

## **Government Response to the Thirty Fourth Report of the Joint Standing Committee on Treaties.**

In this Report the Committee considers two treaty actions: an *Agreement with Spain on remunerated employment for dependants of personnel at Diplomatic and Consular Missions* and *Amendments to the Convention on International Trade in Endangered Species* which were tabled on 6 June 2000.

The Report recommends that binding treaty action be taken in relation to the agreement with Spain (Recommendation 1) and makes two formal recommendations in relation to the *Amendments to the Convention on International Trade in Endangered Species*.

### **Recommendation 2**

With reference to the *Amendments to the Convention on International Trade in Endangered Species* the Committee, at paragraph 3.34 recommends that:

**The Minister for the Environment and Heritage should provide the Joint Standing Committee on Treaties with copies of any proposed amendments to the *Convention on International Trade in Endangered Species* and the *Convention on the Protection of Migratory Species of Wild Animals*, particularly proposed amendments submitted by the Australian Government, at the same time that they are lodged with the Convention secretariats and made available to Parties to the Conventions.**

The Government advises that there is already an existing well-established procedure for widespread consultation on proposed amendments to both the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Convention on the Conservation of Migratory Species of Wild Animals (CMS) prior to each Conference of the Parties.

Conferences of the Parties for both conventions are held generally every two to three years. Prior to each meeting, the Minister for the Environment and Heritage writes to relevant Ministers in the Commonwealth Government and the States and Territories seeking their views on proposed amendments. Consultation also takes place at a detailed level between Environment Australia, relevant State, Territory and Commonwealth Government agencies and non-government organisations.

Prior to the recent 11<sup>th</sup> Conference of the Parties to CITES in Nairobi (COP11) in April 2000, all jurisdictions agreed to the proposals to be put forward by Australia and to the proposed Australian position on proposals by other Parties.

In addition, a wide range of interests is traditionally represented on the Australian delegation to CITES Conferences of the Parties. The Australian delegation to COP11 included representatives from the Australia and New Zealand Environment and Conservation Council (ANZECC), the Northern Territory, Humane Society International

(a non-government conservation organisation) and officers from the Department of Foreign Affairs and Trade and Environment Australia.

Prior to the 6<sup>th</sup> Conference of the Parties for the CMS in November 1999, all State and Territory governments and relevant Commonwealth Ministers, including the Prime Minister, supported the proposals submitted by Australia as well as those proposals of relevance to Australia.

### *Specific comments on Recommendation 2*

The Government is pleased to support the general intentions of Recommendation 2 of Report 34.

However, the dates for finalising Australian proposals and finalising Australian positions on the proposals of other Parties are different, and Recommendation 2 does not distinguish between them. The Government therefore proposes that the timing of provision of proposals to JSCOT should depend upon whether the proposals are Australian or whether they are made by another Party. The reasons for this are discussed below.

#### *Draft Australian proposals*

If draft Australian proposals were provided to JSCOT at the same time as they are lodged with the Convention Secretariats, as suggested in Recommendation 2, this would mean that JSCOT would not receive copies of proposals until they had been finalised in consultation with whole of government and other relevant stakeholders including the States and Territories. At that stage, it would not be possible for JSCOT to have any meaningful input into preparation of the proposals.

It is therefore proposed to provide JSCOT with draft Australian proposals at the same time as they are provided to other stakeholders, so that JSCOT would have an opportunity to comment on the draft proposals prior to their finalisation and lodgement with Convention Secretariats.

#### *Proposals made by other Parties*

Copies of all proposals made by other Parties will be provided to JSCOT as soon as practicable after being made available to the Government by the Convention Secretariats. This would enable JSCOT to have input into the Australian positions on proposals lodged by other Parties, as these would still be under consideration pending finalisation of the delegation brief.

It is noted that the preparation of briefing for a Conference of the Parties to a convention is a very resource intensive task. As many proposals and agenda papers arrive shortly before the conference, the delegation brief is usually completed just in

time for the Conference. In this context, it would not be possible for Environment Australia to divert resources to assist JSCOT in assessing proposals.

### **Recommendation 3**

At paragraph 3.38 the Committee recommends that:

**The Minister for Foreign Affairs, in conjunction with the Minister for the Environment and Heritage and other ministers as appropriate, should:**

- **Identify the international agreements to which Australia is party that allow amendments agreed at a Conference of Parties, or agreed by correspondence between Parties, to automatically enter into force and provide a list of these to the Committee;**
- **review whether it is appropriate for the Australian government to continue to subscribe to such provisions, given the transparency objectives of the reformed treaty making process; and**
- **report back to the Treaties Committee within three months of this report being tabled on the results of this consideration.**

The Government recognises the important contribution that the Committee has made in increasing the level of community consultation about treaty actions, and bringing greater transparency to the treaty-making process. In relation to amendments to treaties, the Government considers that the Committee's role should not be limited to cases where the amendment has not yet entered into force, because the Committee can play a useful role in examining the implications of treaty amendments that have already taken effect or will enter force automatically. The Government acknowledges the Committee's concerns about its capacity to undertake its functions in relation to "automatic entry" amendments and, consistent with its response to Recommendation 2, will now explore ways to ensure that such amendments are brought to the Committee's attention in sufficient time to allow it to undertake a fuller consideration of them.

In relation to future multilateral treaties that Australia is considering ratifying, the Government will continue to have regard to their amendment procedures as part of determining whether it would be in Australia's national interest to become bound by the treaty. Similarly the Government expects that the Committee may have regard to amendment procedures when formulating its views in relation to proposed treaty actions.

In relation to treaties that are already in existence, the Government considers that it would not be fruitful to invest considerable resources reviewing over 2000 treaties, analysing their amendment provisions and conducting a review of whether those provisions are appropriate. This is because any such amendment provisions that exist will be scrutinised (both by the Government and by the Committee) as and when amendments are proposed. If, as a result of an automatic amendment procedure, Australia became bound by an amendment that is not in Australia's national interest, it

would be appropriate for the Government to consider whether continued membership of the amended treaty would be in the national interest. The Government expects that the Committee would contribute to the consideration of that issue.