

**Documents tabled on 25 June 2008**

**National Interest Analysis [2008] ATNIA 22**

**Headquarters Agreement between the Government of Australia and the  
Secretariat to the Agreement on the Conservation of Albatrosses and Petrels  
(Hobart, 23 June 2008)  
[2008] ATNIF 7**

# NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

## SUMMARY PAGE

### **Headquarters Agreement between the Government of Australia and the Secretariat to the Agreement on the Conservation of Albatrosses and (Hobart, 23 June 2008) [2008] ATNIF 7**

#### **Nature and timing of proposed treaty action**

1. The treaty action proposed is the entry into force of the *Headquarters Agreement between the Government of Australia and the Secretariat to the Agreement on the Conservation of Albatrosses and Petrels* (the Headquarters Agreement). The Headquarters Agreement sets out the conditions for Australia to host the permanent Secretariat to the *Agreement on the Conservation of Albatrosses and Petrels* (ACAP) (done in Canberra on 19 June 2001 [2004] ATS 5) in Hobart.

2. The Parties to ACAP, including Australia, agreed on the text of the Headquarters Agreement at their second meeting on 13-17 November 2006 and requested the Executive Secretary of the interim Secretariat to sign the Headquarters Agreement on behalf of the Secretariat.

3. The Headquarters Agreement was signed by the Australian Government and the interim Secretariat on 23 June 2008. In accordance with Article 25 of the Headquarters Agreement, the Agreement will enter into force on the day on which the Government of Australia and the Secretariat notify each other in writing that their respective requirements for entry into force have been met. We expect to exchange notes as soon as Australia's domestic requirements are completed.

#### **Overview and national interest summary**

4. Australia promoted the development of the ACAP, which seeks to coordinate, harmonise and promote international conservation actions in terrestrial and marine environments to significantly improve the conservation status of albatrosses and petrels and their habitats.

5. Australia has hosted the interim Secretariat since the ACAP was signed in June 2001. At the first Meeting of ACAP Parties in October 2004, Australia's offer to host the permanent Secretariat was accepted by all Parties. The establishment of a permanent Secretariat is critical to guiding the future work of ACAP. The location of the ACAP Secretariat in Hobart accords with the Commonwealth's support for Hobart as an international Antarctic gateway city, and would increase Australia's standing in international affairs.

## **Reasons for Australia to take the proposed action**

6. ACAP has been an Australian-led initiative since 1997. Achieving a favourable conservation status for albatrosses and petrels has been a high priority for successive Australian Governments. Australia has played a significant role in the development and finalisation of ACAP and is the ACAP Depository, and has hosted the interim Secretariat since 2001.

7. Text specifying the conditions for, and privileges and immunities of, the permanent Secretariat was concluded in the form of the Headquarters Agreement at the second Meeting of ACAP Parties in November 2006. After whole of government consultations, it was agreed that hosting the permanent ACAP Secretariat would increase Australia's standing in international affairs. Further justification for hosting the permanent Secretariat in Australia includes the logistical simplicity and greater continuity in not having to move or interrupt the functioning of the interim Secretariat, including archiving and information management systems and support staff.

## **Obligations**

8. The Headquarters Agreement states in Article 5 that the Australian Government shall arrange for appropriate services for the Headquarters, such as electricity, water, sewerage, gas, mail, telephone, telegraph, drainage, collection of refuse and fire protection. The Tasmanian Government has made an offer to provide these and other services under a Memorandum of Understanding (MOU) between the Secretariat and the Government of Tasmania. The Tasmanian Government has been providing these services to the interim Secretariat under a previous MOU.

9. The Secretariat will have immunity from suit and other administrative or legal processes as set out in Article 6.

10. Article 9 provides that the Secretariat will be exempt from all direct taxes including income, capital gains and corporation tax, as well as direct taxes levied by the States or local authorities. The costs of these concessions are modest and will be borne by the Department of the Environment, Water, Heritage and the Arts (DEWHA); these are described in more detail in paragraph 19.

11. Article 10 outlines exemptions from customs and excise duties and refunds for excise and customs duty paid.

12. Under Article 12, the Secretariat shall be exempt from currency and exchange restrictions, including those in respect of funds, currency and securities received, acquired, held or disposed of. The Secretariat may also operate bank or other accounts for its official use in any currency, without restrictions, and have them transferred freely within Australia or to any other country.

13. Article 14 states that the importation and exportation of the Secretariat's publications and other information material imported or exported by the Secretariat within the scope of its official activities shall not be restricted in any way.

14. Articles 15 through 18 set out the immunities applicable to representatives at ACAP meetings, the Executive Secretary of the Secretariat and other staff members and experts. Such immunity does not inhibit the Government taking reasonable measures to preserve security, nor does it prevent the application of laws necessary for health and quarantine or laws relating to public order (Article 21).

15. Pursuant to Article 19, the Australian Government will, pursuant to the laws of Australia and without undue delay and without fee, facilitate the entry into, residence in, and departure from Australia and freedom of movement in Australia of representatives at ACAP meetings, the Secretariat staff, certain family members, and relevant experts.

### **Implementation**

16. An MOU between the Tasmanian Government and the interim Secretariat has been in effect since 2007, and will continue to provide office accommodation and other appropriate services for the permanent Secretariat.

17. Regulations under the *International Organisations (Privileges and Immunities) Act 1963* will need to be made in order to bring the ACAP Secretariat within the operation of that Act. This will ensure that the requisite privileges, immunities and taxation concessions are provided for representatives at ACAP meetings, the Executive Secretary and other staff and their family members, and relevant experts.

18. The existing Migration Regulations 1994 provide for fee-free visas for people accorded, or expected to be accorded, privileges and immunities under the *International Organisations (Privileges and Immunities) Act 1963*, or to representatives of an international organisation. This will allow the Department of Immigration and Citizenship to, pursuant to the Laws of Australia and without undue delay and without fee, facilitate the entry into, residence in, and departure from Australia of the persons listed in Article 19 (a), (b) and (c) of the Headquarters Agreement.

### **Costs**

19. The Secretariat will operate on a modest budget of approximately \$450 000 per annum (which is funded by all Parties to ACAP), meaning that the proposed taxation concessions will also be modest and more than commensurate with the conservation and other benefits to be gained by Australia from the future success of ACAP. The Department of the Environment, Water, Heritage and the Arts (DEWHA) has committed to meeting the cost of these concessions.

### **Regulation Impact Statement**

20. DEWHA has carried out the Office of Best Practice Regulation (OBPR) self-assessment process to confirm that no Regulation Impact Statement is required for the Headquarters Agreement.

### **Future treaty action**

21. Article 26 of the Headquarters Agreement provides that the Agreement may be amended by agreement between the Australian Government and the Secretariat subject to the approval of the Meeting of the Parties of ACAP. Any amendment to the Headquarters Agreement would constitute a separate treaty action and be subject to the usual domestic treaty making process including the tabling of a National Interest Analysis.

### **Withdrawal or denunciation**

22. Article 25 of the Headquarters Agreement provides that the Agreement may be terminated by a joint decision of the Government of Australia and the Secretariat. In resolving to terminate the Headquarters Agreement, the Secretariat may only act in accordance with a decision of the Meeting of the Parties of ACAP. The date on which the Headquarters Agreement terminates shall be confirmed by an exchange of notes between the Government of Australia and the Secretariat. Any termination of the Headquarters Agreement would also be subject to Australia's domestic treaty making process.

### **Contact details**

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**Consultations**

1. Following the first Meeting of ACAP Parties, negotiations commenced to obtain whole of government agreement on the content of a Headquarters Agreement between the ACAP Secretariat and the Australian Government. An Interdepartmental Committee that included representatives from the Department of the Environment and Water Resources, the Department of Foreign Affairs and Trade, the Australian Customs Service, the Department of Immigration and Citizenship, the Treasury and the Attorney-General's Department was established to negotiate the terms of the Headquarters Agreement. The draft text developed by Australia was circulated to the ACAP Parties early in 2006 for comment.
2. Following comments on various aspects of the Headquarters Agreement from the ACAP Parties, Australia circulated a revised text to the Parties before the second Meeting of ACAP Parties. At that meeting, ACAP Parties agreed to the text of the Headquarters Agreement (Annex 2).
3. The Headquarters Agreement was provided to the Commonwealth-States-Territories-Standing Committee on Treaties (SCOT) at their meeting of 26 September 2007. SCOT was comfortable with the Headquarters Agreement and did not request additional briefing.
4. The Prime Minister, the Treasurer, the Attorney-General and the Foreign Minister have agreed to the Headquarters Agreement, including the tax revenue consequences. The Treasurer has negotiated with his counterparts in the States and Territories regarding the financial implications and they support the proposal.
5. The State of Tasmania has hosted the interim Secretariat for several years. Tasmania expressed a willingness to host the permanent Secretariat in Hobart. Tasmania has a strong and longstanding commitment as a host to international Secretariats and organisations with an Antarctic or Southern Ocean focus. Tasmania already hosts the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the Council of Managers of National Antarctic Programs (COMNAP) and the French Polar Institute's southern base. The Australian Government has worked closely with Tasmania in the establishment of the Secretariat.
6. The Commonwealth-State-Territory Standing Committee on Treaties (SCOT) were provided with information on the ACAP Headquarters Agreement prior to their 24 September 2007 meeting. They did not seek any further briefing.