

# Agreement between Australia and the Republic of Korea on the Protection of Migratory Birds

## Introduction

- 4.1 On 6 December 2006 Australia signed a bilateral agreement with the Government of the Republic of Korea on the protection of migratory birds, the *Agreement between the Government of the Republic of Korea on the Protection of Migratory Birds* (ROKAMBA).<sup>1</sup>
- 4.2 Australia has a strong interest in maintaining biodiversity generally and in protecting migratory bird species which visit our shores. The ROKAMBA represents a significant development in Australia's efforts to conserve migratory bird populations.<sup>2</sup>

## Background

- 4.3 Migratory waterbirds journey twice a year from the northern to the southern hemisphere and back. Migratory birds use four major global

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1 *Agreement between the Government of the Republic of Korea on the Protection of Migratory Birds, and exchange of notes*; NIA, para. 1.

2 Mr Jason Ferris, *Transcript of Evidence*, 26 March 2007, p. 10.

routes called global flyways.<sup>3</sup> These birds are in need of protection and habitat management in all the regions they visit and conservation of these birds consequentially requires an international approach.<sup>4</sup>

4.4 In Australia, there are important bird habitat sites such as:

Roebuck Bay and Eighty Mile Beach in the north-west of Australia, which are sand and mud flat coastal habitats – and inland wetlands that are used by migratory birds to coral quays and more oceanic sites that are used by things like the terns and the migratory seabirds.<sup>5</sup>

4.5 Australia has led the conservation of migratory birds throughout the East Asian – Australasian Flyway through the Asia Pacific Migratory Waterbird Conservation Strategy 1996-2005 and continues to do so as one of the initiating partners of the World Summit on Sustainable Development, Type II Partnership for Migratory Waterbirds in the East Asian – Australasian Flyway.<sup>6</sup>

4.6 Australia has existing bilateral agreements similar to the ROKAMBA with China<sup>7</sup> and with Japan<sup>8</sup>. The ROKAMBA signifies Australia's ongoing commitment to the conservation of migratory birds.

## Purpose of the Agreement

4.7 The purpose of the agreement is to help protect bird species, which regularly migrate between Australia and the Republic of Korea, and their environment.<sup>9</sup>

4.8 Migratory species are a matter of National Environmental Significance under the *Environmental Protection and Biodiversity Act 1999* (EPBC Act). The Republic of Korea provides critical stopover sites for migratory shorebirds during their migration to Australia.<sup>10</sup>

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3 Department of Environment and Water Resources (DEWR) website, accessed 8 May 2007: <[www.environment.gov.au/water/wetlands/bulletin/shorebird.html](http://www.environment.gov.au/water/wetlands/bulletin/shorebird.html)>

4 DEWR website, accessed 8 May 2007: <[www.environment.gov.au/water/wetlands/bulletin/shorebirds.html](http://www.environment.gov.au/water/wetlands/bulletin/shorebirds.html)>

5 Mr Jason Ferris, *Transcript of evidence*, 26 March 2007, p. 11.

6 NIA, para. 4.

7 *Agreement with the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment* (CAMBA).

8 *Agreement with the Government of Japan for the Protection of Migratory Bird and Birds in Danger of Extinction and their Environment* (JAMBA).

9 NIA, para. 5.

10 NIA, para. 6.

The ROKAMBA complements Australia's existing bilateral agreements with China and Japan, providing a formal mechanism through which Australia can work to ensure the protection of important habitat for shorebirds during their migration beyond Australian jurisdiction.<sup>11</sup>

## Obligations

- 4.9 The agreement will bring no new obligations for Australia.
- 4.10 Article 1(2) provides that the Annex to the ROKAMBA contains the list of species or subspecies of birds for which there is reliable evidence of migration between the two countries (see Appendix A).<sup>12</sup> All the species included in the annex are already protected under the EPBC Act and also under relevant state and territory wildlife and environment legislation.<sup>13</sup>
- 4.11 ROKAMBA obliges contracting Parties to protect and conserve bird species, which regularly migrate between Australia and the Republic of Korea, and their habitats.<sup>14</sup>
- 4.12 Australia and the Republic of Korea are prohibited to take, sell, purchase or exchange migratory birds or their eggs, except in the following cases:<sup>15</sup>
- for scientific, educational, propagative or other specific purposes not inconsistent with the objectives of the Agreement;
  - for the purpose of protecting persons and property;
  - for hunting during hunting seasons or on hunting grounds established in accordance with Article 2(1)(c); and,
  - to allow the hunting and gathering of specified migratory birds or their eggs by the inhabitants of specified regions who have traditionally carried on such activities for their own food, clothing or cultural purposes, provided that the population of each species

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11 NIA, para. 6.

12 NIA, para. 5.

13 Mr Jason Ferris, *Transcript of Evidence*, 26 March 2007, p. 11.

14 NIA, para. 7.

15 ATNIF 28, Article 2.

is maintained in optimum numbers and that adequate preservation of the species is not prejudiced (Article 2).<sup>16</sup>

- 4.13 Australia and the Republic of Korea are encouraged to undertake joint research programs and to exchange data and publications relating to migratory birds (Article 3).
- 4.14 Australia and Korea shall endeavour to manage and conserve the habitats of birds listed under the ROKAMBA and to take measures to conserve and improve their environments (Articles 4 and 5).

## Other issues

### Avian influenza

- 4.15 The Committee questioned officials from the Department of Environment and Water Resources (DEWR) regarding any possible threat to Australia though the spread of avian influenza by migratory bird populations.<sup>17</sup>
- 4.16 The Committee was assured that the majority of the birds that are protected under this agreement are migratory shore birds that carry avian influenza viruses at a much lower rate than ducks and geese and therefore pose a much lower risk.<sup>18</sup> Migratory birds also have a much lower chance of interacting with domestic poultry which is a key element of disease spread scenarios.<sup>19</sup>
- 4.17 In addition, it is considered unlikely that birds weakened by avian influenza would be able to transverse the considerable distance from Korea to Australia.<sup>20</sup>

### Korean Government obligations

- 4.18 The Committee noted that one of the single greatest threats to shorebirds is the loss of feeding grounds and that in some areas hunting may also be a serious threat. It questioned the DEWR officials

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16 ATNIF 28, Article 2.

17 Mr Jason Ferris, *Transcript of Evidence*, 26 March 2007, p. 12.

18 There are two duck species included under the agreement but the frequency of their migration is considered to be very low. Mr Jason Ferris, *Transcript of evidence*, 26 March 2007, p. 12.

19 Mr Jason Ferris, *Transcript of Evidence*, 26 March 2007, p. 12.

20 Mr Jason Ferris, *Transcript of Evidence*, 26 March 2007, p. 12.

on how the agreement encouraged or enforced the Republic of Korea to conserve migratory bird habitats. The Committee was told:

It is quite specifically addressed in the agreement, but unfortunately it is at the level of endeavour. Article 4 says:

- Each Party shall endeavour to manage and conserve the habitat of migratory birds through activities such as the designation of conservation areas in its territory.<sup>21</sup>

4.19 DEWR further stated:

Certainly we are aware of plans by the Korean government to undertake further reclamation of coastal mud flats. The agreement will certainly give us an opportunity to try to encourage them to do that in a way that manages habitat for migratory species.<sup>22</sup>

## Levels of Korean research on migratory birds

4.20 The Committee questioned DEWR concerning the types of research undertaken by Korea and how this might impact on migratory bird populations. They were informed that:

There are a very small number of birds taken for research purposes. Most of the research is non-invasive or it involves at worst capture and banding of the birds and applying colour markings to allow migration studies. There have been a few studies working on the physiology of birds and trying to understand the migration where birds have been taken and killed, but we are talking about a handful of birds over the last decade. The work was actually undertaken by some Dutch researchers.<sup>23</sup>

## Consultation

4.21 The NIA states that the following Commonwealth, State and Territory agencies were consulted regarding the ROKAMBA:

- Australian Government Attorney-General's Department;

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21 Mr Jason Ferris, *Transcript of Evidence*, 26 March 2007, p. 13.

22 Mr Jason Ferris, *Transcript of Evidence*, 26 March 2007, p. 13.

23 Mr Jason Ferris, *Transcript of Evidence*, 26 March 2007, pp. 11 to 12.

- Australian Government Department of Immigration and Multicultural Affairs;
- Australian Government Department of Foreign Affairs and Trade;
- Australian Government Department of Communications, Information Technology and the Arts;
- Australian Government Department of Industry, Tourism and Resources;
- Australian Government Department of Defence;
- Australian Government Department of the Prime Minister and Cabinet;
- Australian Government Department of Transport and Regional Services;
- Australian Government Department of the Treasury;
- Australian Government Department of Agriculture, Fisheries and Forestry;
- Department of Primary Industries Water and Environment (Tasmania);
- Department of Primary Industries (Victoria);
- Department for Environment and Heritage (South Australia);
- Department of Conservation and Land Management (Western Australia);
- Department of Environment and Conservation (New South Wales);
- Department of Infrastructure, Planning and Natural Resources (New South Wales);
- Environmental Protection Agency (Queensland);
- Department of Natural Resources, Environment and the Arts (Northern Territory); and
- Environment ACT.<sup>24</sup>

4.22 The Department of the Environment and Heritage consulted with the Natural Resource Management Wetlands and Waterbirds Taskforce<sup>25</sup>

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24 ATNIF 28, Consultation, para. 1.

25 The taskforce comprises the agencies listed. The Department of Environment and Water Resources was formerly known as the Department of the Environment and Heritage.

(the Taskforce) and provided papers, and spoke, to the Taskforce meetings in November 2004, July 2005 and May 2006 summarising the state of affairs for Australia's bilateral migratory bird agreements. Each paper included information about the ROKAMBA and progress in its development.<sup>26</sup>

- 4.23 No agencies raised any concerns regarding the proposed treaty action.<sup>27</sup>

## Costs

- 4.24 The entry into force of the ROKAMBA is not expected to impose any additional costs on Australia as the species in the annex to ROKAMBA are already protected as matters of National Environmental Significance under the EPBC Act, by virtue of their inclusion in the Annexes to the JAMBA, CAMBA and the Convention on Migratory Species (CMS).<sup>28</sup>

## Entry into force and withdrawal

- 4.25 The ROKAMBA would not require implementing legislation. The EPBC Act enables Australia to give domestic effect to the obligations imposed by the ROKAMBA.<sup>29</sup>
- 4.26 The EPBC Act provides for protection of migratory species as a matter of National Environmental Significance. Division 2 of Part 13 of the EPBC Act provides for the preservation, conservation and protection of migratory species in or on a Commonwealth area, including to the outer limits of the exclusive economic zone, but excluding State and Northern Territory waters.<sup>30</sup>
- 4.27 Section 209(3)(c) of the EPBC Act specifies that the list of migratory species must include all native species from time to time identified in a list established under an international agreement approved by the

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26 ATNF 28, Consultation, para. 3.

27 ATNIF 28, Consultation, para. 4.

28 NIA, para. 17.

29 NIA, para. 13.

30 NIA, para. 14.

Minister under subsection 4.<sup>31</sup> Before the ROKAMBA enters into force, the Minister for the Environment and Water Resources will need to sign an instrument under Section 209(4) of the EPBC Act, approving the ROKAMBA as an international agreement relevant to the conservation of migratory species.<sup>32</sup>

- 4.28 Division 1 of Part 3 of the EPBC Act prohibits the taking of actions that are likely to have a significant impact on matters of National Environmental Significance without approval from the Minister for the Environment and Water Resources.<sup>33</sup> Under sections 20(1) and 20A(1), a person must not take an action that has, will have, or is likely to have a significant impact on a listed migratory species unless that Minister has given approval.<sup>34</sup> There are exceptions to this prohibition, including those set out in Part 4 of the EPBC Act and an exception for certain actions requiring separate authorisation by an Australian government agency.<sup>35</sup>
- 4.29 Article 8(2) of the ROKAMBA provides that either Party may, by giving one year's notice in writing, terminate the ROKAMBA at the end of the initial fifteen year period or at any time thereafter.<sup>36</sup> Withdrawal by Australia would also be subject to our domestic treaty making process including the tabling of a National Interest Analysis and consideration by JSCOT and Federal Executive Council.<sup>37</sup>

## Conclusion and recommendations

- 4.30 The Committee agrees that the ROKAMBA is an important development in Australia's efforts to conserve the migratory birds which visit this country and that it complements the two similar agreements Australia has in place with China and Japan.

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31 NIA, para. 15.

32 NIA, para. 15.

33 NIA, para. 16.

34 NIA, para. 16.

35 NIA, para. 16.

36 NIA, para. 20.

37 NIA, para. 20.



### **Recommendation 3**

**The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Migratory Birds* (Canberra, 6 December 2006) and recommends that binding treaty action be taken.**

