
The Parliament of the Commonwealth of Australia

Report 51

Treaties tabled on 12 November and 3 December 2002

Joint Standing Committee on Treaties

March 2003
Canberra

© Commonwealth of Australia 2003

ISBN 0 642 78429 9



Contents

Membership of the Committee.....	v
Resolution of Appointment.....	vii
List of recommendations.....	viii
1 Introduction	1
Purpose of the report	1
Briefing documents.....	2
Conduct of the Committee's review	2
2 Amendments to the Convention on Migratory Species of Wild Animals	5
Background.....	5
Entry into force.....	7
Proposed treaty actions	7
Evidence presented and issues arising.....	8
Implementation and enforcement	8
Automatic entry into force.....	9
Consultation	10
Conclusions and recommendation.....	10
3 Amendment to the Schedule to the International Convention for the Regulation of Whaling.....	13
Background.....	13
Evidence presented and issues arising.....	14

4 Convention on the Safety of Spent Fuel and Radioactive Waste Management	17
Background	17
Proposed treaty actions	18
Evidence presented and issues arising	19
Nuclear terrorism	19
Implementation of international best practice.....	19
Conclusions and recommendation.....	21
Appendix A – Submissions	23
Appendix B – Witnesses	25
Appendix C – Exhibits.....	27



Membership of the Committee

Chair Ms Julie Bishop MP

Deputy Chair Mr Kim Wilkie MP

Members The Hon Dick Adams MP

Mr Kerry Bartlett MP

Mr Steven Ciobo MP

Mr Martyn Evans MP

Mr Greg Hunt MP

Mr Peter King MP

The Hon Bruce Scott MP

Senator Guy Barnett (until 18/11/02)

Senator Andrew Bartlett (until 18/11/02
from 13/12/02)

Senator Linda Kirk

Senator Gavin Marshall

Senator Brett Mason

Senator Santo Santoro (from 18/11/02)

Senator Ursula Stephens

Senator Natasha Stott-Despoja (from
18/11/02 until 06/12/02)

Senator Tsebin Tchen

Committee Secretariat

Secretary	Gillian Gould
Inquiry Secretary	Julia Morris
Research Officers	Glenn Worthington Paul Shepherd
Administrative Officers	Frances Wilson Kristine Sidley



Resolution of Appointment

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

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

Amendments to the Convention on Migratory Species of Wild Animals

Recommendation 1

The Committee supports the *Amendments, done at Bonn, Germany on 24 September 2002, to Appendices I and II of the Convention on the Conservation of Migratory Species of Wild Animals, done at Bonn on 23 June 1979* (Paragraph 2.37).

Amendment to the Schedule to the International Convention for the Regulation of Whaling

Recommendation 2

The Committee supports the *Amendment, done at Cambridge, United Kingdom on 14 October 2002, to the Schedule to the International Convention for the Regulation of Whaling, done at Washington on 2 December 1946* (Paragraph 3.10).

Convention on the Safety of Spent Fuel Management and Radioactive Waste Management

Recommendation 3

The Committee supports the *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, done at Vienna on 5 September 1997* and recommends that binding treaty action be taken (Paragraph 4.25).

Introduction

Purpose of the report

1.1 This report contains advice to Parliament on the review by the Joint Standing Committee on Treaties of a series of proposed treaty actions tabled on 12 November 2002¹ specifically:

- *Amendments, done at Bonn, Germany on 24 September 2002, to Appendices I and II of the Convention on the Conservation of Migratory Species of Wild Animals, done at Bonn on 23 June 1979;*

and on 3 December 2002²:

- *Amendment, done at Cambridge, United Kingdom on 14 October 2002, to the Schedule to the International Convention for the Regulation of Whaling, done at Washington on 2 December 1946; and*
- *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, done at Vienna on 5 September 1997.*

1 See *Senate Journal*, 12 November 2002, p. 1015 and *House of Representatives Votes and Proceedings*, 12 November 2002, p. 541.

2 See *Senate Journal*, 3 December 2002, p. 1175 and *House of Representatives Votes and Proceedings*, 3 December 2002, p. 598.

- 1.2 One further proposed treaty action was tabled on 3 December 2002:
- *International Treaty on Plant Genetic Resources for Food and Agriculture (Rome 3 November 2001).*
- 1.3 The Committee deferred tabling its review of this treaty action pending further consideration.

Briefing documents

- 1.4 The advice in this report refers to National Interest Analyses (NIAs) prepared for these proposed treaty actions. Copies of NIAs are available from the Committee's website at <http://www.aph.gov.au/house/committee/jsct/index.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.
- 1.5 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 (DFAT). The Australian Treaties Library is accessible through the Committee's website or directly at: <http://www.austlii.edu.au/au/other/dfat>.

Conduct of the Committee's review

- 1.6 The Committee's review of the treaty actions canvassed in this report was advertised in the national press and on the Committee's website.³ In addition, 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.
- 1.7 The Committee also took evidence at a public hearing held on 9 December 2002. A list of witnesses who gave evidence at the public hearing is at Appendix B. A transcript of evidence from the public hearing can be obtained from the Committee Secretariat or accessed

3 The Committee's review of the proposed treaty actions was advertised in *The Australian* on 13 November 2002 and 18 December 2002. Members of the public were advised on how to obtain relevant information and invited to submit their views to the Committee.

through the Committee's internet site at
www.aph.gov.au/house/committee/jsct/index.htm.

Amendments to the Convention on Migratory Species of Wild Animals

Background¹

- 2.1 The *Convention on the Conservation of Migratory Species of Wild Animals, done at Bonn on 23 June 1979* (the CMS) entered into force for Australia on 1 September 1991. The CMS obligates contracting parties to take measures for the conservation of migratory species of wild animals listed in Appendices I and II of the Convention and for which they are a range state.
- 2.2 Article 1(1)(h) of the CMS defines a range state as:
- any state ... that exercises jurisdiction over any part of the range of that migratory species, or a state, flag vessels of which are engaged outside national jurisdictional limits in taking that migratory species.
- 2.3 Appendix I of the CMS lists species that are classified as 'endangered'. Article 3(4) provides for the immediate protection of endangered species through conservation and restoration of habitat; minimisation

1 Unless otherwise specified the material in this and the following section was drawn from the National Interest Analysis (NIA) for the *Amendments, done at Bonn, Germany on 24 September 2002, to Appendices I and II of the Convention on the Conservation of Migratory Species of Wild Animals, done at Bonn on 23 June 1979*.

of impediments to migration; and the reduction or control of factors that may further endanger these species.

- 2.4 Appendix II of the CMS lists species that are classified as having an 'unfavourable conservation status'. Article 4(1) obligates contracting parties to endeavour to conclude international agreements where these would benefit the listed species. Typically these agreements encompass habitat conservation, research and information exchange and public education.
- 2.5 *The Amendments, done at Bonn, Germany on 24 September 2002, to Appendices I and II of the Convention on the Conservation of Migratory Species of Wild Animals, done at Bonn on 23 June 1979 (the Amendments)* add 21 species to Appendix I and 20 species to Appendix II.
- 2.6 The proposed treaty action includes the listing, on Australia's proposal, of six species of great whale (the Antarctic Minke, Byrde's, Fin, Sei, Sperm and Pygmy Right whales), the Orca (Killer Whale) and the Great White Shark. These species are the only species among those nominated in the Amendments for which Australia is a range state.
- 2.7 The species listed under Appendix I as endangered are the Fin, Sei and Sperm whales and the Great White Shark. These species together with the others listed at paragraph 2.6 are to be included in Appendix II as species having 'unfavourable conservation status' according to the terms of the treaty.
- 2.8 The species of great whale have been nominated because past whaling practices have greatly reduced their populations. Many species remain the target of 'scientific' whaling. Migrating whales face other threats including shipping strikes, pollution, habitat degradation, unregulated interaction with tourists, seismic and sonar activities and entanglement in fishing gear.
- 2.9 Two populations of the Orca are already listed under Appendix II of the CMS. The proposed addition completes the listings to cover all populations of this species. Orca populations encounter similar environmental threats as those faced by migrating whale species.
- 2.10 The Great White Shark is listed as Vulnerable under the World Conservation Union's Red List of Threatened Species meaning that it is classified as facing a high risk of extinction in the medium term. Threats to migrating Great White Sharks include direct and indirect fishing pressure, protective beach meshing, intensified targeted

commercial and sports fishing, incidental catch of species in commercial and traditional fisheries and habitat degradation.

Entry into force

- 2.11 On 9 August 2002 Environment Australia (EA) wrote to the Committee providing details of the Government's nomination of the eight migratory species to the Appendices of the CMS.
- 2.12 The Amendments were adopted by the 7th Meeting of the Conference of Parties to the CMS held in Bonn from 18 to 24 September 2002.
- 2.13 On 22 October 2002 the Commonwealth Minister for the Environment and Heritage wrote to the Committee advising that, due to the automatic entry into force mechanism governing amendments to the CMS under Article 11(5), entry into force for Australia will occur without the usual treaty tabling requirements having been met.
- 2.14 The Amendments automatically entered into force for Australia on 23 December 2002. They were tabled in the Commonwealth Parliament on 12 November 2002.

Proposed treaty actions

- 2.15 Under the Amendments Australia has special obligations with regard to the eight species for which it is a range state. These obligations will not extend beyond the protection already afforded to those species under the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act).
- 2.16 As a result of the inclusion of the six great whales, the Great White Shark and the Orca in the Appendices to the CMS, Australia will be required to update the list of migratory species pursuant to Division 2 of Part 13 of the EPBC Act. Section 209(3)(a) specifies that the list of migratory species must include all species that are included in the Appendices to the CMS and for which Australia is a range state.
- 2.17 The development of multilateral conservation agreements for the protection of the relevant migratory species listed in Appendix II of the CMS will require some additional resources, however, costs associated with the implementation of such agreements are likely to be negligible.

Evidence presented and issues arising

Implementation and enforcement

2.18 Greenpeace wrote to the Committee in support of Australia's ratification of the Amendments. It acknowledged that the EPBC Act is an adequate instrument with which to implement the Amendments. It pointed out that:

The most crucial aspect of implementation [of the CMS] is that Australia takes a leading role in the region for the development of multilateral conservation agreements.²

2.19 EA informed the Committee that all cetaceans are protected under the EPBC Act and that it is an offence to take an action that would have a significant adverse impact upon threatened species. The penalties for undertaking activities that may interfere with a threatened species without a permit are 500 penalty points for an individual and 5,000 penalty points for a corporation.³

2.20 The Queensland Government requested that the Committee confirm that:

current arrangements for beach meshing would not require changes to be consistent with agreements developed in accordance with the Treaty.⁴

2.21 The Committee sought further information on the impact of the EPBC Act on activities that either unintentionally threaten or are legitimate activities that may pose threats to nominated species such as tourism, entanglement in fishing gear and protective beach meshing.

2.22 EA provided assurances that:

With regard to beach netting for protection of swimmers from sharks, that is a matter for the States, because that meshing occurs within States waters. There is very little the Commonwealth can do directly because it does become a question of the balance between interaction to protect the species with that gear and the human safety questions.⁵

2 Greenpeace, *Submission No. 1*, p. 2.

3 Mark Flanigan, *Transcript of Evidence*, 9 December 2002, p. 3.

4 Queensland Government, *Submission No. 3*, p. 1.

5 Mark Flanigan, *Transcript of Evidence*, 9 December 2002, p. 5.

2.23 In response to concerns raised by the Committee about the threat posed by tourist operators, EA referred to Australia's agreement through the Australian and New Zealand Environment and Conservation Council (ANZECC) that governs whale watching activities. EA acknowledged that:

Like many things that occur on the open ocean, [ANZECC guidelines] are difficult to enforce ... If we feel commercial operators are not abiding by the guidelines, we have the ability to take action against them ... [however] We find that the interest of most of the operators, by and large, is in conserving and protecting the whales ...⁶

2.24 EA informed the Committee that:

the Government is currently going through a process of undertaking environmental assessment of all fisheries management arrangements. One of the factors we look at in those processes is whether or not the fishery is set up in a way that will minimise as far as possible the potential interactions with whales.⁷

Automatic entry into force

2.25 The Committee acknowledges the necessity of the entry into force of some treaty actions before they are subject to parliamentary and public scrutiny, for instance, where public knowledge of the proposed treaty action may compromise the national interest.

2.26 The Amendments entered into force automatically on 23 December 2002 in accord with Article 11(5) of the CMS and before the Committee could report back to the Parliament. The 20 sitting day period required for Category B treaties to be tabled in the Parliament before binding treaty action is taken expired for the Amendments on 20 March 2003.

2.27 The Committee acknowledges that EA had informed it of the proposed amendments to the CMS on 9 August 2002, however, the EA accepted that in addition to information on the nature of the Amendments, that is the species being proposed, more background in relation to the broader function and significance of the CMS and the reasons for the Amendments could have been included in the NIA.

6 Mark Flanigan, *Transcript of Evidence*, 9 December 2002, p. 4.

7 Mark Flanigan, *Transcript of Evidence*, 9 December 2002, p. 5.

- 2.28 The Department of Foreign Affairs and Trade (DFAT) informed the Committee that preliminary consideration has been given to the terms in which DFAT would liaise with Commonwealth Departments proposing treaties on the issue of their automatic entry into force.

Consultation

- 2.29 The Committee required more detailed information in relation to the consultation process. In order to be satisfied that adequate consultation has occurred, the Committee would require a full list of the parties consulted and details of any reservations expressed at the proposed treaty actions.
- 2.30 In the case of the NIA for the Amendments, the Committee observed, while the NIA states that the Amendments have received a 'generally favourable' response from State and Territory governments there was no detail provided nor were there details of the non-government organisations, environmental and industry stakeholders and other interest groups that were consulted.
- 2.31 EA informed the Committee that concerns of a scientific and technical nature had been raised by the governments of the Northern Territory, Western Australia and Victoria over whether Orca populations were migratory and whether they required protection under the terms of the CMS, and that those concerns had been addressed.
- 2.32 However, the Committee notes that the concerns of the Queensland Government that it received in *Submission No. 3* were not referred to by EA at the hearing.⁸
- 2.33 DFAT undertook to amend the guidelines that it sends to line agencies on the drafting of NIAs to reflect the Committee's requirements.

Conclusions and recommendation

- 2.34 The Committee is satisfied that the terms of the EPBC Act meet Australia's obligations under the CMS.
- 2.35 The Committee is aware that the final texts of proposed treaty actions are often concluded late in the day. It looks forward to receiving

8 See paragraph 2.20.

information that more closely equates to NIAs at the earliest possible time when, for instance, ‘the Minister has decided to proceed with the nomination.’⁹ The early provision of this information will enable the Committee seek preliminary briefings, if required, on the impact of proposed treaty actions on the national interest.

- 2.36 The Committee notes the prompt response of DFAT in amending guidelines for the drafting of NIAs to reflect its requirement that line agencies provide the full detail of consultation.

Recommendation 1

- 2.37 **The Committee supports the *Amendments, done at Bonn, Germany on 24 September 2002, to Appendices I and II of the Convention on the Conservation of Migratory Species of Wild Animals, done at Bonn on 23 June 1979.***

9 Mark Flanigan, *Transcript of Evidence*, 9 December 2002, p. 7.

Amendment to the Schedule to the International Convention for the Regulation of Whaling

Background¹

- 3.1 The *International Convention for the Regulation of Whaling, done at Washington on 2 December 1946* (the Convention) is a multilateral treaty that regulates the utilisation of whale stocks. The Schedule is an integral part of the Convention, and is amended from time to time to take account of decisions of the International Whaling Commission (IWC) established under the Convention. Australia has been a contracting party to the Convention since it came into force in 1948.
- 3.2 The *Amendment, done at Cambridge, United Kingdom on 14 October 2002, to the Schedule to the International Convention for the Regulation of Whaling, done at Washington on 2 December 1946* (the Amendment) renews a quota for aboriginal subsistence whaling by the indigenous peoples of Alaska and the Chukotka Peninsula (Siberia) in the Bering-Chukchi-Beaufort Seas.

¹ Unless otherwise specified the material in this section was drawn from the National Interest Analysis (NIA) for the *Amendment, done at Cambridge, United Kingdom on 14 October 2002, to the Schedule to the International Convention for the Regulation of Whaling, done at Washington on 2 December 1946*.

- 3.3 The Amendment creates a five year period that allows the taking of bowhead whales for the purposes of aboriginal subsistence, continuing arrangements that have been in force over the previous five years.
- 3.4 The Committee examined similar changes to the Schedule in *Report 48: Treaties tabled in August and September 2002*.² While three aboriginal subsistence quotas (dealt with in Report 48) were renewed at the 54th annual meeting held at Shimonoseki in May 2002, the IWC did not agree to set a catch limit for bowhead whales taken by indigenous peoples of the United States and Russia. Negotiations among IWC member states resulted in the convening of the special meeting, which produced this Amendment.
- 3.5 The Amendment will not add to Australia's existing obligations under the Convention. It will not require any additional measures for implementation and is not expected to impose any additional costs on Australia.
- 3.6 Australia does not intend to lodge an objection to the Amendment and therefore no binding treaty action is required. The Amendment came into force for Australia on 19 January 2003 as no objections were lodged.

Evidence presented and issues arising

- 3.7 The Committee inquired into the reasons that made necessary the special meeting after the annual meeting. Environment Australia (EA) responded that the Amendment required more time to negotiate to the satisfaction of all parties:

It is fair to say that the 54th meeting at Shimonoseki got fairly acrimonious ... this issue was swept up as a byplay to issues that other parties were trying to achieve ...³

- 3.8 Further evidence was presented regarding the purpose of aboriginal subsistence whaling. The Committee was advised that whaling under

2 Chapter 1, *Report 48: Treaties tabled in August and September 2002*. Available at: <http://www.aph.gov.au/house/committee/jsct/augustandseptember2002/report/chapt1.pdf>

3 Mark Flanigan, *Transcript of Evidence*, 9 December 2002, p. 13.

these conditions is traditional and undertaken in a way that does not result in trade or the establishment of a commercial basis.⁴

- 3.9 The Committee was advised by officials of EA that the access of indigenous peoples of Alaska and the Chukotka peninsula to other forms of protein is extremely limited.⁵ The Committee understands that for these reasons the hunting of whales by indigenous cultures in remote locations, according to the terms of the Convention, is for subsistence purposes.

Recommendation 2

- 3.10 **The Committee supports the *Amendment, done at Cambridge, United Kingdom on 14 October 2002, to the Schedule to the International Convention for the Regulation of Whaling, done at Washington on 2 December 1946.***

4 Mark Flanigan, *Transcript of Evidence*, 9 December 2002, p. 15.

5 Mark Flanigan, *Transcript of Evidence*, 9 December 2002, p. 15.

Convention on the Safety of Spent Fuel and Radioactive Waste Management

Background¹

- 4.1 The *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, done at Vienna on 5 September 1997* (the Joint Convention) provides for an internationally recognised best practice approach for the safe management of spent fuel and radioactive waste. It covers the treatment, transboundary movement, storage and disposal of spent fuel and radioactive waste.
- 4.2 The Joint Convention is incentive based and provides principles for the management of radioactive wastes through exchanges of information between contracting parties rather than providing for specific minimum technical requirements.
- 4.3 Australia signed the Joint Convention on 13 November 1998. The Joint Convention entered into force generally on 18 June 2001. As of 25 October 2002 there were 29 contracting parties and 42 signatories to the Joint Convention.

¹ Unless otherwise specified the material in this and the following section was drawn from the National Interest Analysis (NIA) and Regulation Impact Statement (RIS) for the *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, done at Vienna on 5 September 1997*.

- 4.4 The Joint Convention would enter into force for Australia on the ninetieth day after the date of the deposit of Australia's instrument of ratification with the Director-General of the International Atomic Energy Agency.

Proposed treaty actions

- 4.5 The Joint Convention requires that each contracting party shall establish and maintain a legislative and regulatory framework to govern the safety of spent fuel and radioactive waste management.
- 4.6 Contracting parties are required to provide a national report at periodic review meetings. The national report should address measures taken to implement Joint Convention obligations as well as:
- spent fuel management policy and practice;
 - radioactive waste management policy and practice;
 - criteria used to define and categorise radioactive waste;
 - a list of spent fuel and radioactive waste management facilities;
 - an inventory of spent fuel and radioactive waste; and
 - a list of nuclear facilities in the process of being decommissioned and the status of decommissioning activities at those facilities.
- 4.7 The Commonwealth's obligations under the Joint Convention are covered by the *Australian Radiation Protection and Nuclear Safety Act 1998 (Cwth)* and no further legislative measures are required.
- 4.8 The Joint Convention will require implementation by the States and Territories in areas under their jurisdiction. In 1998 the Prime Minister wrote to all State Premiers and Territory Chief Ministers requesting their support for Australia's signing of the Joint Convention.
- 4.9 On 22 February 1999 the Minister for Industry, Science and Resources wrote to the relevant Health and Environment State and Territory Ministers advising them that Australia had signed the Joint Convention.
- 4.10 The NIA stated that New South Wales was the only state where further legislative steps would need to be taken in order to meet the requirements of the Joint Convention. The Committee was subsequently advised by the Department of Education, Science and

Training that, after further detailed discussion between the NSW Environment Protection Authority and the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), the existing legislative framework for managing radioactive waste in that state is adequate to ensure compliance with the Convention.

4.11 All other States and Territories:

have formally advised the Commonwealth that the legislation in their respective jurisdictions would allow implementation of the Joint Convention.²

Evidence presented and issues arising

Nuclear terrorism

4.12 The Committee noted that the NIA makes mention of the threat of nuclear terrorism in light of the events of 11 September 2001. It sought clarification on how the Joint Convention might allay the threat of nuclear terrorism.

4.13 The Australian Nuclear Science and Technology Organisation (ANSTO) advised the Committee that implementation of measures provided for in the Joint Convention would make it more difficult for terrorists to procure radiological material from responsible agencies.³

4.14 As an exporter of uranium, the Treaty will:

Allow us to view the regulatory frameworks and the practices of those countries to whom Australia sells uranium to satisfy ourselves that it is dealt with in a proper manner.⁴

Implementation of international best practice

4.15 The Committee expressed concern at the possibility that international best practice in the management of nuclear waste was not currently observed in all Australian jurisdictions. It sought to establish in which, if any, Australian jurisdictions management of spent fuel and radioactive waste falls short of international best practice and what, if

2 Stephen Irwin, *Transcript of Evidence*, 9 December 2002, p. 34.

3 Steven McIntosh, *Transcript of Evidence*, 9 December 2002, p. 35.

4 Donald Macnab, *Transcript of Evidence*, 9 December 2002, p. 41.

any, agency was responsible for ensuring adherence to the highest safety management standards.

- 4.16 ANSTO affirmed its knowledge of the location of all its nuclear materials (which constitute more than 90 percent of all nuclear waste in Australia⁵) but could not speak for other agencies.⁶ Mr Steven McIntosh of ANSTO indicated that:

As to the small amount [of radioactive waste] which falls under the jurisdiction of the States and Territories, what we are saying is that this process will enable the Commonwealth to get a better handle on how that is being managed.⁷

- 4.17 ARPANSA confirmed the absence of an enforceable uniform standard across Australian jurisdictions for the safe management of spent fuel and radioactive waste. ARPANSA:

looked after the Commonwealth jurisdiction and the States look after their own jurisdictions.⁸

- 4.18 The Committee inquired how the Commonwealth might achieve a uniform standard that meets international best practice in nuclear waste management across Australian jurisdictions.

- 4.19 ANSTO advised the Committee that the Joint Convention would not be used to impose standards upon the States and Territories. The Joint Convention would support current moves to set in place a process of internal peer review among Australian jurisdictions in addition to the international peer review that occurs through the submission of a national report to review meetings of the contracting parties.⁹

- 4.20 The Committee was advised that the Radiation Health Committee (RHC), which consists of a senior radiation protection regulator from each jurisdiction, the Chief Executive Officer of ARPANSA, a public representative and two others (currently a nominee of the Royal Australian and New Zealand College of Radiologists, and a non-ionizing radiation expert), was responsible for achieving uniformity between the States and Territories and the Commonwealth.¹⁰ The Radiation Health Committee:

5 Regulation Impact Statement, p. 3.

6 Steven McIntosh, *Transcript of Evidence*, 9 December 2002, p. 35.

7 Steven McIntosh, *Transcript of Evidence*, 9 December 2002, p. 37.

8 Donald Macnab, *Transcript of Evidence*, 9 December 2002, p. 36.

9 Donald Macnab, *Transcript of Evidence*, 9 December 2002, p. 37.

10 ARPANSA, *Submission No. 8*, p. 4.

does not hold sway over a jurisdiction; its function is to prepare codes of practice and standards jointly across the jurisdictions that are picked up separately by the jurisdictions on a voluntary basis.¹¹

4.21 Dr John Loy, the Chief Executive Officer of ARPANSA, informed the Committee in correspondence subsequent to the public hearing that the Commonwealth manages radioactive waste and spent fuel through the issue of licences that:

require the licence holder to

- develop, maintain, and implement arrangements for their radioactive waste management in a form acceptable to the CEO of ARPANSA;
- make arrangements for the control and monitoring of all radioactive discharges to the environment; and
- make arrangements for consultation with local government and other relevant statutory authorities on any radioactive waste issues.¹²

4.22 Dr Loy confirmed that Australian States and Territories adopt codes developed by the RHC for the safe management of radioactive waste on a voluntary basis and use these codes as they see fit.¹³ He advised that:

Initiatives towards uniformity of regulatory frameworks across Australia, which are currently progressing, will ensure that codes are adopted within the regulatory framework in each jurisdiction. In 1999 the Australian Health Minister's Conference agreed to the proposal for a *National Directory for Radiation Protection*, which will establish a uniform framework for radiation protection, including provision for the national adoption of codes and standards.¹⁴

Conclusions and recommendation

4.23 The Committee accepts the benefits of the framework provided under the terms of the Joint Convention for the development and

11 Donald Macnab, *Transcript of Evidence*, 9 December 2002, p. 40.

12 ARPANSA, *Submission No. 8*, p. 2.

13 ARPANSA, *Submission No. 8*, p. 5.

14 ARPANSA, *Submission No. 8*, p. 5.

implementation of international best practice in relation to the safe management of spent fuel and radioactive waste.

- 4.24 The Committee acknowledges that ratification of the Joint Convention will support moves to develop a code of uniform national standards for the safe management of radioactive waste across all Australian jurisdictions.

Recommendation 3

- 4.25 **The Committee supports the *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, done at Vienna on 5 September 1997* and recommends that binding treaty action be taken.**

Julie Bishop MP
Committee Chair

March 2003



Appendix A – Submissions

- 1 Greenpeace Australia Pacific
- 2 Australian Patriot Movement
- 2.1 Australian Patriot Movement (Supplementary)
- 2.2 Australian Patriot Movement (Supplementary)
- 2.3 Australian Patriot Movement (Supplementary)
- 3 Queensland Government
- 3.1 Queensland Government (Supplementary)
- 4 Agriculture Fisheries & Forestry - Australia (Dept)
- 4.1 Agriculture Fisheries & Forestry - Australia (Dept)
(Supplementary)
- 5 Tasmanian Government
- 6 ACT Government
- 7 Humane Society International
- 8 Australian Radiation Protection and Nuclear Safety Agency
- 9 Seed Industry Association of Australia
- 10 Grains Council of Australia
- 11 Environment Australia
- 12 Grains Research and Development Corporation



Appendix B – Witnesses

Monday 9 December 2002 – Canberra

Attorney-General's Department

Mr John Atwood, Principal Lawyer, Office of International Law

Australian Nuclear Science and Technology Organisation

Mr Steven McIntosh, Government Liaison Officer, Government and Public Affairs

Australian Radiation Protection and Nuclear Safety Agency

Mr Donald Macnab, Director, Regulatory Branch

Commonwealth Scientific and Industrial Research Organisation

Dr Jeremy Burdon, Assistant Chief, Division of Plant Industry

Department of Agriculture, Fisheries and Forestry

Mr Craig Burns, General Manager, Trade Policy, Market Access and Biosecurity

Ms Kristiane Herrmann, Manager, FAO Plant Genetic Resources Treaty, Trade Policy, Market Access and Biosecurity

Mr Paul Morris, Executive Manager, Market Access and Biosecurity

Department of Education, Science and Training

Mr Stephen Irwin, Branch Manager, Science and Technology Policy Branch

Dr Caroline Perkins, Director, Radioactive Waste Management Section

Department of Foreign Affairs and Trade

Dr Terence Beven, Director, Nuclear Policy and Missiles Section, Arms Control Branch, International Security Division

Mr Alan Fewster, Executive Director, Treaties Secretariat, Legal Branch

Dr Greg French, Director, Sea Law, Environmental Law and Antarctic Section, Legal Branch

Ms Sarah Kenney, Desk Officer, Environmental Strategies Section, Environment Branch, International Organisations and Legal Division

Mr Arthur Spyrou, Executive Officer, Environment Strategies Section

Mr Adrian White, Executive Officer, International Intellectual Property Section, Services and Intellectual Property Branch, Office of Trade Negotiations

Mr Russell Wild, Executive Officer, International Law and Transnational Crime Section, Legal Branch

Environment Australia

Mr Mark Flanigan, Acting Assistant Secretary, Marine Conservation Branch, Marine and Water Division



Appendix C – Exhibits

- 1 'Adoption of the International Treaty on Plant Genetic Resources for Food and Agriculture and Interim Arrangements for its Implementation', Department of Agriculture, Fisheries & Forestry – Australia (related to sub. 4.1)
- 2 'Canada Ratifies International Treaty on Plant Genetic Resources', Department of Agriculture, Fisheries and Forestry – Australia (related to sub. 4.1)
- 3 'Revision of the International Undertaking on Plant Genetic Resources', Department of Agriculture Fisheries & Forestry – Australia (related to sub. 4.1)
- 4 'US Signs the International Treaty on Plant Genetic Resources for Food and Agriculture', Department of Agriculture Fisheries & Forestry – Australia (related to sub. 4.1)