia's commitment to the Convention. Equally, Australia has met its obligation to report, every four years, to the United Nations Committee its progress in fulfilling the Convention's requirements.

In 2003, Australia released the combined Fourth and Fifth Reports on Implementing the United Nations Convention on the Elimination of all Forms of Discrimination Against Women. Australia will submit the combined Sixth and Seventh Report to the Convention committee in 2008.

The 2003 Report clearly highlights not only the Coalition's commitment to the Convention but significant advancement in eliminating discrimination against women since Australia's last periodic Report (1999).

For example, from the report:

“Australia is widely regarded as a world leader in its efforts to tackle domestic violence. The Prime Minister’s *Partnerships Against Domestic Violence* initiative has implemented a wide range of measures aimed at early intervention and prevention, as well as the improvement and expansion of services for victims, including children. This initiative has achieved an effective and committed collaboration of State and Territory Governments through the Commonwealth Government leadership, with consequent significant developments in policy approaches to violence against women. Addressing domestic and family violence in Indigenous communities is a major element of the initiative.”¹

Reasons for Australia not to accede to the Optional Protocol:

The Optional Protocol was adopted by the United Nations on 6th October 1999 and provides for a complaint process for an individual or organisation of a signature country to a United Nations committee specialising in discrimination against women.

As its title suggests, the Optional Protocol should be seen for what it is, that is merely an optional addition to the Convention. It is the Convention that sets out the main responsibilities of the signature countries, not the Optional Protocol. The Optional Protocol should not therefore hold the same weight or status as the Convention and should not be held up as crucial to meeting the aims and obligations of the Convention.

Australia, unlike many other countries, has in place a rigorous legislative and appeals process that can be triggered where an individual or organisation believes discrimination has occurred. Such bodies include the Australian Human Rights and Equal Opportunity Commission, the Sex Discrimination Commissioner, the Federal Court, the Administrative Appeals Tribunal and the Commonwealth and various State Ombudsman.

It is worthy to note Australia’s ratification of the International Covenant on Civil and Political Rights (ICCPR) includes non discrimination between men and women as a protocol right. Further, under the ICCPR there is an appeal process to a specialist United Nations committee which individuals or organisations from

¹ Women in Australia - Australia's Combined Fourth and Fifth Reports on Implementing the United Nation's Convention Against the Elimination of All Forms of Discrimination Against Women, 2003, page 11

Australia may access if they believe the treaty protocols have been breached. The ICCPR, while not gender specific, is never the less a forum available for women to make complaints in regards to inequality and women's rights.

Coalition Senators note that while the CEDAW committee in considering alleged violations against State parties found violations in four cases, none of the recommendations appear to have been fully implemented.²

Therefore, Coalition Senators believe issues of rights for women in Australia will be further advanced through the continued development of our own robust legal frameworks rather than being accountable to a panel whose recommendations have never been fully implemented by any country to which such recommendations have been made.

Conclusion

Coalition Senators and Members have made their conclusion not to accede to the Optional Convention based on:

- Firstly, that Australia has strongly supported the principles of the Convention since 1983.
- Secondly, since ratification, Australia has met its obligations under the Convention and enhanced the standing of women as outlined in each of the four yearly reports up to 2003.
- Thirdly, there is adequate domestic redress for aggrieved parties in regard to discrimination against women, most notably the Sex Discrimination Commission.
- Fourthly, there are concerns regarding the membership of the CEDAW Committee.

² Attorney-General's Department, Submission No. 23.

Senator Julian McGauran
Deputy Chair

The Hon Kevin Andrews MP

Senator Simon Birmingham

Senator Michaelia Cash

Mr John Forrest MP

Mr Luke Simpkins MP



Appendix A - Submissions

Treaties tabled 4 June 2008

Convention on the Rights of Persons with Disabilities

- 1 Human Rights Law Resource Centre Ltd
- 2 Mr Frank Hall-Bentick
- 2.1 Mr Frank Hall-Bentick
- 3 Human Rights and Equal Opportunity Commission
- 4 National Ethnic Disability Alliance and Federation of Ethnic Communities Councils of Australia
- 5 NSW Disability Discrimination Legal Centre and National Association of Community Legal Centres
- 6 Women with Disabilities (Australia)
- 7 Blind Citizens Australia
- 8 Dr David Webb
- 9 Deafness Forum of Australia
- 10 Australian Lawyers for Human Rights
- 11 Australian Patriot Movement
- 12 UN CRPD Ratification Task Force
- 13 Festival of Light Australia

- 14 Positive Life NSW
- 15 Attorney-General's Department
- 16 Public Interest Advocacy Centre Ltd
- 17 Dr Ben Saul
- 18 RI Global
- 19 Center for the Human Rights of Users and Survivors of Psychiatry
- 20 Ms Iris Holling
- 21 Queensland Government
- 22 Mr David Heckendorf
- 23 NSW Young Lawyers
- 24 ACT Government
- 25 Government of Western Australia

Treaties tabled 17 June 2008

Australia-Chile Free Trade Agreement

- 2 Mr Adam Wolfenden
- 3 Australian Patriot Movement
- 5 Mr John Massam
- 6 The StopMAI (WA) Coalition
- 7 The Foundation for National Renewal
- 8 Ms Rosie Wagstaff
- 9 CFMEU
- 10 ACT Government
- 11 Dr Matthew Rimmer
- 12 Queensland Government
- 13 Department of Foreign Affairs and Trade
- 14 Horticulture Australia Ltd

Agreement between the Government of Australia and the Government of the United Arab Emirates Concerning Defence Cooperation

- 1 The University of Sydney
- 4 Australian Patriot Movement
- 15 Department of Defence

Treaties tabled 25 June 2008

Headquarters Agreement between the Government of Australia and the Secretariat to the Agreement on the Conservation of Albatrosses and Petrels

- 2 Australian Patriot Movement
- 4 Mr Andrew Serdy

Treaties tabled 26 August 2008

Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women of 18 December 1979

- 4 Mr John Gott
- 5 Australian Patriot Movement
- 6 National Council of Women of Australia
- 7 Mr J.A.L Slee
- 8 Mr Bruce Nickel
- 9 Ms Fiona Reeves
- 10 Amnesty International Australia
- 11 Mr Patrick Ariens
- 12 Ms Bridget Marantelli
- 13 Mr Laurie Marantelli
- 14 Mr Leon Voesenek
- 15 Ms Julanne Murphy
- 16 United Nations Association of Australia
- 17 Ms & Mr June & Robert Mears

- 18 NSW Council for Civil Liberties
- 19 Ms Siobhan Reeves
- 20 Family Voice Australia
- 21 Human Rights Law Resource Centre Ltd
- 22 Law Council of Australia Limited
- 23 Attorney-General's Department
- 23.1 Attorney-General's Department
- 24 Women's International League for Peace and Freedom

Agreement between Australia and the European Union on the Processing and Transfer of European Union-Sourced Passenger Name Record (PNR) Data by Air Carriers to the Australian Customs Service

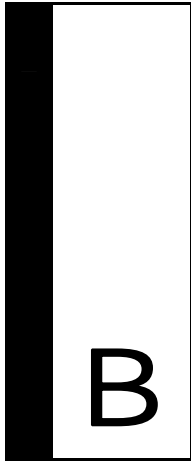
- 3 Australian Patriot Movement

Agreement between the Government of Australia and the Government of the French Republic Regarding Defence Cooperation and Status of Forces

- 2 Australian Patriot Movement

Agreement between the Government of Australia and the European Community on Certain Aspects of Air Services

- 1 Australian Patriot Movement



Appendix B - Witnesses

Monday, 16 June 2008 – Canberra

Attorney-General's Department

Ms Rachel Antone, A/g Principal Legal Officer, Discrimination
Section, Human Rights Branch

Mr Peter Arnaudo, Assistant Secretary, Human Rights Branch

Mr Stephen Bouwhuis, Principal Legal Officer, Office of International
Law

Ms Kelisiana Thynne, A/g Senior Legal Officer

Department of Families, Housing, Community Services and Indigenous Affairs

Ms Helen Bedford, Branch Manager

Ms Frances Davies, Group Manager

Department of Foreign Affairs and Trade

Mrs Sally Alpin, Executive Officer, Human Rights and Indigenous
Issues Section, International Organisations Branch

Mr Philip Kimpton, Executive Officer

Mr David Mason, Executive Director, Treaties Secretariat,
International Legal Branch

Department of Immigration and Citizenship

Ms Cassandra Ireland, Director/Principal Legal Officer, Legal Policy Section

Ms Michelle Pearce, Director, Strategic Health Policy Section

Monday, 28 July 2008 – Melbourne**Individuals**

Mr Frank Hall-Bentick

Blind Citizens Australia

Ms Leah Hobson

Human Rights Law Resource Centre Ltd

Mr Philip Lynch, Director and Principal Solicitor

Tuesday, 29 July 2008 – Sydney**Disability Council of NSW**

Mr Dougie Herd, Director

Federation of Ethnic Communities Councils of Australia

Ms Kelly Kljajic, Disability Chair

Human Rights and Equal Opportunity Commission

Mr Graeme Innes, Human Rights Commissioner and Disability Discrimination Commissioner

Mr David Mason, Director Disability Rights Policy

National Association of Community Legal Centres and New South Wales Disability Discrimination Legal Centre

Ms Jo Shulman, Principal Solicitor

National Ethnic Disability Alliance

Mr Dinesh Wadiwel, Executive Officer

NSW Disability Discrimination Legal Centre

Ms Rosemary Kayess, Chairperson

Positive Life NSW

Mr Robert Lake, Chief Executive Officer

Public Interest Advocacy Centre Ltd

Ms Jessica Cruise, Senior Solicitor

UN CRPD Ratification Task Force

Ms Therese Sands, Co-Chief Executive Officer

Monday, 25 August 2008 – Canberra**Attorney-General's Department**

Mr Stephen Bouwhuis, Assistant Secretary, Office of International Law

Australian Antarctic Division, Department of the Environment and Heritage

Mr Ian Hay, Senior Policy Officer, Antarctic Territories and Environment Protection Section

Department of Defence

Mr Andrew Chandler, Assistant Secretary, Central Asia, Middle East and Africa

Ms Samantha Crossman, Policy Officer, United Nations, Middle East and Africa

Ms Marianne Martin, Senior Legal Officer

Department of Foreign Affairs and Trade

Ms Andrea Faulkner, Assistant Secretary, Middle East and Africa Branch

Ms Virginia Grenville, Assistant Secretary, Market Development, Business Liaison and Regional Trade Policy Branch

Ms Katrina Gunn, Executive Officer, Free Trade Agreement Commitments and Implementation Section

Mr David Mason, Executive Director, Treaties Secretariat, International Legal Branch

Mr Ben Milton, Director, International Law Section, International Legal Branch, International Legal Division

Ms Cathy Raper, Director, Free Trade Agreement Commitments and Implementation Section

Ms Trudy Witbreuk, Assistant Secretary, Trade Commitments Branch

Mr Damian White, Director, Sea Law, Environment Law and Antarctic Policy Section

Monday, 15 September 2008 – Canberra

Attorney-General's Department

Mr Geoffrey Skillen, Principal Legal Officer

Department of Defence

Ms Marianne Martin, Senior Legal Officer

Mr Peter West, Assistant Secretary - Americas, North & South Asia and Europe

Department of Families, Housing, Community Services and Indigenous Affairs

Ms Sally Moyle, Branch Head, Office for Women

Ms Anne O'Rourke, Section Manager

Department of Foreign Affairs and Trade

Mr Philip Kimpton, Executive Officer

Mr David Mason, Executive Director, Treaties Secretariat, International Legal Branch

Department of Infrastructure, Transport, Regional Development and Local Government

Ms Carla Giuca, Assistant Director

Mr Edouard Pokalioukhine, Policy Advisor, Bilateral Aviation Section

Mr Iain Lumsden, Section Head, Bilateral Aviation, Aviation Markets Branch

Monday 22 September 2008 – Canberra

Attorney-General's Department

Mr James Potter, A/g Senior Legal Officer, Office of International Law

Australian Customs Service

Ms Jan Dorrington, National Director Passengers Division

Department of Foreign Affairs and Trade

Mr John Griffin, Assistant Secretary, EU & Western Europe Branch

Mr David Mason, Executive Director, Treaties Secretariat,
International Legal Branch

Mr Adam Robertson, Director, European Union Section

Department of the Prime Minister and Cabinet

Ms Joan Sheedy, Assistant Secretary, Privacy & FOI Policy Branch

Office of the Privacy Commissioner

Ms Karen Curtis, Privacy Commissioner

Monday 13 October 2008**Attorney-General's Department**

Mr Stephen Bouwhuis, Assistant Secretary, Office of International
Law

Construction, Forestry, Mining and Energy Union

Mr John Sutton, National Secretary

Department of Foreign Affairs and Trade

Ms Virginia Grenville, Assistant Secretary, Market Development,
Business Liaison and Regional Trade Policy Branch

Mr Lester Martin, Registrar of Treaties

Ms Cathy Raper, Director, Free Trade Agreement Commitments and
Implementation Section

Ms Trudy Witbreuk, Assistant Secretary, Trade Commitments Branch

Horticulture Australia

Mr Darral Ashton, Chairman, Apple and Pear Australia Limited

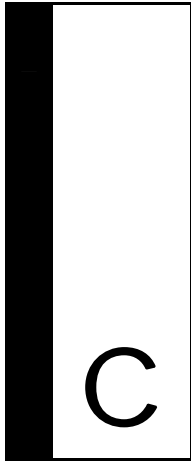
Mr Robert Duthie, Market Access and Biosecurity Adviser,
Summerfruit Australia Ltd

Mr Ian Hay, President, Cherry Growers Australia

Mr Peter McPherson, Treasurer, Australian Blueberry Growers
Association

Mr Jeff Scott, Chief Executive Officer, Australian Table Grape
Association

Mr Stephen Winter, National Horticulture Market Access Coordinator



Appendix C – Category 3 Treaty Actions

Category 3 treaty actions are identifiably minor treaty actions (mainly minor/technical amendments to existing treaties) which do not impact significantly on the national interest. Category 3 treaty actions are tabled with a one-page explanatory statement. The Treaties Committee has the discretion to formally inquire into Category 3 treaty actions or indicate its acceptance of them without a formal inquiry and report.

The following Category 3 treaty actions have been considered by the Treaties Committee on the dates indicated. In each case the Committee determined not to hold a formal inquiry and agreed that binding treaty action may be taken.

Treaties tabled on 17 June 2008

Considered by the Committee on 2 September 2008

- Amendment, adopted 1 October 2007, to Annex 1 of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) International Convention Against Doping in Sport of 19 October 2005

This amendment updates the list of substances and methods of doping prohibited in sport under the relevant UNESCO Convention, reflecting the 2008 Prohibited List International Standard issued by the World Anti-Doping Agency (the WADA List). While the amendment will have little practical effect in Australia, as the specification of prohibited substances under the Australian Government's anti-doping arrangements is based on the current WADA List, it promotes the international effort against doping in sport.¹

¹ Explanatory Statement 2 of 2008, p. 1.

Treaties tabled on 26 August 2008

Considered by the Committee on 23 September 2008

- Amendment to the Agreement on Social Security between the Government of Australia and the Government of the Republic of Chile of 25 March 2003
- Amendment, Adopted at Rome on 28 March 2008, to the Agreement for the Establishment of the International Development Law Organization of 5 February 1988, as Amended on 30 June 2002 and 30 November 2002
- Amendment to Annex 4.1 (Rules of Origin) of the Australia-Thailand Free Trade Agreement (TAFTA) of 5 July 2004

The first of the treaty actions listed above would ensure consistent treatment, under Australia's social security income test, of different Chilean payments to victims (and relatives of victims) of the human rights abuses and political violence which occurred in Chile between September 1973 and March 1990. The practical and legal effect of the proposed treaty matter is minor, as it would benefit a small number of people residing in Australia (less than 100).²

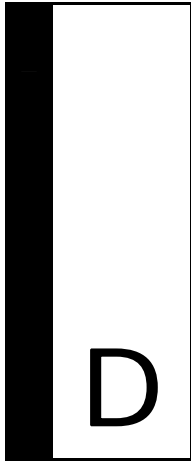
The second of the treaty actions would change the organisational structure of the International Development Law Organization (IDLO) through the creation of a Board of Advisers. The proposed treaty action is expected to improve IDLO's organisational structure and governance, increasing its accountability to Member States and bringing it into line with other similar organisations.³

The third treaty action described above would ensure that tariff line numbers identifying goods in the Australia-Thailand Free Trade Agreement (TAFTA) accurately reflect the internationally agreed descriptions of goods overseen by the World Customs Organisation, reducing the potential for confusion for importers, exporters and customs services when processing goods through customs.⁴

2 Explanatory Statement 3 of 2008, p. 1.

3 Explanatory Statement 4 of 2008, p. 1.

4 Explanatory Statement 5 of 2008, p. 1.



Appendix D – Report 92

Report 92

Treaty Tabled on 4 June 2008

United Nations Convention on the Rights of Persons with Disabilities (New York,
13 December 2006)

June 2008
Canberra

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ISBN 978-0-642-79068-2 (HTML Version)

Treaty Tabled on 4 June 2008

In order to facilitate the timely implementation of the *United Nations Convention on the Rights of Persons with Disabilities (New York, 13 December 2006)* (the Agreement) the Committee resolved to report its recommendation on the treaty to the Parliament immediately and will provide a more detailed report on the provisions of the Agreement at a later date.

Recommendation 1

The Treaties Committee supports the *United Nations Convention on the Rights of Persons with Disabilities* and recommends that binding treaty action be taken.

Mr Kelvin Thomson MP

Committee Chair