



**Queensland
Government**

For reply please quote: AA07IGR

Department of the
Premier and Cabinet

11 DEC 2006

Dr Andrew Southcott MP
Chair
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

Supplementary Submission 3.1
TT 20 June 2006

Dear Dr Southcott

Thank you for your letter to the Premier of 6 September 2006 inviting the Queensland Government's attendance at a public hearing in Canberra on 9 October 2006 to discuss the issues raised in the Government's submission on the proposed *Agreement between the Government of Australia and the Government of the United Mexican States on the Promotion and Reciprocal Protection of Investments, and Protocol (Mexico City, 23 August 2005)*.

Whilst the attendance of Queensland Government officials at the hearing was not practicable, I am able to provide the following additional information regarding the issues raised in the Queensland Government's submission, to assist the Committee in its deliberations.

As previously indicated, the Queensland Government holds the view that:

- the expropriation and compensation provisions of this Agreement result in an extension of rights to property owners that do not exist under Queensland legislation and go beyond current Government policies;
- the compulsory payment of compensation is not consistent with the Queensland Government's existing capacity to determine under what circumstances compensation is appropriate; and
- mandating the payment of compensation and extending that right to instances of indirect expropriation creates disparity between the rights of foreign and domestic investors and it also limits the scope of State Parliaments to legislate.

The proposed Agreement prohibits both direct and indirect expropriation of an investment of the other Party except where it is taken for a public purpose, on a non-discriminatory basis, in accordance with due process of law, and on the prompt payment of compensation. In a

Executive Building
100 George Street Brisbane
PO Box 185 Brisbane Albert Street
Queensland 4002 Australia
Telephone +61 7 3224 2111
Facsimile +61 7 3229 2990
Website www.premiers.qld.gov.au
ABN 65 959 415 458

small number of previous cases, the Queensland Parliament has passed legislation to exclude a claim for compensation upon the cancellation of a permit or lease (direct expropriation). Mandating the payment of compensation will leave the Queensland Government without this capacity. This has significant implications for the Queensland Government, particularly with regard to the sustainable management of its natural resources as there is currently no provision in the Agreement excluding such activities from the mandatory compensation provisions. Further the terms "indirect expropriation" and "non-discriminatory actions" are not defined in the Agreement, which leave these concepts open to broad interpretation.

In their current form the expropriation and compensation provisions provide significant scope for private companies (through the Mexico Government) to challenge the Queensland Government's decisions relating to measures taken to ensure sustainable water and land use, and environmental protection.

I trust that this additional information will assist the Committee in its deliberations.

Yours sincerely



Ross Roife

Coordinator-General
Director-General