

Government Response to Report 95 of the Joint Standing Committee on Treaties

Response from the Australian Government

Chapter 2: Convention on the Rights of Persons with Disabilities

In Report 95 the Joint Standing Committee on Treaties made two recommendations related to its recommendation in Report 92 for ratification of the *Convention on the Rights of Persons with Disabilities* (the Convention).

Recommendations 1

The Committee recommends that the Government consider expanding the role of the Human Rights and Equal Opportunity Commissioner to enable the Commissioner to provide Parliament with an annual report on compliance and implementation of the Convention and, if also ratified, the Optional Protocol.

Government's Response

The Government has taken steps to formally and specifically empower the Australian Human Rights Commission to examine the Convention's implementation should it wish, or is directed to do so by the Attorney-General. This has been done through declaration of the Convention under s.47 of the *Human Rights and Equal Opportunity Commission Act 1986*. This declaration empowers the Commission to examine and report to the Attorney-General on the implementation of the Convention. It also enables the Commission to conciliate complaints based on breaches of the Convention by the Commonwealth.

The Government will also keep the Committee's recommendation in mind as part of its consideration of the report on the National Human Rights Consultation.

Recommendations 2

The Committee recommends that a review be carried out of the relevant provisions of the Migration Act and the administrative implementation of migration policy, and that any necessary action be taken to ensure that there is no direct or indirect discrimination against persons with disabilities in contravention of the Convention.

Government's Response

In deciding whether to ratify the Convention, the Australian Government assessed existing migration laws, policies and programs - including the immigration health requirement - and found them to be consistent with the obligations under the

Convention. The Convention does not create any new rights in respect of immigration, and does not give any person the right to enter or remain in a country of which he or she is not a national. Australia's health requirements for non-nationals seeking to enter or remain in Australia are consistent with Australia's international obligations, as they are based on legitimate, objective and reasonable criteria and do not, therefore, constitute discrimination under international law against persons with disabilities.

The Minister for Immigration and Citizenship, together with the Parliamentary Secretary for Disabilities and Children's Services, announced late last year that the Parliamentary Committee on Migration would be asked to inquire into the treatment of people with a disability as part of the health requirement for Australian visa processing.

The terms of reference for the inquiry were settled on 13 August 2009. The inquiry can be expected to provide an opportunity for many of the issues and concerns that activated the Committee to recommend a review, to be considered.

Inquiry into the migration treatment of disability

TERMS OF REFERENCE

The Committee has been asked to inquire into the assessment of the health and community costs associated with a disability as part of the health test undertaken for Australian visa processing. The Committee shall:

- Report on the options to properly assess the economic and social contribution of people with a disability and their families seeking to migrate to Australia.
- Report on the impact on funding for, and availability of, community services for people with a disability moving to Australia either temporarily or permanently.
- Report on whether the balance between the economic and social benefits of the entry and stay of an individual with a disability, and the costs and use of services by that individual, should be a factor in a visa decision.
- Report on how the balance between costs and benefits might be determined and the appropriate criteria for making a decision based on that assessment.
- Report on a comparative analysis of similar migrant receiving countries.

Chapter 3: The Australia - Chile Free Trade Agreement

Recommendation 3

The Committee recommends that, prior to commencing negotiations for bilateral or regional trade agreements, the Government table in Parliament a document setting out its priorities and objectives. The document should include independent assessments of the costs and benefits. Such assessments should consider the economic, regional, social, cultural, regulatory and environmental impacts which are expected to arise

Government's response

The Government is already implementing Recommendation 3 through its commitment to transparent and inclusive trade policies.

Our approach to the Government's decision to participate in negotiations towards a Trans-Pacific Partnership (TPP) Agreement honours that commitment. That decision was taken in the context of an initial public consultation process.

After the Government announced on 23 September 2008 that Australia would actively consider participating in TPP negotiations, wide-ranging public consultations were held with industry, business, academics and labour and community organisations, as well as with other government agencies, and State and Territory officials. The consultations allowed us to hear directly from each of these sectors in our community on their views on Australia's possible participation. Submissions were made public on the Department of Foreign Affairs and Trade website.

Taking into account this input, the Government formed the view that Australia should proceed with this initiative.

The Minister for Trade tabled a document in both houses of Parliament on 26 November 2008, outlining the views that emerged in the consultations on the costs and benefits of participation, including the expected economic, regional, social, cultural, regulatory and environmental impacts of a TPP, and on priorities and objectives for the negotiations.

A similar process was followed for the launch of negotiations for a bilateral free trade agreement (FTA) between Australia and the Republic of Korea ('Korea'). Following the release of a joint non-government FTA feasibility study in April 2008, public submissions on a possible FTA with Korea were called for in December 2008. Submitting parties were asked to comment on the expected commercial, economic, regional, social, cultural, regulatory and environmental impacts that could be expected to arise from Australia's participation in an FTA with Korea.

More than 40 submissions were received from a broad cross-section of the community in the initial consultation phase. Overall, the submissions were broadly supportive of commencing FTA negotiations with Korea. Taking this into account, the Government formed the view that it should proceed to negotiations.

On 5 March 2009, the Prime Minister and Korean President Lee Myung-bak jointly announced the launch of bilateral FTA negotiations. On 10 March, the Minister for Trade made a Statement to the Parliament on the launch of negotiations, including an outline of the Government's priorities for the negotiations, and tabled a document in both chambers outlining the views of those who had made submissions. To date, three rounds of negotiations have been held.

Recommendation 4

The Committee recommends that the Department of Foreign Affairs and Trade undertake and publish a review of the operation of the Australia – Chile Free Trade Agreement no later than two years after its commencement in order to assess the ongoing relevance of concerns expressed about the Agreement, such as the maintenance of sanitary and phytosanitary measures, impact on the horticulture industries, intellectual property, 457 visas, and labour and environmental standards.

Government's Response

The Committee will be aware that in accordance with Article 20.1 of the Australia-Chile Free Trade Agreement, Australia and Chile agreed to establish a Joint FTA Committee to review the general functioning of the Agreement. The Joint Committee will meet in, or shortly after, the first year of entry into force of the Agreement. It will meet thereafter as agreed by the Parties. It is envisaged that the Department of Foreign Affairs and Trade will provide a report to the Minister for Trade on the key outcomes and conclusions of the meeting of the Joint FTA Committee. The Department may address the issues mentioned in this Recommendation in its report, should they be raised in the meeting of the Joint FTA Committee. The Minister may consider making this report available either through publication or through a statement to Parliament.

However, as the Department of Foreign Affairs and Trade has pointed out in its testimony and submissions to the Committee on this Free Trade Agreement, there is nothing in the Agreement which will affect the maintenance by the relevant authorities in Australia of sanitary and phytosanitary measures. Nor do any provisions of the Agreement change the requirements for the issuing of Australian visas to Chileans.

Recommendation 5

The Committee supports the *Australia – Chile Free Trade Agreement* and recommends that binding treaty action be taken.

Government's Response

Binding Treaty action has been taken and the Agreement entered into force on 6 March 2009.