Premier of Victoria

TT 4 March 2003
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Our Ref: CI 2003/02514

1 3 MAY 2003

Ms Julie Bishop MP
Chair
Joint Standing Committee on Treaties
R1-109
Parliament House
CANBERRA ACT 2600

Dear Ms Bishop

TREATIES TABLED ON 4 MARCH 2003

I refer to your letter dated 5 March 2003 inviting comments, as part of the review process undertaken by the Commonwealth Parliament's Joint Standing Committee on Treaties, on proposed treaties tabled in both Houses of Parliament on 4 March 2003. Thank you for the opportunity to comment before action is taken to bind Australia to the terms of these treaties.

Victoria has no objections to the proposed treaties being brought into force through ratification or other action as appropriate. Attached are specific comments on each of the proposed treaties detailed in your letter.

If you have any queries or require further information regarding these comments please contact Callum Ingram, Senior Policy Adviser, Department of Premier and Cabinet, via telephone (03 9651 1247); fax (03 9651 5071) or email him at Callum.Ingram@dpc.vic.gov.au.

Yours sincerely

HON STEVE BRACKS MP
Premier of Victoria

Your details will be dealt with in accordance with the *Public Records Act* 1973 and the *Information Privacy Act* 2000. Should you have any queries or wish to gain access to your personal information held by this Department please contact our Privacy Officer at the above address.

Victoria
The Place To Be

TREATIES TABLED ON 4 MARCH 2003 - VICTORIAN COMMENTS

Singapore – Australia Free Trade Agreement, done at Singapore on 17 February 2003, and associated exchange of notes

Victoria notes that the Agreement provides for a transition period whereby the terms of the Agreement will initially come into force only for Singapore and the Commonwealth, with States and Territories to be made subject to the relevant terms on the first anniversary of the Agreement entering into force. This is to allow time to negotiate and finalise State and Territory reservations to the obligations of the Trade in Services and Investment Chapters. Victoria looks forward to discussing and finalising its reservations in due course with the Commonwealth Department of Foreign Affairs and Trade.

Victoria understands that the dispute settlement provisions in the Agreement were modelled on the dispute settlement provisions of bilateral agreements already entered into by Australia and a number of other countries. The text and inter-relation of Article 1 of Chapter 17, the dispute settlement provisions contained in Chapter 16, and Article 14 of Chapter 8, have significant parallels with the corresponding provisions of the North American Free Trade Agreement (NAFTA), and in particular, those relating to the settlement of disputes between a Party and an investor of the other Party (investor-Party disputes).

Since NAFTA's enactment, corporate investors in all three NAFTA countries (Canada, Mexico and the USA) have used the rights given to them by the provisions for the settlement of investor-Party disputes to successfully challenge a variety of domestic judicial decisions and national, state and local environmental and public health policies, laws, regulations and government decisions. NAFTA provides foreign investors with the ability to enforce their rights under the Agreement, by empowering them to sue NAFTA signatory Governments in special tribunals to obtain cash compensation for Government policies or actions that violate their new rights under NAFTA. This can be achieved even though the investor has bypassed the country's domestic court system, and domestic laws, to obtain such an award.

NAFTA has been used to undermine US local and state sovereignty and control, and to give foreign investors better treatment than local businesses. While it is not a foregone conclusion that the Singapore – Australia Agreement will create identical scenarios to those that have arisen under the NAFTA, the broad implications of the investor-Party dispute settlement provisions for Australian States and Territories need to be given detailed consideration, and should not be underestimated.

Safeguards need to be put in place to ensure that Australian States and Territories' abilities to regulate are suitably protected from inappropriate challenges from foreign investors under the Agreement. Further, it should also be ensured that States and Territories are specifically given standing to participate in the resolution of any dispute involving their constitutional responsibilities.

Annex IV: Regulations for the Prevention of Pollution by Sewage from Ships (revised) of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, as Amended (MARPOL 73/78), done at London, 17 February 1978, revised text adopted at London, 13 March 2000

Victoria supports the revision to the Annex to the MARPOL Convention. The release of sewage from commercial shipping poses a threat to the health of marine biodiversity and, therefore, a health risk to those that come into contact with contaminated water or fish. By becoming a party to the Annex, Australia will be able to enforce the full range of controls on sewage systems on foreign and Australasian-flagged vessels on international voyages. This will provide a mechanism to manage this threat and ensure the protection of marine life. In Victoria, this is particularly important for the established Marine National Parks and Marine Sanctuaries.

Amendments, done at Santiago, in November 2002, to Appendices I and II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, of 3 March 1973

There will be minor impacts on Victoria from the listing of any of the species on Appendix 2 - Whale Sharks and Basking Sharks may be found in Victorian waters, at times, and there are some *Hippocampus* spp. of seahorse in Victorian waters. Victoria particularly supports the listing of seahorses on Appendix II. There may be implications for the Australian seahorse export industry when the listing comes into operation, but nothing above what they currently are required to do under existing Commonwealth legislation.

International Convention on the Control of Harmful Anti-fouling Systems on Ships done at London on 18 October 2001

Victoria supports Australia's ratification of this treaty. TBT (an organo-tin compound) is a key threat to our marine environment, particularly in areas of high vessel traffic such as Port Melbourne and Geelong. In Victoria, the "input of organo-tins to Victorian marine and estuarine waters" has been listed as a Potentially Threatening Process under the *Flora and Fauna Guarantee Act* 1988 (FFG Act). As the use of TBT in anti-fouling paints on vessels in Australia less than 25 meters in length has been restricted, this Convention provides a mechanism to enforce the full range of controls for larger foreign and Australian flagged vessels still using TBT-based anti-fouling paints. Victoria's Department of Sustainability and Environment is coordinating the development of an Action Statement in response to the FFG Act listing, to manage the threat. The implementation of this Convention is central to the management actions outlined in this Statement.