

Government Response to the 15th Report of the Joint Standing Committee on Treaties

The Government appreciates the committee's consideration of the wide range of treaty actions considered in its 15th Report. The Government response to the recommendations made in the Report in relation to the four treaty actions considered is provided below.

The Hague Convention on Intercountry Adoption

The Government notes the Committee's support for Australia's ratification of the Hague Convention on Intercountry Adoption. This Convention was ratified on 25 August 1998 and entered into force for Australia on 1 December 1998. The Government offers the following response to the three recommendations put forward by the Committee in relation to this Convention.

2.65 The Joint Standing Committee on Treaties recommends that:

the Commonwealth, in consultation with the State and Territory Governments, and with all relevant groups, define the separate roles of the accredited bodies and the parent support groups as part of the implementation process.

The Government agrees to consult with State and Territory Governments on the Committee's proposal for recognition and definition of the role of parent support groups in intercountry adoption.

But policy development and administration in adoption matters in Australia has traditionally been the responsibility of State and Territory Governments. The Commonwealth Government does not consider that Australia's ratification of the Hague Convention should be the occasion for a substantial change in responsibilities in this area. The role of accredited bodies is a matter for each State and Territory to determine, subject to the principles agreed to by the Community Services Ministers Council in the "Commonwealth State Agreement for the implementation of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption" (April 1998). A decision to formally recognise or define the role of parent support groups in the intercountry adoption area is a matter for the Council.

2.67 The Joint Standing Committee on Treaties recommends that:

the Commonwealth coordinate a process with State and Territory Governments and all relevant organisations to ensure that all current intercountry adoption agreements comply with the requirements of the Convention prior to the expiry of the three year transitional period.

The Government will undertake a review of current bilateral arrangements relating to intercountry adoption to ensure consistency with the Convention.

Decisions on whether bilateral arrangements should be formalised (para 2.50) and whether parent support groups should be involved in this process (para 2.51) are matters on which the views of State and Territory Governments need to be obtained.

2.69 The Joint Standing Committee on Treaties recommends that:

the Attorney-General's Department act to improve the consultation process regarding the implementation of this agreement so that it is timely and includes all interested parties.

The Government considers that the consultation process followed in relation to the implementation of the Hague Convention on Intercountry Adoption has been completed in a timely fashion and appropriately took account of the views of interested non-government organisations.

In relation to the consultation undertaken prior to implementation, the Government notes that, pursuant to the Community Services Ministers Council decision, the States and Territories undertook their own consultation processes in their respective jurisdictions. While the consultation processes were consequently varied, these variations did not result in any failure by State, Territory or Commonwealth agencies to identify or consider any significant issues relating to the implementation of the Convention. Subsequent to implementation, the Commonwealth, States and Territories have engaged in broader non-government organisation (NGO) consultation on a range of issues arising from the arrangements for the Convention.

The Government wishes to clarify information as to the process by which the legislation implementing the Convention was made available to interested parties (see para 2.56 of the Committee's report). The Commonwealth Regulations were circulated by State and Territory Governments to NGOs in December 1997. The NGOs then provided their comments to State and Commonwealth agencies. In March 1998, the Office of the Commonwealth Attorney-General wrote to interested NGOs to advise that, while some change would be made to the Regulations, there would be no changes in relation to the significant matters raised in the NGOs' comments. A copy of the draft Commonwealth Regulations was made available to the Committee on 30 March 1998. As soon as Commonwealth drafting priorities allowed, a revised version of the Regulations was distributed to NGOs and the Committee in late May 1998.

Denunciation of ILO Convention No. 9

The Government notes the Committee's views on the denunciation of ILO Convention No. 9 and provides the following responses to its recommendations.

3.45 The Joint Standing Committee on Treaties notes the information it has received, and recommends that ILO Convention No. 9 be denounced.

The Government welcomes the Committee's support for its denunciation of ILO Convention No. 9. Australia's instrument of denunciation was deposited with the ILO on 31 August 1998 to take effect from 31 August 1999. The instrument of denunciation was accompanied by a Statement of Reasons (text follows), in accordance with usual ILO practice.

ILO Convention No. 9 Placing of Seamen, 1920, provides that the business of finding employment for seafarers shall not be carried on by commercial enterprise for pecuniary gain and that fees shall not be charged, directly or indirectly, for finding employment for seafarers on any ship. It provides for the establishment and operation of an adequate system of public employment offices for finding employment for seafarers without charge. Such officers are to be organised and maintained either by representative associations of shipowners and seafarers jointly under the control of a central authority, or by the national government. Australia became a party to the Convention on 3 August 1925.

The Government of Australia has decided to denounce the Convention, following a process of consultation and consideration in relation to reforms aimed at improving the international competitiveness of Australian shipping. These reforms were recommended to the Government by an advisory body, the Shipping Reform Group, comprising key maritime industry executives.

In March 1997, the Government received the Shipping Reform Group report recommending significant and constructive reforms aimed at halting the rapid reduction in the Australian trading fleet and ensuring the survival of the industry. A critical element of these reforms involved proposed changes to the labour market for seafarers, including the extension of company-based employment to all seafarers. Consequently, the industry based employment arrangements for ratings, which were then administered by the Government in consultation with the shipowners' and seafarers' organisations, would be abolished.

The report concluded that the industry employment arrangements for ratings seafarers failed to provide the flexibility necessary for Australian ship operators to compete effectively with overseas operators. They were found to inhibit employment continuity for seafarers, increase training costs, prevent transfer of ratings between each ship operator's vessels, involve both inadequate selected arrangements and barriers to promotion for seafarers and impose on the industry additional administrative costs of the system.

In addition, independent reports to the Government highlighted an adverse impact of the industry employment arrangements on occupational health and safety outcomes in the maritime industry. The introduction of company-based employment for all seafarers was seen by the industry as important in helping to reduce the current high incidence of work-related injury and disease. This results from the improved selection of seafarers to suit the physical demands of particular seagoing jobs and allowing specialised training to be provided to seafarers who have a full time commitment to their employment with a particular ship operator.

The Government concluded that implementation of the labour market reforms, including company-based employment, recommended by the Shipping Reform Group was essential to improve the efficiency of Australian shipping. In view of the industry proceeding to negotiate implementation of these reforms, the Government decided to withdraw from further involvement in operating the particular public employment services for seafarers which were part of the substantive requirements of ILO Convention No. 9, as from 1 March 1998.

Accordingly, it is necessary to denounce ILO Convention No. 9, as recruitment and placement of seafarers in Australia are not being conducted in the manner required by the Convention. It is no longer relevant to Australia's shipping industry and has become redundant with the abolition of the system of public employment offices for seafarers.

Under company-based employment arrangements, seafarers are to be recruited and placed through direct contact between shipowners and seafarers, which may include private arrangements between shipowners' and seafarers' organisations and private agencies.

In accordance with ILO Convention No. 144, Tripartite Consultation (International Labour Standards), 1976, the Australian Government has consulted with the relevant representative employer and worker organisations, including the Australian Chamber of Commerce and Industry (ACCI) and the Australian Council of Trade Unions (ACTU), concerning the denunciation of ILO Convention No. 9.

The ACCI advised that it had no objection to the Government's proposed course of action. Both the ACTU and the Maritime Union of Australia (MUA) commented that there had been insufficient consultation with the shipping industry on the proposal and they did not support the denunciation of ILO Convention No. 9. The MUA also objected to the denunciation proceeding unless the Government agreed to progress other measures recommended by the Shipping Reform Group (including fiscal support for the shipping industry) at the same time. The MUA also protested against the Government's decision to withdraw from administration of the industry employment system prior to the industry finalising company based employment arrangements.

The Government firmly believes the move to full company employment of seafarers and the dismantling of the industry-based employment system for ratings, which was intrinsic to Australia's ability to demonstrate compliance with the ILO Convention No. 9, are crucial reform measures. The Government is convinced that this denunciation, which arises in an environment quite different to that applicable when the Convention was adopted and ratified, is a necessary adjunct to this reform as its provisions are no longer appropriate to the modern Australian shipping industry.

ILO Convention No. 179, Recruitment and Placement of Seafarers, 1996 revises Convention No. 9. The Government of Australia is determining its attitude towards ratification of ILO Convention No. 179 in light of an examination of the compliance of Australian law and practice with this Convention.

3.46 The Joint Standing Committee on Treaties also recommends that:

proper consideration be given to the adoption of ILO Convention No. 179 with the aim of ratification by the time ILO Convention No. 9 is denounced.

Following consultations, the Department of Employment, Workplace Relations and Small Business carried out an assessment of ILO Convention No. 179, Recruitment and Placement of Seafarers, 1996 which revealed significant compliance issues with the Convention, in particular the requirement for the competent authority to "closely supervise all recruitment and placement services".

It would be contrary to the Government's treaty-making policy to initiate ratification of an ILO Convention without establishing that there is compliance with its provisions, and that compliance will be able to be maintained. As the Government is not able to demonstrate compliance with the ambitious provisions of ILO Convention No. 179, Australia is not considering ratification.

ILO Convention No. 179, other ILO maritime instruments and an accompanying report, were tabled in the House of Representatives and the Senate on 9 December 1998, in accordance with Australia's obligation under Article 19 of the ILO Constitution, which requires member States to bring newly-adopted instruments to the notice of the "competent authority".

Dissenting Report

The 15th Report of the JSCOT included a Dissenting Report on the proposal to denounce ILO Convention No. 9. The conclusions of, and Government response to the Dissenting Report are as follows.

1.45 The Federal Government has acted with undue and unnecessary haste in its decision to denounce ILO Convention No. 9. No consultation occurred prior to the Government's decision to denounce the treaty. Such consultation as has occurred since that decision was made has been totally inadequate and in the case of the WA, which represents workers in the relevant industry, has been non-existent.

This assertion is inaccurate. The Government fulfilled its ILO obligation to consult with the most representative employer and worker organisations. The ACTU is representative of workers in relation to all ILO matters and the ACTU advice of 25 March 1998 incorporated the views of its affiliates including the WA.

1.47 Having made the decision to denounce ILO Convention No. 9 however, it is now imperative that the Government acts swiftly to ratify ILO Convention No. 179.

For the reasons expressed above, the Government is not considering ratification of ILO Convention No. 179.

Comprehensive Nuclear Test Ban Treaty

The Government notes the support of the Committee for the ratification of the Nuclear Test-Ban Treaty which was ratified on 9 July 1998.

4.59 The Joint Standing Committee on Treaties recommends that:

once the *Comprehensive Nuclear Test-Ban Treaty Bill 1998* is enacted, the Presiding Officers write jointly to the President of the United States Senate to acquaint that Chamber with the views of the Australian Parliament, as expressed in the Act, and urge them to take all steps to facilitate and expedite ratification of the *Comprehensive Nuclear Test-Ban Treaty* by the United States of America.

The Government welcomes the above recommendation which is fully consistent with the Government's policy on the CTBT and its own actions. Further, the Government notes that ratification of the CTBT is an objective shared explicitly by the US Administration. The Joint Communiqué issued at the conclusion of the 1998 Australia-United States Ministerial Consultations on 31 July 1998 made clear US and Australian commitment to the CTBT: "The United States congratulated Australia for its ratification of the CTBT. Both sides expressed strong support for the development of the Treaty's institutional structure in Vienna...".

In accordance with the above recommendation, a letter was drafted, and subsequently sent to the President of the United States Senate.

Investment Protection and Promotion Agreement with Pakistan

The Government is unable to accept the recommendation of the Committee relating to the Investment Protection and Promotion Agreement with Pakistan.

6.44 The Joint Standing Committee on Treaties recommends that:

ratification of the *Agreement between Australia and the Islamic Republic of Pakistan on the Promotion and Protection of Investments* not take place at least until the Australian Government announces publicly the resumption of Ministerial and senior official contacts with Pakistan.

The Government notes that, at the time, the above recommendation ran counter to already agreed Australian Government policy on the measures adopted in response to nuclear testing by India and Pakistan. The Investment Protection and Promotion Agreement (IPPA) with Pakistan entered into force 30 days after the Exchange of Notes of 23 April - 14 September 1998.

Measures taken against Pakistan in response to nuclear testing included the recall for consultation of the Australian High Commissioner from Islamabad, suspension of bilateral defence relations, exclusion of any future non-humanitarian aid and suspension of Ministerial and senior official visits. The commercial bilateral relationship with Pakistan, was, however, maintained. Government policy ruled out taking measures that would impact negatively on Australia's bilateral economic relationship with Pakistan.

The IPPA is of benefit to a number of major Australian companies including BHP Petroleum, Clough Engineering and ANZ and failure to ratify it could have prejudiced Australian companies engaged in business in Pakistan. The Government was concerned that adoption of this recommendation could have inhibited Australia's ability to pursue its trade and economic interests with Pakistan effectively.