

UNCLASSIFIED

Senate Economics Legislation Committee

**Australian Department of Defence
Submission to the Inquiry into the Tax and Superannuation Laws Amendment
(2014 Measures No. 6) Bill 2014**

The Australian Department of Defence provides the following submission to inform the Senate Economics Legislation Committee's inquiry into the *Tax and Superannuation Laws Amendment (2014 Measures No. 6) Bill 2014* ('the Bill').

Schedule 3 to the Bill seeks to amend the *Income Tax Assessment Act 1936* ('the Act') to provide an exemption from Australian tax on income derived by certain entities engaged by the Government of the United States of America (US) to carry out work exclusively for the US Government in connection with the US Force Posture Initiatives in Australia. This follows undertakings made by the Australian Government as part of *The Force Posture Agreement between the Government of Australia and the Government of the United States of America* ('the Agreement').

The Agreement was signed on 12 August 2014 in Sydney by the Minister for Foreign Affairs, the Hon Julie Bishop MP, and the Minister for Defence, Senator the Hon David Johnston, with their US counterparts. This important new agreement with our US alliance partner seeks to facilitate the full implementation of the US Force Posture Initiatives in Australia.

First announced in 2011 by then-Prime Minister Gillard and US President Obama, the US Force Posture Initiatives in Australia currently involve annual rotational US Marine Corps (USMC) deployments and enhanced aircraft cooperation activities with the US Air Force (USAF) in northern Australia. The USMC rotations occur for around six months at a time during the northern dry season. This year's rotation comprised around 1150 personnel, with the size of the rotations to increase in the coming years to around 2500 personnel, equipment and aircraft. The enhanced aircraft cooperation initiative involves an extension of long standing bilateral activities, building on USAF visits for exercising and training. The US Force Posture Initiatives in Australia are an important new element of the Australia US alliance and are an expression of Australia's support for a strong US presence in the Asia-Pacific.

The Agreement provides a legal, policy and financial framework to govern the US Force Posture Initiatives in Australia and contains important protections and assurances for both countries. It requires, for example, respect for Australian sovereignty and the laws of Australia, imposes obligations for consultation, and affirms that the initiatives will occur at Australian facilities, consistent with our long standing policy that there are no foreign military bases on Australian soil. It also provides certainty around the conditions for US access to Australian owned facilities as well as the types of activities that US forces will be able to conduct under the initiatives. The Agreement provides the certainty needed for both countries to maximise the benefits of the initiatives while protecting their sovereign interests.

UNCLASSIFIED

UNCLASSIFIED

To fulfil Australia's obligations under the Agreement, and to allow for its eventual entry into force, an amendment to the Act is required as outlined in Schedule 3 to the Bill. This amendment would ensure that income derived by a person or company (other than a company incorporated in Australia) – as a result of work done exclusively for the US Government in Australia under contract to the US Government for the purposes of the US Force Posture Initiatives in Australia – is not taxed in Australia; provided that income is taxed in the US. This is to avoid a situation where such persons or companies could be taxed in both jurisdictions. These provisions are modelled on those of the *Agreement between the Government of Australia and the Government of the United States of America relating to the Operation of and Access to an Australian Naval Communication Station at North West Cape in Western Australia 2011*.

Of note, the Agreement will apply only to those activities that occur explicitly under the US Force Posture Initiatives in Australia. As a result, the proposed exemption from Australian tax on income derived by certain entities engaged by the US Government would only extend to those specific entities performing duties directly connected with the US Force Posture Initiatives in Australia. There is no intention to extend the exemption to entities engaged by the US Government in Australia that are performing other, unrelated duties.

The Agreement, as a legally-binding instrument of treaty status, was tabled in the Australian Parliament on 26 August 2014 for consideration by the Joint Standing Committee on Treaties (JSCOT). A public hearing on the Agreement was held by JSCOT on 22 September 2014, with JSCOT due to report on the Agreement by 26 November 2014.

In light of the important protections and assurances provided by the Agreement, it is strongly in Australia's national interest for the Agreement to enter into force as soon as is practicable and well ahead of the arrival of next year's rotation of US Marines (which is expected to occur around March-April 2015). This would require timely consideration of Schedule 3 of the Bill by the Parliament. To this end, on 12 August 2014, the Minister for Defence wrote to the Chair of JSCOT, Mr Wyatt Roy MP, to seek JSCOT's concurrence that the proposed amendment to the Act arising from the Agreement could be introduced into Parliament during the period in which JSCOT was likely to be considering the Agreement. On 26 August 2014, Mr Roy advised that JSCOT had agreed to this request.