

---

The Parliament of the Commonwealth of Australia

# Report 65

## **Treaties tabled on 7 December 2004 (3) and 8 February 2005**

**Agreement on Cooperation between the Government of Australia and the Government of the Kingdom of Thailand**

**Termination of the Agreement between the Government of Australia and the Government of the Slovak Republic on Trade and Economic Cooperation**

**Joint Agreement on Enhanced Cooperation between Australia and Papua New Guinea**

**Convention for the Unification of Certain Rules for International Carriage by Air**

**Amendments to the Schedule to the International Convention for the Regulation of Whaling**

**Agreement on Social Security between the Government of Australia and the Government of Malta**

**Beijing Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer**

**Amendments, agreed at Bangkok, in October 2004, to Appendices I and II of the Convention of International Trade in Endangered Species of Wild Fauna and Flora**

© Commonwealth of Australia 2005

ISBN 0 642 78647 X



# Contents

Membership of the Committee .....	vii
Terms of reference .....	ix
List of abbreviations .....	x
List of recommendations .....	xii
<b>1 Introduction .....</b>	<b>1</b>
Purpose of the report.....	1
Briefing documents .....	2
Conduct of the Committee's review .....	3
<b>2 Agreement on Bilateral Cooperation between the Government of Australia and the Government of the Kingdom of Thailand.....</b>	<b>5</b>
Introduction .....	5
Overview .....	5
Implementation and costs .....	6
Withdrawal or denunciation .....	7
Conclusion and recommendation .....	7
<b>3 Termination of the Agreement between the Government of Australia and the Government of the Slovak Republic on Trade and Economic Cooperation ...</b>	<b>9</b>
Introduction .....	9
Overview .....	9
Obligations and implementation.....	10
Consultation .....	11

---

Conclusion and recommendation .....	11
<b>4 Enhanced Cooperation Agreement with Papua New Guinea .....</b>	<b>13</b>
Background .....	13
Features of the Agreement.....	15
Jurisdictions and protections.....	17
Implementation and costs.....	18
Consultation.....	19
Entry into force.....	19
Future treaty action.....	20
National interest exemption provision .....	20
Conclusion .....	21
<b>5 Montreal Convention on International Carriage by Air.....</b>	<b>23</b>
Background .....	24
The Warsaw System before the Montreal Convention .....	24
The Montreal Convention.....	24
Features of the Convention.....	25
Entry into force.....	28
Implementation.....	28
Costs.....	29
Consultation .....	29
Future treaty action.....	30
Conclusion and recommendation .....	31
<b>6 Amendments to the Schedule to the International Convention for the Regulation of Whaling .....</b>	<b>33</b>
Introduction .....	33
Background .....	33
The Amendments .....	34
Automatic entry into force.....	35
Costs.....	36
Conclusion .....	36

<b>7</b>	<b>Agreement on Social Security between the Government of Australia and the Government of Malta.....</b>	<b>37</b>
	Introduction .....	37
	Features of the Agreement.....	37
	Evidence presented .....	39
	Implementation, costs and savings.....	40
	Consultation .....	40
	Entry into force.....	40
	Conclusion and recommendation .....	41
<b>8</b>	<b>Beijing Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer .....</b>	<b>43</b>
	Introduction .....	43
	Background .....	43
	Features of the agreement .....	44
	Consultation .....	46
	Implementation and costs .....	46
	Entry into force.....	47
	Conclusion and recommendation .....	47
<b>9</b>	<b>Amendments to the Convention on International Trade in Endangered Species of Wild Fauna and Flora.....</b>	<b>49</b>
	Background .....	49
	Features of the Amendments.....	50
	Great White Shark.....	51
	Implementation.....	52
	Costs .....	53
	Consultation .....	54
	Entry into force.....	54
	Future treaty action.....	55
	Conclusion and recommendation .....	56
	<b>Appendix A - Submissions.....</b>	<b>57</b>

<b>Appendix B - Witnesses .....</b>	<b>59</b>
Monday, 7 March 2005 - Canberra .....	59
Monday, 14 March 2005 - Canberra .....	60



## Membership of the Committee

Chair            Dr Andrew Southcott (MP)

Deputy Chair   Mr Kim Wilkie (MP)

Members	Hon Dick Adams (MP)	Senator Andrew Bartlett
	Mr Michael Johnson (MP)	Senator Jacinta Collins
	Mrs Margaret May (MP)	Senator Sue Mackay
	Ms Sophie Panopoulos (MP)	Senator Brett Mason
	Mr Bernie Ripoll (MP)	Senator Santo Santoro
	Hon Bruce Scott (MP)	Senator Ursula Stephens
	Mr Malcolm Turnbull (MP)	Senator Tsebin Tchen

## Committee Secretariat

Secretary	Gillian Gould
Inquiry Secretary	Stephanie Mikac
Research Officers	Serica Mackay
	Lyndon McCauley
	Clare James
Administrative Officers	Heidi Lushtinetz





## Terms of reference

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

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions 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
- c) 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

AFP	Australian Federal Police
BCM	Bromochloromethane
Cth	Commonwealth
CITES	Convention on International trade in Endangered Species of Wild Fauna and Flora
DEH	Department of the Environment and Heritage
DFAT	Department of Foreign Affairs and Trade
DoTARS	Department of Transport and Regional Services
ECP	Enhanced Cooperation Program
EPBC Act	Environment Protection and Biodiversity Act
EU	European Union
HCFCs	Hydrochloroflourocarbons
IATA	International Air Transport Association
ICAO	International Civil Aviation Organisation
IWC	International Whaling Commission
NGO	Non-Government Organisation

NIA	National Interest Analysis
PGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
PNG	Papua New Guinea
RAMSI	Regional Assistance Mission to the Solomon Islands
RIS	Regulation Impact Statement
SDR	Special Drawing Right
TAFTA	Australia-Thailand Free Trade Agreement
WTO	World Trade Organisation



## List of recommendations

### **2 Agreement on Bilateral Cooperation between the Government of Australia and the Government of the Kingdom of Thailand**

#### **Recommendation 1**

The Committee supports the *Agreement on Bilateral Cooperation between the Government of Australia and the Government of the Kingdom of Thailand* (Canberra, 5 July 2004), and recommends that binding treaty action be taken.

### **3 Termination of the Agreement between the Government of Australia and the Government of the Slovak Republic on Trade and Economic Cooperation**

#### **Recommendation 2**

The Committee supports the *Termination of the Agreement between the Government of Australia and the Government of the Slovak Republic on Trade and Economic Cooperation* (Canberra, 23 April 1999), and recommends that binding treaty action be taken.

### **4 Enhanced Cooperation Agreement with Papua New Guinea**

#### **Recommendation 3**

In circumstances where the national interest exemption is invoked the Committee recommends that an urgent briefing by the Minister for Foreign Affairs be provided in addition to the notification it currently receives.

---

## 5 Montreal Convention on International Carriage by Air

### Recommendation 4

The Committee supports the *Montreal Convention for the Unification of Certain Rules for International Carriage by Air* (Montreal, 28 May 1999) and recommends that binding treaty action be taken.

## 7 Agreement on Social Security between the Government of Australia and the Government of Malta

### Recommendation 5

The Committee supports the proposed *Agreement on social security between the Government of Australia and the Government of Malta* (Valletta, 16 June 2004) and recommends that binding treaty action be taken.

## 8 Beijing Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer

### Recommendation 6

The Committee supports the *Beijing Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer* (Beijing, November 1999) and recommends that binding treaty action be taken.

## 9 Amendments to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

### Recommendation 7

The Committee supports the *Amendments, agreed at Bangkok, in October 2004, to Appendices I and II of the Convention of International Trade in Endangered Species of Wild Fauna and Flora of 3 March 1973*.



## Introduction

### Purpose of the report

- 1.1 This Report contains advice to Parliament on the review by the Joint Standing Committee on Treaties of five proposed treaty actions which were tabled in the Parliament on 7 December 2004<sup>1</sup> and three proposed treaty actions which were tabled on 8 February 2005, specifically:

7 December 2004<sup>2</sup>

- *Agreement on Bilateral Cooperation between the Government of Australia and the Government of the Kingdom of Thailand (Canberra, 5 July 2004)*<sup>3</sup>
- *Termination of the Agreement between the Government of Australia and the Government of the Slovak Republic on Trade and Economic Cooperation (Canberra, 23 April 1999)*
- *Joint Agreement on Enhanced Cooperation between Australia and Papua New Guinea (Port Moresby, 30 June 2004)*
- *Convention for the Unification of Certain Rules for International Carriage by Air (Montreal, 28 May 1999).*

---

1 The Committee's reviews of other treaties which were also tabled on 7 December 2004 are contained in Reports 63 and 64.

2 These treaties had been previously tabled in August 2004. The inquiries lapsed with the prorogation of the 40<sup>th</sup> Parliament. They were re-tabled in the 41<sup>st</sup> Parliament.

- *2004 Amendments to the Schedule to the International Convention for the Regulation of Whaling, 1946*

#### 8 February 2005

- *Agreement on Social Security between the Government of Australia and the Government of Malta (Valletta, 16 June 2004)*
- *Beijing Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Beijing in November 1999*
- *Amendments, agreed at Bangkok, in October 2004, to Appendices I and II of the Convention of International Trade in Endangered Species of Wild Fauna and Flora of 3 March 1973*

1.2 The Committee is continuing to review three proposed treaty actions which were also tabled on 7 December 2004, and has advised the Minister for Foreign Affairs accordingly. They are:

- *Treaty between the Government of Australia and the Government of New Zealand Establishing Certain Exclusive Economic Zone Boundaries and Continental Shelf Boundaries (Adelaide, 25 July 2004)*
- *United Nations Convention against Corruption (New York, 31 October 2003)*
- *International Treaty on Plant Genetic Resources for Food and Agriculture (PGRFA)*

## Briefing documents

1.3 The advice in this Report refers to the National Interest Analyses (NIAs) prepared for these proposed treaty actions. Copies of the NIAs are available from the Committee's website at [www.aph.gov.au/house/committee/jsct/7dec2004/tor.htm](http://www.aph.gov.au/house/committee/jsct/7dec2004/tor.htm) and [www.aph.gov.au/house/committee/jsct/8february2005/tor.htm](http://www.aph.gov.au/house/committee/jsct/8february2005/tor.htm) or may be obtained from the Committee Secretariat. These documents were prepared by the Government agency (or agencies) responsible for the administration of Australia's responsibilities under each treaty.



- 1.4 Copies of treaty actions and NIAs can 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](http://www.austlii.edu.au/au/other/dfat)>.

## **Conduct of the Committee's review**

- 1.5 Letters inviting comment were sent to all State Premiers and Chief Ministers and to individuals who have expressed an interest in being kept informed of proposed treaty actions such as these. A list of submissions and their authors is at Appendix A.
- 1.6 The Committee also took evidence at public hearings held on 7 and 14 March 2005. A list of witnesses who gave evidence at the public hearings is at Appendix B. Transcripts of evidence from the public hearings can be obtained from the Committee Secretariat or accessed through the Committee's website at <[www.aph.gov.au/house/committee/jsct/7dec2004/hearings.htm](http://www.aph.gov.au/house/committee/jsct/7dec2004/hearings.htm)>.



# Agreement on Bilateral Cooperation between the Government of Australia and the Government of the Kingdom of Thailand

## Introduction

- 2.1 The *Agreement on Bilateral Cooperation between the Government of Australia and the Government of the Kingdom of Thailand* (the Agreement) was signed in July 2004 and was negotiated in conjunction with the Australia-Thailand Free Trade Agreement (TAFTA). The Agreement is designed to strengthen non-trade ties between Australia and Thailand, such as political, diplomatic, security and social ties.

## Overview

- 2.2 The Agreement is intended to increase cooperation between Australia and Thailand in numerous non-trade areas, through greater levels of information exchange and intensification of existing dialogue.<sup>1</sup> This enhancement was exemplified by the Department of Foreign Affairs and Trade, which stated that the Agreement will
- serve as a mechanism ... to deepen understanding and practical cooperation. It will also help us – and this is

---

1 National Interest Analysis (NIA), para. 7.

important for us – to get access more directly to many areas of Thai government with which we have had some but not a great deal of cooperation in the past. That we see as being one of the key opportunities presented by this agreement.<sup>2</sup>

2.3 The Agreement provides for high-level Ministerial consultation between Australia and Thailand. Through this consultation Australia can expect easier access to numerous areas of the Thai Government including:

- security
- law enforcement
- economic investment
- technical areas not covered by TAFTA
- environment and heritage
- natural resource management in agriculture
- science and technology in energy
- information technology and telecommunications
- civil aviation
- public administration
- immigration
- education
- culture
- social development
- tourism.

2.4 To facilitate this enhanced information exchange and cooperation, the Agreement contains provisions for the establishment of a Joint Commission on Bilateral Cooperation. This Commission would meet on a bi-annual basis, at Ministerial level, to review progress on cooperative activities identified in the Agreement. The Commission would also continue to strengthen ties between Australia and Thailand by identifying further areas for potential cooperation between the two nations.<sup>3</sup>

## **Implementation and costs**

2.5 The implementation of the Agreement requires no legislative action by Australia. All aspects of implementation are to be addressed administratively by relevant agencies and organisations. There will be

---

2 Ms Kathy Klugman, *Transcript of Evidence*, 7 March 2005, p. 41.

3 NIA, para. 13.

no additional costs incurred by Australia through the entry into force of the Agreement.<sup>4</sup>

## **Withdrawal or denunciation**

- 2.6 The Agreement can be terminated by either Australia or Thailand on six months notice by written notification to the other Party.

## **Conclusion and recommendation**

- 2.7 The Agreement will forge closer strategic and diplomatic ties with one of Australia's important regional neighbours. The Committee notes that in the current strategic environment it is in Australia's best interests to make every effort to enhance regional ties in both trade and non-trade matters, such as those incorporated in the Agreement.

---

### **Recommendation 1**

**The Committee supports the *Agreement on Bilateral Cooperation between the Government of Australia and the Government of the Kingdom of Thailand (Canberra, 5 July 2004)*, and recommends that binding treaty action be taken.**

---

4 NIA, paras. 15-17



# Termination of the Agreement between the Government of Australia and the Government of the Slovak Republic on Trade and Economic Cooperation

## Introduction

- 3.1 The *Agreement between the Government of Australia and the Government of the Slovak Republic on Trade and Economic Cooperation* (the Agreement) was signed in April 1999. The Slovak Republic acceded to the European Union (EU) on 1 May 2004 and a requirement of that accession is to terminate existing bilateral trade agreements including the Agreement. The Agreement requires the consent of both nations to be terminated within five years of commencement.<sup>1</sup>

## Overview

- 3.2 The impact of the termination of the Agreement is likely to be minimal as the Slovak Republic is not a major trading partner of Australia, as outlined by the Department of Foreign Affairs and Trade:

Slovakia is one of Australia's smaller trade and investment partners, with two way trade currently worth approximately

---

<sup>1</sup> National Interest Analysis (NIA), para. 3.

\$25 million. It is ranked 95<sup>th</sup>... In 2004, Australian exports to Slovakia were a mere \$3.34 million.<sup>2</sup>

3.3 The accession to the EU by the Slovak Republic is expected to have positive and negative impacts on different business sectors within Australia. Some of Australia's trade sectors are subject to higher tariff levels under the auspices of the EU than under the Agreement, whereas others are privy to lower tariff levels.<sup>3</sup>

3.4 Regardless of any variation in effect on individual trade industries in Australia, the overall impact of the termination of the Agreement is not expected to be significant:

Australia's bilateral relations with Slovakia are good, and the request to terminate the Agreement will not affect either Australia's trade or diplomatic relations with Slovakia.<sup>4</sup>

3.5 Should Slovakia's accession to the EU have significant, adverse trade consequences for Australia in future, there are provisions within the World Trade Organisation (WTO) Agreement that can be invoked to preserve Australian trade interests. If market access conditions deteriorate due to a trade agreement, the relevant state may seek offsetting market access benefits. According to the Department of Foreign Affairs and Trade, Australia is monitoring the state of market access to the EU and is prepared to take the required action to secure Australia's market access:

... under the WTO Agreement, under article XXIV:6, there are provisions for a country affected by a trade union agreement such as the European Union customs union to negotiate, and those negotiations are currently underway in Europe.<sup>5</sup>

## Obligations and implementation

3.6 No new obligations will arise from the termination of the Agreement. The termination of the Agreement will not require any legislative actions by Australia and will not change the existing roles of the Commonwealth or States and Territories. As such Australia will not incur any costs as a result of the termination of the Agreement.

---

2 Mr John Woods, *Transcript of Evidence*, 7 March 2005, p. 12.

3 NIA para. 8.

4 Mr John Woods, *Transcript of Evidence*, 7 March 2005, p. 12.

5 Mr Peter Threlfall, *Transcript of Evidence*, 7 March 2005, p. 13.



## Consultation

- 3.7 Austrade advised that impact of the termination of the Agreement was expected to be minimal. As a result, further consultation with industry was not considered necessary. The States and Territories did not identify any potential problems emanating from termination of the Agreement.

## Conclusion and recommendation

- 3.8 Australia's trade and diplomatic interests with the Slovak Republic are assured regardless of the termination of the Agreement. The economic effects of termination are minimal and any potential for adverse trade conditions is minimised by Article XXIV:6 of the World Trade Organisation Agreement.

---

### Recommendation 2

**The Committee supports the *Termination of the Agreement between the Government of Australia and the Government of the Slovak Republic on Trade and Economic Cooperation* (Canberra, 23 April 1999), and recommends that binding treaty action be taken.**



## Enhanced Cooperation Agreement with Papua New Guinea

- 4.1 The *Joint Agreement on Enhanced Cooperation between Australia and Papua New Guinea* was signed at Port Moresby on 30 June 2004 (the Agreement). The Agreement will enable Australia to deploy police and other personnel to Papua New Guinea. The Agreement will allow the deployed Australians to work in partnership with the Government of Papua New Guinea to address core challenges in the areas of: governance; law and order and justice; financial management; economic and social progress; and public administration.

### Background

- 4.2 Australia has had a close history of cooperation with Papua New Guinea since the latter's independence in 1975, and the two countries have entered into several bilateral treaties and other formal arrangements over the past 30 years.<sup>1</sup> The umbrella agreement is the *Joint Declaration of Principles Guiding Relations Between Papua New Guinea and Australia*, signed in 1987 and revised in 1992.<sup>2</sup>

---

1 National Interest Analysis (NIA), Annex 4, 'List of other treaties with Papua New Guinea', p. 1.

2 NIA, Annex 2, 'Papua New Guinea Political Brief', p. 1.

- 4.3 In recent years, Papua New Guinea has faced a number of serious challenges to its development, including law and order, justice, corruption, poor financial management, and governance. Papua New Guinean politics is highly competitive and fluid, with no Prime Minister ever serving a full five-year term.<sup>3</sup> There are fundamental economic problems, including weak domestic demand, and the 2% economic growth experienced in 2003 is not likely to improve.<sup>4</sup> The country also faces challenges in managing its borders and ensuring transport safety and security.<sup>5</sup>
- 4.4 Bilateral relations between Australia and Papua New Guinea entered a new era of cooperation in December 2003 when Ministers from both countries agreed to the Enhanced Cooperation Program (ECP) to help address Papua New Guinea's economic and development challenges.<sup>6</sup> The ECP contains an outline of humanitarian and development assistance to be provided to Papua New Guinea by Australia. This includes a proposal to deploy a number of Australian police and officials to Papua New Guinea.<sup>7</sup>
- 4.5 Accordingly, the Agreement provides the necessary legal framework at international law for Australia to implement the ECP.<sup>8</sup> The Agreement enables the deployment of Australian police and officials and provides them with appropriate legal protections and powers to perform their duties. The Agreement does this by establishing obligations, rights, and duties for each Party. The ECP will involve up to 210 members of the Australian Federal Police and 64 officials. These personnel will work in line positions with the Papua New Guinean police force, public service and judiciary.<sup>9</sup>

---

3 NIA, Annex 2, 'Papua New Guinea Political Brief', p. 1.

4 NIA, Annex 2, 'Papua New Guinea Political Brief', p. 1.

5 NIA, para. 4.

6 NIA, Annex 2, 'Papua New Guinea Political Brief', p. 1.

7 NIA, para. 9.

8 NIA, paras 4-5.

9 Mr Gerald Thomson, *Transcript of Evidence*, 7 March 2005, p. 35.

## Features of the Agreement

- 4.6 The Department of Foreign Affairs and Trade (DFAT) advised the Committee that the Agreement is similar in nature to two other agreements:<sup>10</sup> the *Agreement between Australia and Nauru concerning additional police and other assistance to Nauru*<sup>11</sup> and the multilateral agreement concerning the Regional Assistance Mission to the Solomon Islands (RAMSI).<sup>12</sup>
- 4.7 The Agreement establishes a number of obligations, rights and duties on both Parties in respect of the deployed officials, including:
- provisions enabling the deployment of Australian police and other personnel to work in partnership with the Government of Papua New Guinea to address core issues in the areas of governance, law and order and justice, financial management, economic and social progress, and public administration (Article 2)
  - provisions concerning the status of the Assisting Australian Police (Article 3) and other personnel (Article 5)
  - provisions concerning uniforms, and the carriage of weapons, by Assisting Australian Police (Article 4)
  - provisions decreeing that Australian personnel and their families must observe and respect the laws and regulations of Papua New Guinea (Article 7)
  - criminal jurisdiction over deployed Australians (Article 8)
  - establishment of a Joint Steering Committee, comprising members nominated by Australia and Papua New Guinea, to ensure continuing consultation on implementation of the ECP (Article 9)
  - compliance with obligations under international law (Article 10)

---

10 Mr Gerald Thomson, *Transcript of Evidence*, 7 March 2005, p. 35.

11 *Agreement between Australia and Nauru concerning additional police and other assistance (Melbourne, 10 May 2004)*. See Joint Standing Committee on Treaties Report 63.

12 *Agreement between Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa and Tonga concerning the operations and status of the police and armed forces and other personnel deployed to Solomon Islands to assist in the restoration of law and order and security (Townsville, 24 July 2004)*. See Joint Standing Committee on Treaties Report 55.

- establishment of a system for dealing with civil claims brought against Australian personnel (Article 11)
- provisions for entry into and departure from Papua New Guinea of deployed Australians (Article 13)
- provisions for transport and financial arrangements for deployed Australians (Article 14)
- provisions for accommodation and facilities for deployed Australians (Article 15)
- provisions for communications and postal services for deployed Australians (Article 16)
- provisions for the health and safety of deployed Australians (Article 17).

4.8 One of the features of the Agreement is that Australian police and other officials will work alongside their Papua New Guinean colleagues in line positions within the Papua New Guinean Government. They will exercise the powers and duties of their Papua New Guinean counterparts, with this Agreement affording them the powers and protections necessary to operate in line positions.<sup>13</sup> The Australian Federal Police (AFP) are working closely with the Royal Papua New Guinea Constabulary, enabling:

A sharing of skills across a range of activities within the law enforcement sector, from criminal investigations through to general policing duties through to anticorruption investigations and a range of other activities.<sup>14</sup>

4.9 The Committee discussed at length the ability of the AFP to sustain overseas deployments such as this. Mr John Lawler from the AFP informed the Committee that the AFP is represented extensively internationally.<sup>15</sup> Management of such a large number of personnel deployed overseas is made possible by financial support from the government, involvement of state and territory police officers in overseas deployments, as well as:

A quite highly developed and sophisticated prioritisation model, which enables [the AFP] to deploy key resources to the highest priority tasks and to monitor and adjust staffing

---

13 NIA, para. 12 and Mr Gerald Thomson, *Transcript of Evidence*, 7 March 2005, p. 35.

14 Mr John Lawler, *Transcript of Evidence*, 7 March 2005, p. 37.

15 Mr John Lawler, *Transcript of Evidence*, 7 March 2005, p. 38.

in particular functional streams or crime types, as and when required.<sup>16</sup>

- 4.10 It was stated quite conclusively that the number of police personnel deployed overseas does *not* stretch the AFP's resources in terms of having people on the ground to fulfil their duties in Australia. Pressure from overseas deployments is ameliorated by the AFP's prioritisation model, which enables the organisation to move resources to meet high priority tasks.<sup>17</sup> As stated by Mr Lawler:

The reality is that the nature of transnational law enforcement, the nature of the world in which we live, means that we need to prioritise and to respond efficiently to the taskings that we have from time to time. There will be peaks and troughs in the response that is required, and it is an issue of making sure that the organisation is able to receive, analyse and adjust its resourcing models to meet what might be the highest priorities at a given point in time.<sup>18</sup>

## Jurisdictions and protections

- 4.11 As reported previously, the Agreement will provide the deployed Australians with appropriate legal protections and appropriate powers. Mr Thomson stated that:

The agreement contains provisions on jurisdiction designed to protect Australian police and officials serving within the PNG bureaucracy and to particularly guard them from vexatious claims. Australians working in PNG under the ECP will be engaged in potentially sensitive work, and in order to protect them from vexatious claims it was desirable to agree to these jurisdiction provisions. Australia has not and did not seek blanket immunities for ECP personnel.<sup>19</sup>

- 4.12 Under Article 7 of the Agreement, deployed Australians are at all times obliged to observe and respect the laws and regulations of Papua New Guinea. However, under Article 11, the deployed Australians are not subject to the civil jurisdiction of the courts and tribunals of Papua New Guinea for acts or omissions done within the course of, or incidental to, official duties.

---

16 Mr John Lawler, *Transcript of Evidence*, 7 March 2005, p. 38.

17 Mr John Lawler, *Transcript of Evidence*, 7 March 2005, p. 39.

18 Mr John Lawler, *Transcript of Evidence*, 7 March 2005, p. 39.

19 Mr Gerald Thomson, *Transcript of Evidence*, 7 March 2005, p. 35.

- 4.13 With respect to criminal or disciplinary matters, Article 8 of the Agreement establishes a system of concurrent jurisdiction to deal with alleged breaches of Papua New Guinean law. Under this system and in accordance with the *Crimes (Overseas) Act 1964* (Cth) ('the Crimes Act'), Australia will have the primary right of jurisdiction for actions or omissions by deployed persons which are in the course of, or incidental to, official duties and for offences involving Australian personnel or property.<sup>20</sup>
- 4.14 Alleged offences, either civil or criminal, committed outside official duties will be investigated to determine if there is a case to answer and, if so, which country will exercise jurisdiction.<sup>21</sup> The exercise of jurisdiction will require agreement by both Australia and Papua New Guinea through a Joint Steering Committee, established under Article 9.
- 4.15 The Committee is aware that on 13 May 2005 the Supreme Court in Papua New Guinea overturned the legal immunity of Australian police working in Papua New Guinea. In a unanimous verdict, five judges agreed that the legal immunity given to Australian police was unconstitutional.
- 4.16 The Australian Government has halted the work of Australian police in Papua New Guinea and most of the Australians working under the Agreement have left Papua New Guinea.
- 4.17 The Governments of Australia and Papua New Guinea have indicated their intent to re-negotiate the terms of the Agreement.

## Implementation and costs

- 4.18 No legislation is required to implement Australia's obligations. The Crimes Act has been extended to include Papua New Guinea and ensures that Australia is able to exercise criminal jurisdiction over its officials who are deployed to Papua New Guinea under the Agreement.<sup>22</sup>

---

20 Mr Gerald Thomson, *Transcript of Evidence*, 7 March 2005, p. 36.

21 Mr Gerald Thomson, *Transcript of Evidence*, 7 March 2005, p. 36.

22 NIA, para. 27.



- 4.19 The Australian Government is responsible for salary, allowances, medical and dental expenses, removal expenses, and accommodation and transport costs for Australian officials deployed to Papua New Guinea. Australia will fund its participation following regular budgetary processes.<sup>23</sup>
- 4.20 At the time the ECP was first agreed to, Australian Ministers agreed to fund Papua New Guinea with an amount of approximately \$1.1 billion over five years until 30 June 2008. This includes \$805 million of new funding to the Australian Federal Police, as well as \$330 million of existing funding from the bilateral aid program with Papua New Guinea.<sup>24</sup>

## Consultation

- 4.21 The Committee understands that the Government of Papua New Guinea was consulted in the preparation of the text of the Agreement.<sup>25</sup> The National Interest Analysis states that relevant Commonwealth agencies were also heavily involved in the preparation of the text of the Agreement, including DFAT, AusAID, the AFP, and the Attorney-General's Department.<sup>26</sup> The State and Territory Governments were also notified.<sup>27</sup>

## Entry into force

- 4.22 The Agreement was signed on 30 June 2004 and entered into force on 13 August 2004 following the exchange of first person notes between the two Parties in accordance with the provisions of Article 22.2.<sup>28</sup>
- 4.23 As at 24 February 2005, 136 police, including 111 officers of the AFP and 25 state and territory officers, and 37 officials had been deployed to Papua New Guinea and commenced their work.<sup>29</sup>

---

23 NIA, para. 28.

24 Mr Gerald Thomson, *Transcript of Evidence*, 7 March 2005, p. 37.

25 NIA, Annex 1, p. 1.

26 NIA, para. 29 and NIA, Annex 1, p. 1.

27 NIA, para. 30 and NIA, Annex 1, p. 1.

28 <http://www.info.dfat.gov.au/Info/Treaties/Treaties.nsf/AllDocIDs/F1B48DDEECEC6FA6CA256ECC001C075C> accessed 20/4/2005 at 3.30pm.

29 Mr John Lawler, *Transcript of Evidence*, 7 March 2005, p. 38.

## Future treaty action

- 4.24 In accordance with Article 21, the Agreement may be varied by agreement between the Parties. Amendments to the Agreement would be subject to the usual Australian treaty making process.
- 4.25 As there is no set expiration date, the Agreement will expire on the complete withdrawal of all Designated Persons from Papua New Guinea (Article 22.3). However, the Agreement may be suspended, in whole or in part, by agreement between the parties (Article 21).

## National interest exemption provision

- 4.26 Generally, after treaties have been signed for Australia they are tabled in both Houses of Parliament for at least 15 sitting days prior to binding treaty action being taken. During this period the Committee reviews the proposed treaty action and presents its conclusions and recommendations to the Parliament.
- 4.27 However, where it is in Australia's national interest to proceed with an urgent treaty action, the 15 or 20 sitting day tabling requirement may be varied or waived. The national interest exemption provision was invoked in relation to the Agreement to ensure the deployment of police and officials as soon as possible. As explained by Mr Thomson:

It took the governments of Australia and Papua New Guinea quite a bit longer to reach agreement on the treaty than we had anticipated. This caused considerable delay in the implementation of the ECP. When agreement was finally reached on the treaty, the situation was such that the Australian government wanted to move quickly to bring the agreement into force so that we could proceed as quickly as possible with the deployment of Australian police and officials under the ECP.<sup>30</sup>

- 4.28 On 23 June 2004, the Minister for Foreign Affairs and Trade, the Hon Alexander Downer MP, wrote to the Committee advising of the urgent need for the Agreement to be in force to enable the Australian police and officials to be deployed to Papua New Guinea as soon as possible.<sup>31</sup> The Agreement was signed on 30 June 2004. The

---

30 Mr Gerald Thomson, *Transcript of Evidence*, 7 March 2005, pp. 34 - 35.

31 NIA, para. 3.

Papua New Guinean Parliament passed enabling legislation on 27 July 2004, and the Agreement came into force on 13 August 2005, when Mr Downer and the Papua New Guinean Minister for Foreign Affairs and Immigration, Sir Robbie Namaliu, exchanged first person notes. The Agreement and associated NIA were tabled in both houses of the Australian Parliament on 4 August 2004. The Agreement was scheduled to be considered by the Committee until the Federal election was called in late August. The Agreement was subsequently re-tabled in Parliament on 7 December 2004.

## Conclusion

- 4.29 The Committee supported the Agreement enabling the deployment of Australian Police and other officials to deliver assistance to Papua New Guinea. The Committee also acknowledged the urgent need for the Agreement to be in force prior to the treaty action being tabled in Parliament and parliamentary consideration of the Agreement.
- 4.30 There have been a number of treaties relating to the stability of Pacific Island Countries which have invoked the national interest exemption and entered into force before being tabled in Parliament. For this reason, the Committee believes it would be preferable to receive an urgent briefing on the treaty in cases where the national interest exemption is used.
- 4.31 Following the decision of the Supreme Court in Papua New Guinea, the Government of Australia and the Government of Papua New Guinea have committed to renegotiate the terms of the Agreement. The Committee awaits the outcome of these negotiations.

### Recommendation 3

**In circumstances where the national interest exemption is invoked the Committee recommends that an urgent briefing by the Minister for Foreign Affairs be provided in addition to the notification it currently receives.**



## Montreal Convention on International Carriage by Air

- 5.1 The *Convention for the Unification of Certain Rules for International Carriage by Air*, done at Montreal on 28 May 1999 (the Montreal Convention), updates and will eventually replace the *Convention for the Unification of Certain Rules Relating to International Carriage by Air*, done at Warsaw on 12 October 1929 (the Warsaw Convention) and a number of subsequent Conventions and Protocols, which together form the ‘Warsaw system’. This system provides an international treaty framework for liability rules governing commercial international aviation travel, and for documentation such as tickets and air waybills.<sup>1</sup>
- 5.2 The Montreal Convention will provide a new uniform code that modernises the international air carrier’s liability framework and will provide measures such as electronic documentation to assist the smooth movement of air passengers, baggage and cargo.<sup>2</sup>

---

1 National Interest Analysis (NIA), paras. 3-6.

2 NIA, para. 4.

## Background

### The Warsaw System before the Montreal Convention

- 5.3 Under the Warsaw system, an international carrier is liable for the death or injury of a passenger caused by an event that occurs on board the carrier's aircraft or in the course of embarking or disembarking. The carrier is also liable for damage to cargo and registered baggage caused by an occurrence on their aircraft during international carriage. It is not necessary for the plaintiff to prove fault, such as negligence. However, the carrier is not liable if it can prove that it took all necessary measures to avoid the damage or that it was impossible to take such measures.<sup>3</sup>
- 5.4 The Warsaw Convention was negotiated during the early years of the aviation industry and, as such, it capped air carriers' liability limits at a level appropriate for that era. Those limits are now out of date and unreasonably low.<sup>4</sup>
- 5.5 Over the years, there have been several amendments to the Warsaw Convention which have attempted to update and raise liability limits. Some of these failed to attract broad adherence, and different Warsaw Parties adopted different amending instruments, resulting in a complex and confusing array of international arrangements.<sup>5</sup>
- 5.6 In addition, a number of international agreements and private voluntary arrangements among air carriers have been developed, particularly by the International Air Transport Association (IATA) and the European Union. Many carriers agreed among themselves to apply an increased liability limit, or to waive liability limits. These voluntary arrangements increased the amount of compensation available to passengers of certain carriers in certain circumstances but further complicated the international system.<sup>6</sup>

### The Montreal Convention

- 5.7 The Montreal Convention was concluded in 1999, and, according to the Department of Transport and Regional Services (DoTARS):

---

3 Regulation Impact Statement (RIS), para. 1.3.

4 NIA, paras 3 & 6.

5 NIA, paras 3 & 7.

6 NIA, para. 8.

Is widely regarded as a major achievement in reaching a compromise between countries with disparate views on the nature of the aviation industry and on appropriate amounts of compensation for injury or death as a result of aviation accidents.<sup>7</sup>

- 5.8 The primary objectives of the Montreal Convention are:
- to provide for equitable compensation for death or injury to passengers, and damage to baggage and cargo, that occur in international air carriage
  - to facilitate the efficient operation of international carriage by air of passengers, baggage and cargo.<sup>8</sup>
- 5.9 The Montreal Convention incorporates most of the provisions of existing instruments, combining them into a single package that States must either accept or reject. As more States accept it, the Montreal Convention will eventually replace the Warsaw Convention.<sup>9</sup> Mr Samuel Lucas from DoTARS advised the Committee that:
- With the accession the year before last of the United States and now by members of the European Union, all our key routes, such as New Zealand, the United States, Europe and Japan, are covered.<sup>10</sup>
- 5.10 Other major partners of Australia, such as Singapore, are known to be considering accession.<sup>11</sup>

## Features of the Convention

- 5.11 The Montreal Convention substantially improves consumer protection in international carriage by air and modernises the smooth flow of passengers, baggage and cargo.<sup>12</sup> Mr Stephen Bogiatzis from DoTARS advised the Committee that:

---

7 Mr Stephen Bogiatzis, *Transcript of Evidence*, 7 March 2005, p. 4.

8 RIS, para. 2.1.

9 NIA, para. 11.

10 Mr Samuel Lucas, *Transcript of Evidence*, 7 March 2005, p. 6.

11 NIA, para. 12 and Ms Elisabeth Welch, *Transcript of Evidence*, 7 March 2005, p. 6.

12 NIA, para. 13.

The most practical effect of accession to the Montreal Convention is the increase in compensation limits for victims of air accidents.<sup>13</sup>

5.12 As identified in the National Interest Analysis (NIA), the key features of the Montreal Convention are:

- the use of the International Monetary Fund's Special Drawing Right (SDR) as the monetary unit rather than the now obsolete Poincaré gold francs used by the Warsaw system
- a two-tiered system of liability for the death of, or bodily injury to, an aircraft passenger. The first tier, for claims of up to 100,000 SDRs (\$A212,000), is based on strict, or no-fault, liability, and cannot be reduced or excluded except in the case of contributory negligence of the passenger. The second tier, for claims in excess of 100,000 SDRs, is unlimited in amount but is fault-based. However, the plaintiff is not required to prove fault; the carrier is liable unless it proves that the damage was not due to negligence or any other wrongful act or omission of the carrier (Article 21)
- additional updated liability limits: for damaged or delayed baggage up to a limit of 1,000 SDRs (\$A2,123) for each passenger; for damaged or delayed cargo up to 17 SDRs (\$A36) per kilogram; and for delay of passengers up to 4,150 SDRs (\$A8809) (Article 22)
- provision for review of carriers' liability limits every five years to take account of inflation. If the accumulated inflation over the review period exceeds 10 per cent the limits of liability will be revised and the revision takes effect six months later (Article 24)
- provision that States may require their own carriers to make advance payments following aircraft accidents to assist victims or their relatives meet their immediate economic needs. These payments do not constitute recognition of liability (Article 28)
- provision that punitive, exemplary or other non-compensatory damages may not be recovered in any claim arising from international carriage by air (Article 29)
- the addition of a 'fifth jurisdiction' in which a damages claim can be heard. An action for damages for the death or injury of a passenger may be brought in the State where the passenger resided

---

13 Mr Stephen Bogiatzis, *Transcript of Evidence*, 7 March 2005, p. 5.



at the time of the accident, if it is a country to or from which the carrier operates and where it has premises (Article 33)

- provision that States must ensure their air carriers maintain adequate insurance to cover their liability under the Convention (Article 50)
- provision for simplified documentation, eliminating the need for cargo consignors to complete detailed paper-based air waybills, allowing simplified electronic records to be used.

5.13 Ms Elisabeth Welch from DoTARS provided an example to explain the addition of a fifth jurisdiction:

An example of the fifth jurisdiction being used would be of an Australian who wished to bring an action in a country where liability limits are significantly lower than they are in Australia. That person would have an opportunity to bring an action in Australia rather than in the country where the accident occurred.<sup>14</sup>

5.14 If Australia accedes to the Montreal Convention, whether an Australian carrier would be subject to the new liability limits under the Montreal Convention (listed above) or under the earlier Warsaw limits is dependent on the country to which the carrier is flying, *not* the nationality of the carrier. If the country to which the carrier is flying is a signatory to the Montreal Convention, then the airline and passengers on that flight would be covered by the Montreal provisions. However, if the country is not yet a signatory, the airline and passengers would be covered by the Warsaw provisions. This would be considered non-Montreal Convention carriage for an Australian carrier. Ms Welch stated, by way of example:

Indonesia ... is a party to the Warsaw Convention of 1929 and to the Guadalajara Convention of about midway through last century. In that case, when Qantas flies to Indonesia it would be covered by the Warsaw Convention and the Guadalajara protocols.<sup>15</sup>

---

14 Ms Elisabeth Welch, *Transcript of Evidence*, 7 March 2005, p. 7.

15 Ms Elisabeth Welch, *Transcript of Evidence*, 7 March 2005, p. 6.

## Entry into force

- 5.15 The Montreal Convention entered into force generally on 4 November 2003 and, as at 7 March 2005, there were 63 Parties to the Convention,<sup>16</sup> including the United States, New Zealand, Canada, Japan, and the European Community and its member countries.<sup>17</sup> Pursuant to Article 53(7), the Montreal Convention will enter into force for Australia on the sixtieth day following the date of deposit of an instrument of accession with the International Civil Aviation Organisation (ICAO).

## Implementation

- 5.16 Australia will need to amend the *Civil Aviation (Carriers' Liability) Act 1959* (Cth) ('the Carriers' Liability Act') to give force to the international air carriage laws under the Montreal Convention.<sup>18</sup>
- 5.17 The Carriers' Liability Act currently imposes on Australian international carriers a higher liability limit (260,000 SDRs or around \$A552,000) for death or injury than applies under the Warsaw system.<sup>19</sup> If Australia accedes to the Montreal Convention and consequently amends the Carriers' Liability Act, the current higher limit will continue to apply to Australian carriers, but only in relation to non-Montreal Convention carriage.<sup>20</sup> For carriage covered by the Montreal Convention, both Australian and foreign carriers will be subject to a first tier strict liability limit of 100,000 SDRs, and a second tier of unlimited fault-based liability.<sup>21</sup>
- 5.18 Minor consequential amendment of the *Air Accidents (Commonwealth Government Liability) Act 1963* (Cth) ('the Air Accidents Act') will also be required. This Act provides for the Commonwealth to 'top-up' damages to the level that applies to domestic travel in cases where the lower Warsaw limits apply. The minor amendment will deal with the relationship between the Commonwealth liability under the Air

---

16 Ms Elisabeth Welch, *Transcript of Evidence*, 7 March 2005, p. 6.

17 NIA, para. 12.

18 NIA, para. 25.

19 NIA, para. 26.

20 NIA, para. 27.

21 NIA, para. 27.

Accidents Act and its liability under the Carriers' Liability Act, where the Montreal Convention applies.<sup>22</sup>

## Costs

- 5.19 There will be no financial implications for the Commonwealth or State and Territory Governments as a result of accession to the Convention.<sup>23</sup>
- 5.20 The implications for business and the aviation industry will be positive, in that most international carriers operating into Australia already subject themselves voluntarily to higher liability limits than apply under the Warsaw system, and they do not expect to have higher insurance costs.<sup>24</sup> Carriers, particularly the cargo freight industry, will also benefit from the simplified documentation procedures.<sup>25</sup>

## Consultation

- 5.21 Consultations were conducted with relevant federal and state government departments and agencies, aviation industry stakeholders and various community organisations during early 2001. The NIA states that the comments on accession to the Montreal Convention from all major stakeholders, including Qantas, were positive.<sup>26</sup>
- 5.22 The only negative response, from two members of the public, was that Australia should seek an even better international regime.<sup>27</sup> As advised by Mr Lucas:

... the two people who argued for a better system had been hoping that Australia would have tackled some of the more contentious issues that almost caused the negotiations to

---

22 NIA, para. 30.

23 NIA, para. 31.

24 NIA, para. 32.

25 NIA, para. 33.

26 NIA, para. 35 and Consultations Annex, pp. 1-2. See also Ms Elisabeth Welch, *Transcript of Evidence*, 7 March 2005, p. 7.

27 NIA, para. 35 and Consultations Annex, pp. 1-2.

break down ... I have now been informed verbally by the two lawyers in person in my conversations with them that they now feel that we are better off moving to accede to Montreal. They have, to a certain extent, changed their opinion on that in the time since the extensive consultation process.<sup>28</sup>

- 5.23 Comments on revision of the law applying to domestic flights, in line with the Montreal Convention, were mixed. Responses revealed substantial concern in relation to the application of some Montreal Convention principles to domestic flights, particularly with regard to unlimited liability and the cost of insurance.<sup>29</sup> Currently, the legislative provisions relating to purely domestic carriage are independent of Australia's obligations under international law.<sup>30</sup>

## Future treaty action

- 5.24 The Montreal Convention requires review of the liability limits at five-year intervals by reference to an inflation factor, which corresponds to the accumulated rate of inflation since entry into force or since the previous revision. If the review concludes that the inflation factor has exceeded 10 per cent, the State Parties must be notified of a revision of the limits of liability. Any such revision becomes effective automatically six months after its notification to the State Parties, unless a majority of the State Parties register their disapproval within three months of notification. In this case, the matter will be referred to a meeting of the State Parties.<sup>31</sup>
- 5.25 The liability limits must also be reviewed at any time that one-third of the State Parties express a desire to that effect, if the inflation factor has exceeded 30 per cent since the previous revision.<sup>32</sup>
- 5.26 Any amendment of the Montreal Convention, other than changes to the liability limits, is subject to the normal Australian treaty process.<sup>33</sup>

---

28 Mr Samuel Lucas, *Transcript of Evidence*, 7 March 2005, pp. 7-8.

29 NIA, Consultations Annex, p. 2.

30 RIS, para. 2.3.

31 NIA, para. 37.

32 NIA, para. 37.

33 NIA, para. 38.

## Conclusion and recommendation

- 5.27 The Committee appreciates the benefits the Montreal Convention will generate by providing legal certainty and consistency for international carriage by air. The Committee agrees with DoTARS that delaying accession and implementation of the Montreal Convention, or failing to become a Party altogether, would be detrimental to Australia.

### Recommendation 4

**The Committee supports the *Montreal Convention for the Unification of Certain Rules for International Carriage by Air* (Montreal, 28 May 1999) and recommends that binding treaty action be taken.**



## Amendments to the Schedule to the International Convention for the Regulation of Whaling

### Introduction

- 6.1 The *Amendments to the Schedule to the International Convention for the Regulation of Whaling, done at Washington 2 December 1946 (Sorrento, Italy 22 July 2004)* makes two sets of minor amendments to the Schedule of the *International Convention for the Regulation of Whaling* (the Schedule).

### Background

- 6.2 The *International Convention for the Regulation of Whaling* (the Convention) is a multilateral treaty that regulates the conservation and utilisation of whale stocks. The initial focus of the Convention was to ensure international control of post-war development of the commercial whaling industry. More recently, the International Whaling Commission (IWC), established under the Convention, has been a vehicle for conservation measures, such as the 1982 decision to implement a moratorium on commercial whaling. The IWC currently has 60 member countries.<sup>1</sup>

---

<sup>1</sup> <http://www.iwcoffice.org/commission/members.htm> accessed 09/03/05.

- 6.3 Australia has been a Contracting Government to the Convention since it came into force in 1948 and a strong advocate of conservation measures within the IWC since 1979.<sup>2</sup>
- 6.4 The Schedule is an integral part of the Convention, and is amended from time to time in accordance with Article V to take account of decisions of the IWC.<sup>3</sup>
- 6.5 Australia already prohibits killing, injuring or interfering with whales in Australian waters under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and actually provides a higher level of protection than under the Convention.<sup>4</sup>

## The Amendments

- 6.6 The first set of amendments to the Schedule substitute the dates '2004/2005' for '2003/2004' and '2005' for '2004' in paragraphs 11 and 12 and Tables 1, 2 and 3 for the coming year on commercial whale catch limits. The catch limits for commercial whaling are all set at zero in accordance with subparagraph 10(e) of the Schedule.<sup>5</sup>
- 6.7 The second set of amendments adds two new provisions to paragraph 13(a) of the Schedule, modifying the provisions for aboriginal subsistence whaling in the Northern Hemisphere. These new provisions:
- impose a ban on the taking of calves or any whales accompanied by a calf
  - require that all hunts be conducted under national legislation that accord with paragraph 13.<sup>6</sup>
- 6.8 The amendments also delete the words '...whose traditional aboriginal subsistence and cultural needs have been recognized' in subparagraph 13(b)(2).<sup>7</sup>
- 6.9 Subparagraph 13(b)(2) now reads:

---

2 National Interest Analysis (NIA), paras 9 and 7.

3 NIA, para. 2.

4 NIA, para. 14.

5 NIA, para. 8.

6 NIA, paras 10, 11 and 12.

7 NIA, para. 12.



The taking of gray whales from the Eastern stock in the North Pacific is permitted, but only by Aborigines or a Contracting Government on behalf of Aborigines, and then only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines.

- 6.10 Following the amendments, some barter, trade or sharing of whale products could be undertaken by aboriginal people under subparagraph 13(b)(2), with relatives, others in the local community or with other persons with whom local residents share familial, social or economic ties.<sup>8</sup> The deletion of these words brings subparagraph 13(b)(2) into line with subparagraph 13(b)(1), (b)(3) and (b)(4).
- 6.11 The Department of the Environment and Heritage, Australian Antarctic Division, noted that :

these modifications are in Australia's national interest because they maintain the strong opposition we have to commercial whaling but support the access of some indigenous communities to whales and whaling to meet demonstrated traditional, cultural and nutritional needs.<sup>9</sup>

## **Automatic entry into force**

- 6.12 Under the Convention, amendments become effective with respect to each Contracting Government ninety days following the date of notification from the Secretariat of the Commission unless a Contracting Government lodges an objection to the amendments in that period.<sup>10</sup> In the event that an objection is lodged during the ninety day period, the amendments would not come into force for any Contracting Government for an additional ninety days. After that, the amendments are binding on all other Contracting Governments apart from those that have lodged objections.<sup>11</sup>

---

8 NIA, para. 12.

9 Dr Anthony Press, *Transcript of Evidence*, 7 March 2005, p. 16.

10 NIA, para. 3.

11 NIA, para. 3

- 6.13 Australia did not lodge an objection concerning the amendments to the Schedule to the Convention.<sup>12</sup> The amendments to the Schedule came into force for Australia on 28 October 2004.<sup>13</sup>

## Costs

- 6.14 The amendments to the Schedule will not add to Australia's obligation under the Convention, require any additional measures or impose any additional costs.<sup>14</sup>

## Conclusion

- 6.15 The Committee continues to support the maintenance of the moratorium on commercial whaling. The Committee recognises that the amendments are routine and do not impose any additional costs or obligations on Australia. The Committee support the amendments to the Schedule.

---

12 NIA, para. 5.

13 NIA, para. 5.

14 NIA, paras 14-16.

# Agreement on Social Security between the Government of Australia and the Government of Malta

## Introduction

- 7.1 The *Agreement on social security between the Government of Australia and the Government of Malta* (the Agreement), when entered into force, will replace the current such agreement entered into force in Canberra on 1 July 1991.<sup>1</sup>
- 7.2 The Agreement is part of a network of existing social security bilateral agreements that Australia has with other countries. The Agreement, similarly to the current agreement, will provide access to certain Australian and Maltese social security benefits and limited portability of these benefits between the countries.<sup>2</sup>

## Features of the Agreement

- 7.3 The National Interest Analysis states that the principal differences between the current and proposed agreements are those as listed:

---

1 National Interest Analysis (NIA), para. 11.

2 NIA, para. 7.

- a disability support pension is restricted to people who are considered to be severely disabled, that is, people assessed as having no capacity to work or no prospect for rehabilitation within two years of being granted the pension
  - when a person enters Australia temporarily, their rate of benefit will remain the same for the first 26 weeks. When a person departs Australia temporarily, their pension rate will remain the same for the first 26 weeks
  - new transitional provisions have been added and several provisions are now dealt with by Australian domestic legislation and so are no longer included.<sup>3</sup>
- 7.4 The first principal change brings the agreement into line with similar such bilateral agreements. Those persons already receiving a disability support pension under the current agreement will not be affected by the changed provision.<sup>4</sup> The second principal change is intended to reduce the incident of overpayments to pensioners who undertake temporary visits between Australia and Malta.<sup>5</sup>
- 7.5 The Agreement will continue to allow people to lodge claims in either Australia or Malta and help people to meet minimum qualifying requirements for benefits. This is achieved by 'allowing periods of working-life residence in Australia to be counted by Malta as periods of contributions to the Maltese social security scheme' and vice versa.<sup>6</sup> In addition, the Agreement will also overcome restrictions on portability of payments between Australia and Malta and provide for mutual administrative assistance to determine correct entitlements for recipients.<sup>7</sup>
- 7.6 For Australia, the Agreement will include access to the age pension, disability support pension for the severely disabled and pension for widows (including the single parenting payment for widows with dependent children and bereavement allowance).<sup>8</sup>
- 7.7 For Malta, the Agreement will include contributory pensions in relation to retirement, invalidity, widowhood and non contributory

---

3 NIA, para. 14.

4 Mr Peter Hutchinson, *Transcript of Evidence*, 14 March 2005, p. 16.

5 NIA, para. 14.

6 Mr Peter Hutchinson, *Transcript of Evidence*, 14 March 2005, p. 16.

7 Mr Peter Hutchinson, *Transcript of Evidence*, 14 March 2005, p. 16.

8 NIA, para. 12.

assistance and pension.<sup>9</sup> The majority of people that will benefit from the Agreement are pensioners.<sup>10</sup>

## Evidence presented

- 7.8 The Committee received evidence that the Agreement will address the gaps in coverage of people who move between Australia and Malta, allowing people to maximise their income and provide greater choice of retirement destination. Further, the Agreement will contribute to the bilateral relationship between Australia and Malta. The current agreement provides benefits for approximately 2,500 former Maltese residents, living in Australia and over 3,000 former Australian residents living in Malta.<sup>11</sup>
- 7.9 Clarification was sought about the differences between similar bilateral agreements which form part of the Australian Government's network of social security arrangements. In particular, clarification was sought about the current bilateral social security arrangements with New Zealand.
- 7.10 A representative from the Department of Family and Community Services confirmed that Australia's bilateral social security agreement with New Zealand is very different to any other such agreement.<sup>12</sup> The reason for the difference is that Australia and New Zealand both have non-contributory social security systems (excepting the superannuation guarantee system). The agreement in place limits the entitlement so that a recipient receives equivalent to one pension. The reason for this is to not disadvantage those who have lived only in Australia and are receiving entitlements.<sup>13</sup>

---

9 NIA, para. 12.

10 NIA, para. 8.

11 Mr Peter Hutchinson, *Transcript of Evidence*, 14 March 2005, pp. 15 and 16.

12 Mr Peter Hutchinson, *Transcript of Evidence*, 14 March 2005, p. 18.

13 Mr Peter Hutchinson, *Transcript of Evidence*, 14 March 2005, p. 18.

## Implementation, costs and savings

- 7.11 The *Social Security (International Agreements) Act 1999 (Cth)* (the Act) will be amended to include the schedule containing the text of the Agreement. The Agreement will be implemented, pursuant to sections 8 and 25 of the Act.<sup>14</sup>
- 7.12 The Agreement will provide administrative savings of \$0.68 million and will cost \$0.47 million to implement. Implementation costs are associated with administrative changes, additional staff training and system improvements.<sup>15</sup>
- 7.13 The Committee was informed that savings would result from fewer claims for severely disabled pensions once the Agreement entered into force.<sup>16</sup>

## Consultation

- 7.14 The Committee understands that consultation about the Agreement was conducted Australia-wide with Maltese community groups, relevant community welfare organisations and State and Territory Governments.<sup>17</sup> The Committee also understands that no issues about the Agreement were identified through the consultation process.<sup>18</sup>

## Entry into force

- 7.15 Pursuant to Article 19, the Agreement will enter into force on the first day of the month after the exchange of notes by the relevant Parties. The date scheduled for entry into force of the Agreement is 1 July 2005.<sup>19</sup>

---

14 NIA, para. 33.

15 NIA, para. 35.

16 Mr Peter Hutchinson, *Transcript of Evidence*, 14 March 2005, pp. 18 & 19.

17 NIA, Attachment on Consultation, paras. 1-3.

18 Mr Peter Hutchinson, *Transcript of Evidence*, 14 March 2005, p. 16.

19 NIA, para. 3.

## Conclusion and recommendation

- 7.16 The Committee acknowledges and supports that the Agreement will bring the bilateral social security agreement with Malta into line with Australian Government policy on disability support pensions. The Committee also supports the savings that will flow from the Agreement.
- 7.17 The Committee found that the proposed Agreement will continue to provide economic and political benefits for Australia by strengthening bilateral relations with Malta and providing choice of retirement destination for Australians and Maltese.

### Recommendation 5

**The Committee supports the proposed *Agreement on social security between the Government of Australia and the Government of Malta* (Valletta, 16 June 2004) and recommends that binding treaty action be taken.**





# Beijing Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer

## Introduction

- 8.1 The *Beijing Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer*, (the Beijing Amendment) done at Beijing in November 1999, amends the *Montreal Protocol on Substances that Deplete the Ozone Layer* (the Montreal Protocol).

## Background

- 8.2 The Montreal Protocol recognises the environmental and human health problems caused as a result of damage to the ozone layer. It aims to diminish this damage by committing Parties to a reduction of their consumption of substances that harm the ozone layer.<sup>1</sup>
- 8.3 The Department of the Environment and Heritage informed the Committee that:

Since it became a party in 1989, Australia has been a leading participant in the advancement of measures to phase out ozone depleting substances under the Montreal Protocol on

---

1 National Interest Analysis (NIA), para. 5.

Substances that Deplete the Ozone Layer. Australia has accepted each of the previous amendments to the protocol.<sup>2</sup>

8.4 The Beijing Amendment is the fourth amendment to the Montreal Protocol.

## Features of the agreement

8.5 The Beijing Amendment:

- sets out a series of control measures for a newly identified ozone depleting substance – bromochloromethane (BCM)
- provides an internationally binding cap on the manufacture of hydrochlorofluorocarbons (HCFCs)
- restricts trade in HCFCs with non-Parties
- requires mandatory annual reporting to the Protocol Secretariat on volumes of methyl bromide used for quarantine and pre-shipment purposes.<sup>3</sup>

8.6 Article 1 of the Beijing Amendment amends the Montreal Protocol to restrict trade in HCFCs with countries that have not ratified, accepted or acceded to the Beijing Amendment. Once these provisions come into effect, they will prohibit any country that has already ratified the Beijing Amendment from trading HCFCs with Australia, until such time as Australia accepts the Beijing Amendment.<sup>4</sup> The majority of Australia's HCFC trading partners have either ratified the Beijing Amendment or indicated that they intend to do so in the near future.<sup>5</sup>

8.7 Australia does not manufacture HCFCs and is fully dependent on imports to meet domestic demand.<sup>6</sup> However, Australia currently supplies HCFCs to countries in the region, including New Zealand and Pacific Island Countries, through the re-export of bulk product by Australian companies.<sup>7</sup> HCFCs are most commonly used as refrigerants, foam blowing agents and in fire protection systems.<sup>8</sup>

---

2 Mr Peter Burnett, *Transcript of Evidence*, 14 March 2005, p. 20.

3 NIA, para. 6.

4 NIA, para. 12.

5 NIA, para. 14.

6 NIA, para. 13.

7 Regulation Impact Statement (RIS), para. 3.2.2.

8 NIA, para. 14.

8.8 If Australia were to stop supplying these countries with HCFCs, the Department of the Environment and Heritage hypothesised that:

... one concern that we would have is that, as developing countries, they might be forced back into using the now banned CFCs which are much more harmful to the ozone layer.<sup>9</sup>

8.9 The Montreal Protocol sets out a time frame for the phase out of these substances by 2030 and it is hoped that an economically and environmentally acceptable alternative to HCFCs will be developed during this period.<sup>10</sup>

8.10 The Department of the Environment and Heritage advised the Committee of the difficulties involved in finding these alternatives when the alternatives themselves have other detrimental consequences:

Now a lot of equipment is moving across to HFCs, which no longer harm the ozone layer, but these substances are harmful greenhouse gases. Nevertheless, they are less harmful to the environment overall than the ones that are being phased out. Beyond that there are ongoing research efforts to replace these gases with ones that would have no detriment to the environment at all, but it is hard to say exactly when those gases will become available. Unfortunately, some of them have other impacts. Refrigerants such as ammonia or hydrocarbons may not harm the environment but they are either flammable or toxic, or both, so they give rise to occupational health and safety and other issues.<sup>11</sup>

8.11 The Committee heard evidence that acceptance of the Beijing Amendment is in Australia's national interest. In addition to providing Australian manufacturers with access to HCFCs during the phase out period, acceptance of the Beijing Amendment will result in a reduction of the depletion of the ozone layer. It will enable Australia to more effectively influence international efforts to address ozone depletion and demonstrates Australia's commitment to supporting

---

9 Mr Peter Burnett, *Transcript of Evidence*, 14 March 2005, p. 23.

10 RIS, para. 3.2.1.

11 Mr Peter Burnett, *Transcript of Evidence*, 14 March 2005, p. 23.

effective and balanced approaches to global cooperation on the environment.<sup>12</sup>

## Consultation

8.12 During the course of negotiations for the Beijing Amendment, the Commonwealth consulted with government, industry and interest groups.<sup>13</sup> There were no significant objections to Australia's acceptance of the Beijing Amendment. Specifically, the main distributors of BCM and the Australian Pharmaceutical Manufacturers Association indicated that they would not be significantly disadvantaged by the Beijing Amendment.<sup>14</sup> The Australian Fluorocarbon Council supported acceptance of the Beijing Amendment given that non-acceptance would result in a loss of access to HCFCs during the phase out program.<sup>15</sup>

## Implementation and costs

8.13 Implementation of all of Australia's obligations under the Beijing Amendment has already occurred with legislative changes to the *Ozone Protection and Synthetic Gas Management Act 1989* (Cth) in December 2003.<sup>16</sup> The Department of the Environment and Heritage has liaised with the Australian Customs Services to make the necessary amendments to the *Customs (Prohibited Imports) Regulations 1956* (Cth) and the *Customs (Prohibited Exports) Regulations 1958* (Cth).<sup>17</sup>

8.14 As a consequence of accepting the Beijing Amendment, Australia's existing financial commitments supporting the Secretariat to the *Vienna Convention for the Protection of the Ozone Layer* and the *Montreal Protocol* will not increase.<sup>18</sup>

---

12 Mr Peter Burnett, *Transcript of Evidence*, 14 March 2005, p. 21 and NIA, para. 9.

13 NIA, Attachment 'Consultations', para. 1.

14 NIA, Attachment 'Consultations', paras. 4 and 6. The major distributors of BCM are identified as Merck Pty Ltd, Sigma Aldrich and Selby Biolab.

15 NIA, Attachment 'Consultations', para. 9.

16 NIA, para. 25.

17 NIA, para. 26.

18 NIA, para. 28.

- 8.15 There might be additional costs as a result of future licences for the import and export of BCM. However it is expected that these will be recovered through licence application fees.<sup>19</sup>

## Entry into force

- 8.16 If Australia accepts the proposed treaty action, the Beijing Amendment will enter into force for Australia ninety days after the deposit of its instrument of acceptance. Australia needs to accept the Beijing Amendment by the 17<sup>th</sup> meeting of the Parties in November 2005 to ensure continued trade in HCFCs.

## Conclusion and recommendation

- 8.17 The Committee recognises that cooperation between States is required to exercise effective and lasting control over ozone damaging products.

### Recommendation 6

**The Committee supports the *Beijing Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer* (Beijing, November 1999) and recommends that binding treaty action be taken.**

---

<sup>19</sup> NIA, para. 29.



## Amendments to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

- 9.1 The proposed treaty action concerns *Amendments, Agreed at Bangkok, in October 2004, to Appendices I and II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora of 3 March 1973 (the Amendments)*. Australia has been a Party to the *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)* since 1976. As at March 2005 there were 167 Parties to CITES.<sup>1</sup>

### Background

- 9.2 CITES is a multilateral environmental treaty which regulates international trade in specimens of wild fauna and flora.<sup>2</sup> CITES arose from recognition that international cooperation is essential to protect and conserve endangered and threatened species of plants and animals from over-exploitation through international trade.<sup>3</sup>
- 9.3 CITES provides for different degrees of regulation of trade, resulting in different levels of protection for each species. The level of protection is determined by the Appendix listing of the species. Trade is defined as export, re-export, import and introduction from the sea.

---

1 National Interest Analysis (NIA), Background information: Current status list.

2 NIA, para. 1.

3 NIA, para. 6 and Mr Neil Ellis, *Transcript of Evidence*, 14 March 2005, p. 12.

- Article II(1) defines Appendix I as including all species threatened with extinction which are or may be affected by trade. These are species for which international commercial trade is generally prohibited. This is the highest level of protection a species is afforded under CITES.
- Article II(2) defines Appendix II as including all species which, although not threatened with extinction at this time, may become so unless trade in specimens of such species is subject to strict regulation. These are species for which international commercial trade is permitted, but is closely monitored.

9.4 To trade specimens of species listed on either Appendix I or Appendix II requires an export permit. An export permit will only be granted if it is advised that the export of the specimen will not be detrimental to the survival of the species, the specimen was not illegally obtained, and that, if living, the specimen will be adequately protected during export.<sup>4</sup>

9.5 In addition to the export permit, to trade specimens of species listed on Appendix I an import permit is required. An import permit will only be granted if it is advised that the import of the specimen will not be detrimental to the survival of the species, that, if living, the proposed recipient is suitably equipped to house and care for the specimen, and that the specimen is not to be used for primarily commercial purposes.<sup>5</sup>

## Features of the Amendments

9.6 As identified in the National Interest Analysis (NIA), the key features of the Amendments are:

- the transfer of one dolphin species, one cockatoo species, one parrot species, one tortoise species, and one palm species from the list of monitored species (Appendix II) to the list of prohibited species (Appendix I). The protection afforded to these species has

---

4 See Article IV(2) in relation to Appendix 2, and Article III(2) in relation to Appendix I. Note that for Appendix I, there is an additional requirement: that an import permit has been granted for the specimen (Article III(2)(d)).

5 See Article III(3).



been increased because they are continuing to decline and/or face increased potential for trade<sup>6</sup>

- the transfer of one rhinoceros species, one eagle species, two species of crocodile, and two species of orchid from the list of prohibited species to the list of monitored species
- the addition of five species of turtle, one gecko species, one shark species, one whale species, one mussel species, one species and four sub-species of herbs, and three species of trees to the list of monitored species. The three marine species have been listed on Appendix II due to population declines related in part to trade<sup>7</sup>
- the deletion of one lovebird from the list of monitored species. This species has improved its population status and is not threatened to the degree it was when it was listed<sup>8</sup>
- changes to the 'interpretative annotations' specifying the populations and/or parts or products derived from those species which are subject to the trade controls of CITES. The amendments made to annotations relating to listed African elephants, specific butterfly species, and plant species more accurately define the products of those species that are subject to trade controls, and define trade controls specific to the species.

9.7 The Amendments to Appendices I and II will not add to Australia's substantive obligations as a party to CITES. Australia is still obligated to prohibit and monitor trade in listed species in accordance with the provisions of CITES. The Amendments simply change the species listed as protected in the Appendices.

## Great White Shark

9.8 The Great White Shark has been nominated for inclusion on Appendix II of CITES, including an annotation that states that a zero annual export quota is established for this species. Australia has an

---

6 NIA, para. 8.

7 NIA, para. 9.

8 Ms Carey Robinson, *Transcript of Evidence*, 14 March 2005, p. 14.

interest in protection of the Great White Shark, having unilaterally listed it on Appendix III in 2001.<sup>9</sup>

- 9.9 Population declines in the Great White Shark were occurring from continued unregulated trade in jaws, teeth and fins,<sup>10</sup> as well as bycatch in commercial net and set line fishing and recreational fishing.<sup>11</sup> Australia subsequently nominated the Great White Shark for inclusion on Appendix II at the 13<sup>th</sup> Conference of the Parties in 2004.<sup>12</sup> As explained by Mr Neil Ellis from the Department of the Environment and Heritage (DEH):

The great white shark has been protected in Australian waters for some time under national as well as state legislation. Because the species is a migratory species ... the national regulatory system ... was not giving it the protection that it deserved and international cooperation was sought to extend the range of protection and to at least monitor the trade that may be occurring on a global scale.<sup>13</sup>

## Implementation

- 9.10 The Listing of CITES Species established under s 303CA of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ('the EPBC Act') currently gives effect to Australia's obligations arising out of the CITES Appendices. Section 303CA(3) provides that the list must include all species, and only those species, included in any of Appendices I, II and III to CITES.<sup>14</sup> The list will be amended to reflect the Amendments to the Appendices.
- 9.11 The new listings will have limited impact for Australia given that significant trade does not occur in Australia in these species and that

---

9 Any CITES Party may list a species on Appendix III if the Party identifies that species as being subject to regulation within its jurisdiction for conservation purposes, and as needing the cooperation of other Parties in the control of trade (Article II(3)).

10 NIA, para. 9 and Western Australian Government (Department of the Premier and Cabinet), *Submission*, p. 1.

11 Western Australian Government (Department of the Premier and Cabinet), *Submission*, p. 1.

12 NIA, para. 9. Australia's nomination was made jointly with Madagascar.

13 Mr Neil Ellis, *Transcript of Evidence*, 14 March 2005, p. 13.

14 NIA, para. 20.

Australian laws governing the species affected by the Amendments are already equivalent to CITES obligations.<sup>15</sup>

- 9.12 The only species of wildlife mentioned in the Amendments that are found within Australian territory are the Great White Shark, the Hump-head Maori Wrasse, and the Irrawaddy Dolphin.<sup>16</sup> In particular, Australia already regulates the Great White Shark under the EPBC Act, and consequently the CITES listing will not impose additional import or export requirements.<sup>17</sup>

## Costs

- 9.13 The treaty action is not expected to impose any additional costs to Australia in complying with its obligations under CITES, nor will there be any significant effect on Australia's trade interests. This is due to only limited trade occurring in these species within Australia.

- 9.14 There will be minor impacts for industry as a result of the listing of the Hump-head Maori Wrasse on Appendix II. A single operator in Queensland is licensed to export a very small amount of the Wrasse for the aquarium trade. This operator has been consulted and will now require a CITES export permit.<sup>18</sup> Mr Ellis explained the situation:

We have had various discussions with that operator and the operator is quite comfortable with the CITES listing. The Queensland government department that is responsible for the management of fisheries ... is supportive of the listing. The operator is yet to put in an application for a permit at this stage.<sup>19</sup>

- 9.15 According to the NIA, there will be some positive impacts for industry as a result of the Amendments to annotations for the species *Euphorbia* spp. and Orchids in Appendix II.<sup>20</sup> Australia engages in trade of these species as artificially propagated household plants and

---

15 NIA, para. 5.

16 Mr Neil Ellis, *Transcript of Evidence*, 14 March 2005, p. 13.

17 NIA, para. 10.

18 NIA, para. 21.

19 Mr Neil Ellis, *Transcript of Evidence*, 14 March 2005, p. 14.

20 NIA, para. 22.

the Amendments will reduce the current regulation required for artificially propagated specimens for these species.<sup>21</sup>

## Consultation

9.16 The Amendments to CITES were subject to an extensive consultation process, coordinated by DEH.<sup>22</sup> This included:

- the establishment of a consultation page on the DEH website, which linked to a full list of the CITES proposals and invited comments to assist in the development of Australia's position for the 13<sup>th</sup> Conference of the Parties
- an Inter-Departmental Committee meeting held at the end of June 2004, which provided Commonwealth agencies with the opportunity to provide input for the development of Australia's position for the Conference
- a Non-Government Organisations (NGO) Round Table discussion held in early September 2004 between DEH and key NGO representatives
- an in-depth consultation process with countries within the Great White Shark's home range.<sup>23</sup>

9.17 Consultation undertaken with Australian industries regarding the proposed Amendments to the Appendices did not identify any significant impacts or concerns.

## Entry into force

9.18 The Amendments were adopted at the 13<sup>th</sup> meeting of the Conference of the Parties to CITES, which concluded on 14 October 2004. In accordance with Article XV(1)(c), amendments to CITES automatically enter into force ninety days after the meeting of the Conference of the Parties at which they were adopted, so long as a reservation is not lodged under Article XV, paragraph 3.<sup>24</sup>

---

21 NIA, paras. 21-22.

22 NIA, Annex 2, pp. 1-2.

23 NIA, Annex 2, p. 1.

24 NIA, paras. 1-2.

9.19 Australia did not lodge a reservation because the Amendments are consistent with Australia's commitment to international cooperation for the protection and conservation of species threatened by trade.<sup>25</sup> Hence, the Amendments will have automatically entered into force for Australia on 12 January 2005.<sup>26</sup>

9.20 Mr Ellis clarified why the treaty entered into force prior to it being tabled in Parliament:

Due to the automatic entry into force, the Minister wrote to the committee in the middle of last year to outline the fact that the Conference of the Parties was coming up in October and that various amendments to the appendices were being proposed. The full list of those proposed amendments was provided. Because of the way the convention is set up, the ninety day entry into force meant that the normal timetabling for this committee could not be achieved.<sup>27</sup>

## Future treaty action

9.21 Appendices I and II form an integral part of CITES and are amended from time to time. The purpose of this is to reflect the changing conservation status of a species and to address the impacts of international trade on the conservation of species.

9.22 Amendments are made according to Article XV of CITES, by two-thirds majority of the Conference of the Parties or through a postal procedure between meetings. Under Article XVII, CITES may also be amended at an extraordinary meeting of the Conference of the Parties, convened at the written request of at least one-third of the Parties.

9.23 At any time, Australia may make a denunciation of CITES in accordance with Article XXIV via written notification to the Depository Government (the Government of Switzerland). This would take effect twelve months after notification was received.

---

25 NIA, para. 12.

26 NIA, paras. 3 & 4.

27 Mr Neil Ellis, *Transcript of Evidence*, 14 March 2005, p. 13.

- 9.24 Any future amendments to the Appendices or denunciation of CITES would constitute a separate treaty action and would be subject to the normal Australian treaty process.

## **Conclusion and recommendation**

- 9.25 The Committee agrees with the views expressed by the Department of the Environment and Heritage that the Amendments are consistent with Australia's commitment to international cooperation for the protection and conservation of wildlife that may be adversely affected by trade.

---

### **Recommendation 7**

***The Committee supports the Amendments, agreed at Bangkok, in October 2004, to Appendices I and II of the Convention of International Trade in Endangered Species of Wild Fauna and Flora of 3 March 1973.***

Dr Andrew Southcott MP

Committee Chair



## Appendix A - Submissions

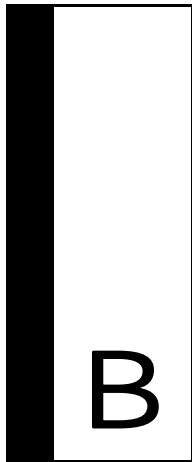
### Treaties tabled on 7 December 2004

- 1 Department of the Premier and Cabinet, Western Australia
- 2 Australian Patriot Movement
- 2.1 Australian Patriot Movement (supplementary)
- 2.2 Australian Patriot Movement (supplementary)
- 2.3 Australian Patriot Movement (supplementary)
- 2.4 Australian Patriot Movement (supplementary)
- 2.5 Australian Patriot Movement (supplementary)
- 2.6 Australian Patriot Movement (supplementary)
- 2.7 Australian Patriot Movement (supplementary)
- 3 Queensland Government
- 4 University of Melbourne
- 5 Department of Foreign Affairs and Trade
- 5.1 Department of Foreign Affairs and Trade (supplementary)
- 6 Minister for the Environment and Heritage
- 7 Attorney-General's Department

### Treaties tabled on 8 February 2005

- 1 Australian Patriot Movement
- 1.1 Australian Patriot Movement (supplementary)
- 1.2 Australian Patriot Movement (supplementary)
- 2 Department of the Premier and Cabinet, WA
- 3 Department of the Environment and Heritage
- 4 Department of Family and Community Services
- 5 South Australian Government
- 6 ACT Government
- 7 Queensland Government





## Appendix B - Witnesses

**Monday, 7 March 2005 - Canberra**

### Attorney-General's Department

Mr William McFadyen Campbell, General Counsel, International Law

Mr Greg Manning, Principal Legal Officer, Public International Law  
Branch, Office of International Law

Miss Houda Younan, Senior Legal Officer

### Australian Agency for International Development

Mr Paul Lehmann, Director, Good Government Section, Papua New  
Guinea Branch

### Australian Federal Police

Mr John Lawler, Deputy Commissioner

### Department of Foreign Affairs and Trade

Mr Michael Bliss, Director, International Law and Transnational Crime  
Section, Legal Branch

Mr Franz Ingruber, Director, Thailand Vietnam and Laos Section,  
Mainland South-East Asia and South Asia Branch

Ms Kathy Klugman, Assistant Secretary, Mainland South-East Asia and  
South Asia Branch

Mr Andrew Rose, Executive Officer, International Law and Transnational  
Crime Section, Legal Branch, International Organisations and Legal  
Division

Mr Gerald Thomson, Director, PNG Political Section

Mr Peter Threlfall, Executive Officer, Northern, Central and Eastern Europe Section

Mr Michael Jonathan Thwaites, Executive Director, Treaties Secretariat

Mr John Woods, Director, Northern, Central and Eastern Europe Section

#### Department of the Environment and Heritage

Dr Anthony Press, Director, Australian Antarctic Division

Mr Jonathon Harold Sutherland Barrington, Senior Policy Adviser, Australian Antarctic Division

### Monday, 14 March 2005 - Canberra

#### Attorney-General's Department

Mr William McFadyen Campbell, General Counsel, International Law

Mr Greg Manning, Principal Legal Officer, Public International Law Branch, Office of International Law

#### Department of Environment and Heritage

Mr Peter Burnett, Assistant Secretary, Environment Standards Branch

Mr Julien Colomer, Senior Policy Officer, Migratory and Marine Species Section, Marine Division

Mr Neil Ellis, Acting Assistant Secretary, Wildlife Trade and Sustainable Fisheries Branch, Approvals and Wildlife Division

Mr Patrick McInerney, Director, Ozone and Synthetic Gas Team

Ms Carey Ellen Robinson, Assistant Director, Sustainable Wildlife Industries

Mr Anthony Smart, Assistant Director, International Wildlife Trade

#### Department of Family and Community Services

Mr Peter Anthony Hutchinson, Acting Branch Manager, International Branch

Mrs Peta Anne Murray, Acting Director, Agreements Section, International Branch

**Department of Foreign Affairs and Trade**

Ms Annabel Anderson, Assistant Secretary, Northern, Southern and Eastern Europe Branch

Miss Lucy Blanda, Executive Officer, Northern, Southern and Eastern Europe Branch

Mr Michael Jonathan Thwaites, Executive Director, Treaties Secretariat

**Department of the Environment and Heritage**

Dr Lesley Dowling, Assistant Director, Ozone and Synthetic Gas Team

