
The Parliament of the Commonwealth of Australia

Report 72

Treaties tabled on 29 November 2005 (2)

Amendments to the Statute of the Hague Conference on Private International Law of 31 October 1951

Universal Postal Union: Seventh Additional Protocol to the Constitution of 10 July 1964, as amended; Convention, and Final Protocol; General Regulations

Annex G: Settlement of Disputes to the Stockholm Convention on Persistent Organic Pollutants

Agreement between the Government of Australia and the Government of the Republic of Turkey on the Reciprocal Promotion and Protection of Investments

February 2006
Canberra

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ISBN 0 642 78758 1 (printed version)

ISBN 0 642 78759 X (HTML version)



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Membership of the Committee

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Resolution of appointment

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

DEH	Department of Environment and Heritage
EC	European Community
ICJ	International Court of Justice
IPPA	International Promotion and Protection of Investments Agreements
NIA	National Interest Analysis
OECD	Organisation for Economic Cooperation and Development
POPs	Persistent Organic Pollutants
REIO	Regional Economic Integration Organisations
RIS	Regulation Impact Statement
SCOT	Standing Committee on Treaties
UPU	Universal Postal Union



List of recommendations

2 Amendments to the Statute of the Hague Conference on Private International Law

Recommendation 1

The Committee supports the *Amendments, adopted on 30 June 2005, to the Statute of the Hague Conference on Private International Law* and recommends that binding treaty action be taken.

3 Universal Postal Union: Seventh Additional Protocol to the Constitution of 10 July 1964, as amended; Convention, and Final Protocol; General Regulations

Recommendation 2

The Committee supports the *Universal Postal Union: Seventh Additional Protocol to the Constitution of 10 July 1964, as amended; Convention, and Final Protocol; General Regulations* and recommends that binding treaty action be taken.

4 Amendments to the Stockholm Convention on Persistent Organic Pollutants

Recommendation 3

The Committee supports the *Amendments, adopted at Punta Del Este on 6 May 2005, to add a new Annex G to the Stockholm Convention on Persistent Organic Pollutants (POPs)* and recommends that binding treaty action be taken.

5 Agreement with the Republic of Turkey for the Promotion and Protection of Investments

Recommendation 4

The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of Turkey for the Promotion and Protection of Investments* (Canberra, 16 June 2005) and recommends that binding treaty action be taken.

Introduction

Purpose of the report

- 1.1 This Report contains advice to Parliament on the review by the Joint Standing Committee on Treaties of four treaty actions tabled in Parliament on 29 November 2005.¹ These treaty actions are:²
- *Amendments to the Statute of the Hague Conference on Private International Law of 31 October 1951 (The Hague, 30 June 2005)*
 - *Universal Postal Union: Seventh Additional Protocol to the Constitution of 10 July 1964, as amended; Convention, and Final Protocol; General Regulations, done at Bucharest on 5 October 2004*
 - *Annex G: Settlement of Disputes to the Stockholm Convention on Persistent Organic Pollutants, done at Stockholm on 22 May 2001 (Punta del Este, Uruguay, 6 May 2005)*
 - *Agreement between the Government of Australia and the Government of the Republic of Turkey on the Reciprocal Promotion and Protection of Investments (Canberra, 16 June 2005)*

1 Australia, House of Representatives 2004-05, *Votes and Proceedings*, No. 72 p. 802; Australia, Senate 2004-05, *Journals*, No. 60, p. 1437.

2 The Agreement between the Government of Australia and the Government of the Hong Kong Special Administrative Region of the People's Republic of China concerning transfer of sentenced persons was also tabled on 29 November 2005 and reviewed in the Committee's Report 70.

Briefing documents

- 1.2 The advice in this Report refers to the National Interest Analyses (NIAs) prepared for the proposed treaty actions. These documents are prepared by the Government agency (or agencies) responsible for the administration of Australia's responsibilities under each treaty. Copies of the NIAs may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct/29november2005/tor.htm

- 1.3 Copies of treaty actions and NIAs may also be obtained from the Australian Treaties Library maintained on the internet by the Department of Foreign Affairs and Trade. The Australian Treaties Library is accessible through the Committee's website or directly at:

www.austlii.edu.au/au/other/dfat/

Conduct of the Committee's review

- 1.4 The review contained in this report was advertised in the national press and on the Committee's website.³ Letters were also sent inviting comment from all State Premiers, Territory Chief Ministers, Presiding Members of Parliament and from 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.

- 1.5 The Committee also received evidence at public hearings held on 5 December 2005. A list of witnesses who appeared before the Committee at this public hearing is at Appendix B. A transcript of evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct/29november2005/hearings.htm

3 The Committee's review of the proposed treaty actions was advertised in *The Australian* on 30 November 2005. Members of the public were advised on how to obtain relevant information and invited to submit their views to the Committee, both in the advertisement and via the Committee's website.

Amendments to the Statute of the Hague Conference on Private International Law

Introduction

- 2.1 The *Amendments to the Statute of the Hague Conference on Private International Law* (the Amendments) provide for a number of procedural amendments. The Amendments allow Regional Economic Integration Organisations (REIOs) to seek membership to the *Statute of the Hague Conference on Private International Law* (the Statute), change the procedure for amending the Statute, and provides for the equal authenticity of the French and English versions of the Statute.

Background

- 2.2 The Hague Conference is designed to work towards the progressive unification of the rules of private international law.¹ The Committee was informed by representatives from the Attorney-General's Department that:

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

By working cooperatively, member states of the Hague Conference seek to reduce uncertainty, costs and delays in international private legal matters.²

- 2.3 The Committee was further informed that the work of the Hague Conference falls into three main areas:
- international legal cooperation and litigation
 - international protection of children, family law and property relations
 - international commercial and finance law.³
- 2.4 Member States of the Hague Conference develop and produce conventions reflecting an agreed approach to an area of private international law. For instance, the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters
- establishes methods for taking of evidence abroad in civil or commercial matters and provides an effective means of overcoming the differences between civil law and common law systems with respect to the taking of evidence.⁴
- 2.5 The Committee was informed that there are currently 36 conventions that have been negotiated through the Hague Conference, with some receiving more acceptance than others.⁵ Conventions relating to family law have received more support from States, whereas conventions relating to civil and commercial matters have received less.⁶
- 2.6 Non-Member States are able to accede to conventions developed by the Conference.⁷
- 2.7 The Statute of the Hague Conference is essentially its constitution.⁸ The Amendments represent the first changes made to the Statute since it entered into force in 1945.

2 Angela Davies, *Transcript of Evidence*, 5 December 2005, p. 11.

3 Angela Davies, *Transcript of Evidence*, 5 December 2005, p. 11.

4 Hague Conference on Private International Law website, accessed 18 January 2006: <www.hcch.net>

5 Angela Davies, *Transcript of Evidence*, 5 December 2005, p. 14.

6 Angela Davies, *Transcript of Evidence*, 5 December 2005, p. 14.

7 Angela Davies, *Transcript of Evidence*, 5 December 2005, p. 11.

8 Angela Davies, *Transcript of Evidence*, 5 December 2005, p. 12.

The Amendments

- 2.8 The Committee was informed that the Amendments consist of two groups of changes.⁹ The first relate to the REIOs and the second relate to the procedure for future amendments to the Statute.
- 2.9 Article 2 of the Statute is amended to allow certain REIOs which are constituted solely by sovereign states to seek membership of the Hague Conference. The admission of REIOs will not lead to additional voting or procedural rights.¹⁰
- 2.10 In order to be eligible for membership, the Member States of the REIO must have transferred to the REIO competence over a range of matters within the purview of the Hague Conference.¹¹
- 2.11 At present, the European Community (EC) is the only REIO seeking membership.¹² In 2002, the EC first sought membership after EC Member States transferred competence in relation to a number of Hague Conference issues to the EC.¹³ The National Interest Analysis (NIA) notes that this Amendment is in Australia's interest, as previously non-EC States have had difficulty determining which circumstances require negotiation with EC Member States and which require negotiation with the EC.¹⁴
- 2.12 The Committee was informed that the second group of amendments improves procedures for amending the Statute in the future.¹⁵ Article 12 requires future amendments to the Statute to be adopted by consensus. The amendments would enter into force three months after approval by two-thirds of the Members but not before nine months from the date of adoption of those changes.¹⁶
- 2.13 Article 15 of the Statute is amended to provide for the equal authenticity of the French and English versions of the Statute.

9 Angela Davies, *Transcript of Evidence*, 5 December 2005, p. 12.

10 NIA, para. 8.

11 National Interest Analysis (NIA), para. 4.

12 NIA, para. 10; Angela Davies, *Transcript of Evidence*, 5 December 2005, p. 12.

13 NIA, para. 10.

14 NIA, para. 11.

15 Angela Davies, *Transcript of Evidence*, 5 December 2005, p. 13.

16 Article 12 of the Statute; NIA, para. 14; Angela Davies, *Transcript of Evidence*, 5 December 2005, p. 13.

Implementation

- 2.14 Implementation of the Amendments requires no change to domestic law or policy.¹⁷

Costs

- 2.15 Australia's contribution to the 2005-2006 Budget of the Conference was A\$154 625. The Amendments are not expected to result in any additional costs for Australia.¹⁸

Conclusion and recommendation

- 2.16 The Committee recognises that the Amendments are essentially procedural in nature and do not result in any changes to Australia's obligations under the Hague Conference.
- 2.17 The Committee supports the Amendments as steps towards greater certainty and the simplification of private international law negotiations.

Recommendation 1

The Committee supports the Amendments, adopted on 30 June 2005, to the Statute of the Hague Conference on Private International Law and recommends that binding treaty action be taken.

17 NIA, para. 16.

18 NIA, para. 17.

Universal Postal Union: Seventh Additional Protocol to the Constitution of 10 July 1964, as amended; Convention, and Final Protocol; General Regulations

Introduction

- 3.1 The Universal Postal Union (UPU) provides the basis for the exchange of international mail and helps to develop and maintain international postal services.¹ The proposed amendments to the Universal Postal Convention (the Convention), the Final Protocol and the General Regulations of the UPU (referred to collectively as ‘the Amendments to the Acts of the UPU’) will assist in developing a more efficient and effective international postal service.²

The Amendments

- 3.2 The Constitution provides the fundamental rules for the UPU, provides for its legal foundation and is binding on all members.³ The

1 National Interest Analysis (NIA), para. 6.

2 NIA, para. 7.

3 NIA, para. 13.

Constitution is amended by Additional Protocols and the Seventh Additional Protocol is the most recent amendment to the Constitution.

- 3.3 The General Regulations implement the Constitution, provide for the day-to-day working of the UPU and are binding on all members.⁴ Previously, the General Regulations have been renewed as a whole every five years by the UPU Congress. The Amendments will make the General Regulations permanent. Any future changes to the General Regulations will be made as Additional Protocols.⁵
- 3.4 The Amendments to the Final Protocol to the Universal Postal Convention incorporate the reservations lodged by Australia and other UPU members. As a general principle, reservations applied to one country will be applied on a reciprocal basis to other members.⁶
- 3.5 Australia's reservations include the following articles:
- II(1) authorises Australia to collect postal charges other than those provided in the Regulations, when such charges are consistent with the legislation of their countries
 - III(2) allows Australia to collect the charges for special services which are applied to literature for the blind in the internal service
 - XIII(1) reserves the right of Australia to impose a charge, equivalent to the cost of the work it incurs, on any administration which under the provisions of article 27.4, sends to it items for the disposal of postal items in the country of destination
 - XIII(3) allows Australia the option of limiting the payment of delivery for letter-post items to the appropriate domestic tariff for equivalent items in the country of destination.⁷
- 3.6 The Convention and Additional Protocol comprises the rules applicable throughout the international postal service. Some of the key changes include:
- revision of postal security provisions for the exchange of information between member countries on maintaining the safe and secure transport of mail items (Article 9)

4 NIA, para. 13.

5 NIA, para. 17.

6 Article 37 of the Convention

7 NIA, para. 32.

- an outward mandatory registration service for priority and airmail letter-post items is required, a registration service for outbound non-priority and surface letter-post items but only to destinations for which there is no priority or airmail service (Article 13)
- postal administrations must establish delivery standards and targets for their inward letter-post items and parcels (Article 20)
- it is no longer mandatory to accept inquiries about the non-receipt of ordinary letter-post items (Article 17)
- senders of prohibited articles that cause damage to other postal items, postal officials or postal equipment are now liable for that damage (Article 23)
- the establishment of a terminal dues system consisting of two subsystems:⁸ a target system applicable to industrialised countries and a transition system intended for developing countries (Articles 28, 29, 30)
- the introduction of a Quality of Service Fund designed to help developing nations improve their postal infrastructure and quality of service. The Fund will ensure that countries and territories in most need of funds receives them (Article 31).

Regulation Impact Statement

- 3.7 A Regulation Impact Statement (RIS) examining amendments which could potentially impact on Australia Post's international mail system was prepared in relation to the Amendments.
- 3.8 The RIS notes that
- The majority of the proposed amendments were procedural in nature and do not have any significant impact on Australia Post's international mail systems.⁹
- 3.9 The provisions which could possibly impact on Australia Post include the establishment of a new terminal dues system under Articles 28, 29
-

8 Terminal dues are the payments made between UPU members to compensate for the delivery of international letter-post items in a destination country.

9 RIS, para. 12.

and 30 of the Universal Postal Convention, the outward mandatory registration service under Article 13, the non-mandatory acceptance of inquiries about ordinary letter-post items under Article 17, the establishment of a quality of service standards and targets under Article 20, and the new inward land rates for parcel post items under Article 34.

- 3.10 The RIS concludes that notwithstanding the estimated \$A 2 – 3 million costs which will result from the Amendments, the general outlook for Australia Post’s international business remains strong. UPU membership remains an affordable option compared with alternatives in the provision of international postal services for the Australian community.¹⁰

Implementation

- 3.11 The Amendments to the Acts of the UPU can be implemented through administrative arrangements and will not require any change to existing legislation.¹¹

Costs

- 3.12 At present, Australia provides approximately A\$840 000 per annum to the UPU budget.¹²
- 3.13 The Amendments will create additional costs for Australia as a result of the introduction of the new terminal dues system, the proposed changes to procedures for internal air conveyance charging and the reimposition of liability provisions for uninsured parcels.¹³ The National Interest Analysis estimates that this will cost an additional A\$2 to 3 million.¹⁴

10 NIA, paras 35, 36 and 37.

11 NIA, para. 34.

12 NIA, para. 36.

13 NIA, para. 39.

14 NIA, para. 39.

Conclusion and recommendation

- 3.14 The Committee recognises the value of cooperation between States for the effective operation of international mail and considers the Amendments to be a move towards a more efficient and effective international postal service.

Recommendation 2

The Committee supports the *Universal Postal Union: Seventh Additional Protocol to the Constitution of 10 July 1964, as amended; Convention, and Final Protocol; General Regulations* and recommends that binding treaty action be taken.

Amendments to the Stockholm Convention on Persistent Organic Pollutants

Introduction

- 4.1 The *Amendments adopted at Punta Del Este on 6 May 2005 to add a new Annex G to the Stockholm Convention on Persistent Organic Pollutants* involves the addition of a seventh annex, Annex G, to the Stockholm Convention. Annex G provides procedures to settle disputes relating to the Stockholm Convention.

Background

- 4.2 The Stockholm Convention on Persistent Organic Pollutants (the Stockholm Convention) is designed to protect human health and the environment from persistent organic pollutants (POPs).¹ POPs are toxic chemical substances that persist in the environment, accumulate in the fatty tissue of living organisms and become widely distributed

¹ National Interest Analysis (NIA), para. 3.

geographically.² POPs are used for industrial and agricultural processes or are by-products from industrial processes.³

4.3 The central obligations of the Stockholm Convention are:

To ban or phase out the production and use of intentionally produced POPs, to manage stockpiles of POPs wastes in an environmentally sound manner and to reduce or, where feasible, eliminate releases of unintentionally produced POPs.⁴

4.4 The Stockholm Convention entered into force for Australia on 18 August 2004.⁵ The Joint Standing Committee on Treaties recommended binding treaty action be taken in relation to the Stockholm Convention in Report 55.

Annex G

4.5 Annex G provides procedures to settle disputes relating to the Stockholm Convention. Annex G Part I provides the arbitration procedures and Annex G Part II provides the conciliation procedures.

4.6 Under Article 18 of the Stockholm Convention, Parties are obliged to settle disputes through negotiation or other peaceful means.

4.7 Article 18(2) of the Stockholm Convention sets out two options for dispute settlement:

1. arbitration
2. submission to the International Court of Justice (ICJ).

4.8 Article 18(6) provides a third means of dispute settlement:

3. conciliation.

4.9 Parties may make a declaration accepting either or both arbitration or the ICJ under Article 18(2). At present Australia is considering whether to make a declaration.⁶ Where a Party has not made a

2 The Stockholm Convention on Persistent Organic Pollutants website. Accessed 2 February 2006 <<http://www.pops.int/>>

3 NIA, para. 3.

4 Mary Harwood, *Transcript of Evidence*, 5 December 2005, p. 23; NIA, para. 3.

5 NIA, para. 5; Mary Harwood, *Transcript of Evidence*, 5 December 2005, p. 23.

6 NIA, para. 10.

declaration or where parties to a dispute have not accepted the same means of dispute settlement, the default dispute settlement is conciliation.⁷

- 4.10 Annex G Part I provides that an arbitration tribunal, consisting of three members, will be established to hear a dispute. The arbitration tribunal renders a binding decision within 5 months of being established in accordance with the Stockholm Convention and international law. No appeals are allowed unless agreed to in advance by the Parties to the dispute.
- 4.11 Annex G Part II provides that a conciliation commission will be established, consisting of three members, to hear the dispute. The conciliation commission renders a report with recommendations for the resolution of the dispute within 12 months of being established which the Parties to the dispute must consider in good faith.

Consultation

- 4.12 The Department of Environment and Heritage (DEH) invited relevant government departments and stakeholders, including State and Territory governments, industry and community groups, to comment on the draft rules of arbitration and conciliation.⁸ No issues were raised but a representative from the National Environment Consultative Forum accepted DEH's invitation to stakeholders to join the Australian delegation.⁹

Entry into force

- 4.13 Annex G will enter into force one year from the date of communication by the Depositary (the United Nations Secretary-General) of its adoption.
- 4.14 The Stockholm Convention provides for an 'opt out' provision, whereby Parties may notify the Depositary within one year that they

7 Article 18(6) of the Stockholm Convention; NIA, para. 9.

8 NIA, Consultation Annex.

9 NIA, Consultation Annex, para. 2.

are unable to accept an additional annex. If they do not opt out, Parties will be bound by the new annex.

- 4.15 Unless Australia opts out, it will be bound by the conciliation procedures set out in Annex G, Part II. If Australia makes a declaration accepting arbitration as a means of dispute settlement, it will be bound by the Arbitration procedure set out in Annex G, Part I.

Conclusion and recommendation

- 4.16 The Committee agrees that dispute settlement provisions are important for providing Parties with finality and an agreed mechanism for dealing with disputes.¹⁰

Recommendation 3

The Committee supports the Amendments, adopted at Punta Del Este on 6 May 2005, to add a new Annex G to the Stockholm Convention on Persistent Organic Pollutants (POPs) and recommends that binding treaty action be taken.

¹⁰ NIA, para. 7.

Agreement with the Republic of Turkey for the Promotion and Protection of Investments

Introduction

- 5.1 The *Agreement between the Government of Australia and the Government of the Republic of Turkey for the Promotion and Protection of Investments* (Canberra, 16 June 2005) (the Agreement) will, by guaranteeing certain treatment for investments, encourage and facilitate bilateral investment between Australia and Turkey.¹

Background

- 5.2 In 1999, the Australian Government made an in-principle decision to negotiate an investment promotion and protection agreement with Turkey. The first round of formal negotiations began in 2001, followed by another round of negotiations in 2002. Negotiations then continued informally to settle outstanding drafting issues. The final agreement text was decided upon in April 2005.²

1 National Interest Analysis (NIA), para. 4.

2 Michael Bliss, *Transcript of Evidence*, 5 December 2005, p. 26.

- 5.3 The majority of Australia's major trading partners and most OECD³ countries have International Promotion and Protection of Investments Agreements (IPPA) with Turkey. According to an International Monetary Fund⁴ assessment, Turkey is one of the highest returning markets⁵ on investments.

Overview

- 5.4 The Committee was informed that Turkey is considered to have a relatively open and transparent investment regime.⁶ While investment between Australia and Turkey is small,⁷ Turkey's current rate of economic growth is high, making it desirable for foreign investment. The prospect of a strong Turkish economy is likely to lead to increased export and investment opportunities for both countries.
- 5.5 In relation to Australian investment in Turkey, a representative of the Department of Foreign Affairs and Trade stated:

The value of investment is still small and there are no official figures available yet. Turkish treasury figures on foreign direct investment do not show Australia in the top 20 foreign investors. However, with growing interest from the Australian private sector and with the benefit of an investment promotion and protection agreement, we expect investment to increase.⁸

3 The Organisation for Economic Cooperation and Development consists of 30 member countries with a commitment to democratic government and the market economy. Organisation for Economic Cooperation and Development, OECD, viewed 23 January 2006 <<http://www.oecd.org>>.

4 The International Monetary Fund consists of 184 member countries and was established to promote international monetary cooperation, exchange stability, and orderly exchange arrangements; to foster economic growth and high levels of employment; and provide temporary financial assistance to countries to help ease balance of payments adjustment. International Monetary Fund, viewed 23 January 2006, <<http://www.imf.org>>.

5 Richard Mathews, *Transcript of Evidence*, 5 December 2005, p. 27.

6 NIA, para. 8.

7 Australian exports to Turkey in 2004-05 were A\$279 million with total trade in 2004-2005 at A\$644 million. NIA Turkey fact sheet.

8 Richard Mathews, *Transcript of Evidence*, 5 December 2005, p. 27.

- 5.6 In light of Turkey's accession to the European Union and the modernisation of the Turkish economy, foreign direct investment in 2005-06 is expected to more than double from the previous year to reach US\$5 billion.⁹
- 5.7 In addition, in an effort to attract foreign investment, Turkey recently significantly reduced its corporate tax rate from 30 to 20 percent and partnered this with a reduction in its bureaucratic investment procedures.¹⁰
- 5.8 A number of Australian companies are currently looking at investing in Turkey over the next few years in the areas of energy, infrastructure, and mining.¹¹ Turkey's new laws on mining and foreign investment are expected to continue to encourage foreign investment in the energy sector.¹²
- 5.9 In addition, a number of Australian companies have also won tenders for development projects in Turkey. The Committee received evidence that this includes a major investment by an Australian company in Turkey's oil sector and other investments in the agriculture sector.¹³
- 5.10 In addition, the substantial Turkish community in Australia (around 100 000 people) has the potential to emerge as another significant source of investment funds for the Turkish economy.¹⁴

Obligations

- 5.11 The Agreement establishes a set of obligations relating to the promotion and protection of investments in accordance with each country's laws, regulations, and investment policies. Under the Agreement, each country retains the decision to admit new investments with no limit placed on either Government's ability to

9 Richard Mathews, *Transcript of Evidence*, 5 December 2005, p. 27.

10 Richard Mathews, *Transcript of Evidence*, 5 December 2005, p. 27.

11 BHP Billiton is a potential investor in the Izmir area of Turkey and has longer-term plans for involvement in the mining, processing and marketing of borates (a salt or ester of Boric Acid) of which Turkey has 70 percent of the world's reserves. White Mining is interested in coal mining projects in Turkey. NIA, para. 10.

12 NIA, para. 11.

13 Richard Mathews, *Transcript of Evidence*, 5 December 2005, p. 28.

14 NIA, para. 11.

pass laws pertaining to pre-establishment investment or to regulate sensitive sectors.

- 5.12 Modelled on other Australian IPPA texts, the Agreement covers the post establishment treatment of investments.¹⁵

Consultation

- 5.13 The Committee received evidence that all relevant agencies were consulted during negotiations and approved of the final text of the Treaty. These agencies include Treasury, the Department of Immigration, Multicultural and Indigenous Affairs and the Attorney-General's Department. At each stage of the treaty process, extensive consultation was also undertaken within the Department of Foreign Affairs and Trade.¹⁶
- 5.14 No comment was received from Industry during the course of negotiations. State and Territory Governments were advised of the Agreement through the State/Territory Standing Committee on Treaties (SCOT). SCOT did not seek further information or raise any issues about the Agreement.¹⁷
- 5.15 The Committee received evidence that no formal consultation about the Agreement had taken place with Australia's Turkish community during the negotiating period.¹⁸
- 5.16 As stated at paragraph 5.10 the Committee received evidence that there is potential for Australia's Turkish community to emerge as a significant investor in the Turkish economy. In respect of this evidence, there appears to have been an oversight in not conducting formal consultation with the Australian-Turkish community.¹⁹

15 NIA, para. 13.

16 NIA, Consultation Annex.

17 NIA, Consultation Annex.

18 Department of Foreign Affairs and Trade, *Submission 5*, p. 1.

19 NIA, para. 11.

Dispute resolution

- 5.17 The Agreement would safeguard Australian companies participating in major projects in Turkey.²⁰
- 5.18 Redress for wrongs without recourse to the domestic legal system would be facilitated through the investor-state dispute resolution procedures included in the Agreement. No formal dispute resolution procedures have ever been invoked against Australia²¹ in relation to the 19 IPPAs currently in force for Australia.²²

Potential costs

- 5.19 Costs may be incurred in the event of a dispute between Parties if the dispute is submitted to an Arbitral Tribunal at the request of either Party. In addition, under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Australia may be required to bear the cost of arbitration if a dispute is referred to the International Centre for the Settlement of Investment Disputes.²³
- 5.20 Article 8 provides that Australia must, if it adopts any measures to pay compensation, indemnification or restitution for losses owing to war or other armed conflict, revolution, a state of national emergency, civil disturbance or similar events in its territory, treat Turkish investors no less favourably than Australian or third party investors.²⁴

Entry into force, implementation and withdrawal

- 5.21 The Agreement will enter into force once both Parties exchange notes indicating that domestic legal requirements have been met.²⁵
- 5.22 The Agreement will be implemented within Australia's existing laws and policies relating to foreign investment.²⁶

20 NIA, para. 7.

21 Michael Bliss, *Transcript of Evidence*, 5 December 2005, p. 28.

22 NIA, para. 7.

23 NIA, para. 21.

24 NIA, para. 23.

25 NIA, para. 3.

- 5.23 The Agreement will remain in force for 15 years after its entry into force and will remain in force until one of the Parties provides 12 months notice of termination to the other Party.²⁷ Article 14(4) stipulates that the Agreement will continue to be effective in respect to investments made or acquired before the date of termination for a further period of 15 years after the date of termination.²⁸

Conclusion and recommendation

- 5.24 The Committee agrees that the Turkish economy is a significant emerging market and has the potential to provide stable returns for investors.
- 5.25 However, from evidence taken by the Committee, it appears that the consultation process undertaken in relation to the Agreement was not adequate and should have included formal consultation with Australia's Turkish community.

Recommendation 4

The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of Turkey for the Promotion and Protection of Investments* (Canberra, 16 June 2005) and recommends that binding treaty action be taken.

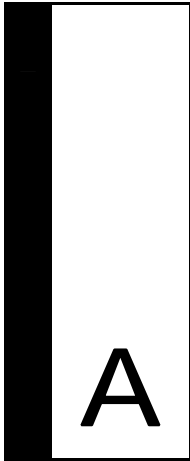
Dr Andrew Southcott MP

Committee Chair

26 NIA, para. 20.

27 NIA, para. 26.

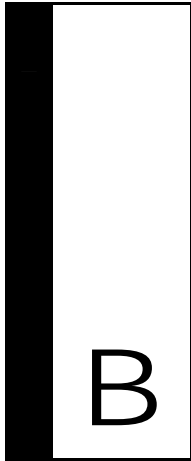
28 NIA, para. 28.



Appendix A - Submissions

Treaties tabled on 29 November 2005

- 1 Attorney-General's Department
- 3.1 Australian Patriot Movement
- 3.2 Australian Patriot Movement
- 3.3 Australian Patriot Movement
- 3.4 Australian Patriot Movement
- 4 Government of Western Australia
- 5 Department of Foreign Affairs and Trade
- 6 ACT Government



Appendix B - Witnesses

Monday, 5 December 2005 – Canberra

Attorney-General's Department

Ms Amanda Davies, Assistant Secretary, Administrative Law and Civil Procedure Branch

Ms Catherine Fitch, Principal Legal Officer, Private International Law Section, Administrative Law and Civil Procedure Branch

Australia Post

Mr Samuel Curro, Manager, International Communications, International Treaty and Policy Group

Mr Christopher Grosser, Group Manager, International Treaty and Policy Group

Department of Communications, Information Technology and the Arts

Mr Don Williams, Manager, Postal Policy Section, Enterprise and Infrastructure Branch, Telecommunications Division

Department of Foreign Affairs and Trade

Mr Michael Jonathan Thwaites, Executive Director, Treaties Secretariat

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

Mr Henry Bray, Executive Officer, Southern Europe Section

Mr Richard Mathews, Director, Southern Europe Section

Department of Health and Ageing

Dr Luba Tomaska, Policy, Standards and Reform Leader, Office of Chemical Safety

Department of the Environment and Heritage

Mr Lee Eeles, Director, Chemical Policy Section, Environment Protection Branch

Ms Mary Harwood, First Assistant Secretary, Environment Quality Division

Mr Christopher Mobbs, Assistant Director, Chemical Policy Section, Environment Protection Branch