

Report 110

Treaties tabled on 18, 25 (2) and 26 November 2009 and 2 (2) February 2010

Amendment to the Convention Establishing a Customs Cooperation Council adopted at Brussels in 1952

Agreement between Australia and the Republic of Lebanon regarding Cooperation on Protecting the Welfare of Children (Beirut, 18 March 2009)

Second Protocol amending the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income as amended by the Protocol of 16 October 1989

Agreement between Australia and the Republic of Poland on Social Security (Warsaw, 7 October 2009)

Amendments to the Annex of the Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973, as Modified by the Protocol of 1978 Relating Thereto

Treaty between Australia and the Republic of India on Mutual Legal Assistance in Criminal Matters (Canberra, 23 June 2008)

Extradition Treaty between Australia and the Republic of India (Canberra, 23 June 2008)

Amendment and extension of the Agreement between the Government of Australia and the Government of the United States of America concerning Space Vehicle Tracking and Communications Facilities effected by exchange of notes at Canberra May 29, 1980, as amended

Measure 16 (2009) Amendment of Annex II to the Protocol on Environmental Protection to the Antarctic Treaty (1998) (Baltimore, 17 April 2009)

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Membership of the Committee

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Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and

such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of recommendations

2 Agreement with Lebanon on Protecting the Welfare of Children

Recommendation 1

The Committee supports the *Agreement between Australia and the Republic of Lebanon Regarding Cooperation on Protecting the Welfare of Children* and recommends that binding treaty action be taken.

3 Taxation Agreement with Singapore

Recommendation 2

The Committee supports the *Second Protocol amending the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income as amended by the Protocol of 16 October 1989* and recommends that binding treaty action be taken.

5 Exchange of Notes constituting an Agreement between the Government of the United States of America and the Government of Australia to amend the Agreement concerning Space Vehicle Tracking and Communication Facilities of 29 May 1980, as amended.

Recommendation 3

The Committee recommends that the Minister for Foreign Affairs write to all other ministers to remind them that, when they are planning to enter into a treaty, they must factor in the agreed 15 to 20 sitting day timeframe for the Committee to conduct its inquiry.

6 Extradition Treaty between Australia and the Republic of India, and Treaty between Australia and the Republic of India on Mutual Legal Assistance in Criminal Matters

Recommendation 4

The Committee recommends that new and revised extradition agreements should explicitly provide a requirement that the requesting country provide annual information concerning the trial status and health of extradited persons and the conditions of the detention facilities in which they are held.

Recommendation 5

The Committee recommends that all Australians who are subject to extradition should receive a face to face meeting with an Australian consular official, except where the person has made explicit their objection to consular assistance to the satisfaction of consular officers.

Recommendation 6

The Committee recommends that, when a foreign national is extradited from Australia to a third country, the Australian Government formally advise the government of that person's country of citizenship that one of its nationals has been extradited from Australia to a third country.

Recommendation 7

The Committee supports the *Extradition Treaty between Australia and the Republic of India* and the *Treaty between Australia and the Republic of India on Mutual Legal Assistance in Criminal Matters* and recommends that binding treaty action be taken.

7 Measure 16 (2009) Amendments to Annex II to the Protocol on Environmental Protection to the Antarctic Treaty

Recommendation 8

The Committee supports *Measure 16 (2009) Amendment of Annex II to the Protocol on Environmental Protection to the Antarctic Treaty* and recommends that binding treaty action be taken.

Introduction

Purpose of the Report

1.1 This report contains advice to Parliament on the review by the Joint Standing Committee on Treaties of nine treaty actions tabled in Parliament on 18, 25 and 26 November 2009 and 2 February 2010. These treaty actions are the:

- *Amendment to the Convention Establishing a Customs Cooperation Council adopted at Brussels in 1952;*
- *Agreement between Australia and the Republic of Lebanon regarding Cooperation on Protecting the Welfare of Children (Beirut, 18 March 2009);*
- *Agreement between Australia and the Republic of Poland on Social Security (Warsaw, 7 October 2009);*
- *Second Protocol amending the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income as amended by the Protocol of 16 October 1989;*
- *Amendments to the Annex of the Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973, as Modified by the Protocol of 1978 Relating Thereto;*
- *Treaty between Australia and the Republic of India on Mutual Legal Assistance in Criminal Matters (Canberra, 23 June 2008);*
- *Extradition Treaty between Australia and the Republic of India (Canberra, 23 June 2008);*

- *Amendment and extension of the Agreement between the Government of Australia and the Government of the United States of America concerning Space Vehicle Tracking and Communications Facilities effected by exchange of notes at Canberra May 29, 1980, as amended; and*
- *Measure 16 (2009) Amendment of Annex II to the Protocol on Environmental Protection to the Antarctic Treaty (1998) (Baltimore, 17 April 2009).¹*

1.2 One of the powers of the Committee set out in its resolution of appointment is to inquire into and report on matters arising from treaties and related National Interest Analyses (NIAs) presented. This report deals with inquiries conducted under this power, and consequently the report refers frequently to the treaties and their associated NIAs. Copies of each treaty and its associated NIA may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct

1.3 Copies of each treaty action and the NIAs may also be obtained from the Australian Treaties Library maintained on the internet by the Department of Foreign Affairs and Trade. The Australian Treaties Library is accessible through the Committee's website or directly at:

www.austlii.edu.au/au/other/dfat/

Conduct of the Committee's Review

1.4 The reviews contained in this report were advertised in the national press and on the Committee's website.² Invitations to lodge submissions were also sent to all State Premiers, Chief Ministers, Presiding Officers of parliaments and to individuals who have expressed an interest in being kept informed of proposed treaty actions. Submissions received and their authors are listed at Appendix A.

1.5 The Committee also received evidence at public hearings on 1, 9 and 22 February 2010 in Canberra. A list of witnesses who appeared at the public hearings is at Appendix B. Transcripts of evidence from the public

1 Parliament of the Commonwealth of Australia, House of Representatives, *Votes and Proceedings* No. 132 p. 1470, No. 136 p. 1505, No. 137 p. 1536, No. 138 p. 1552; Parliament of the Commonwealth of Australia, Senate, *Journals of the Senate*, No. 99 p. 2756, No. 103 p. 2852, No. 106 p. 3056.

2 The Committee's reviews of the proposed treaty actions were advertised in *The Australian* on 2 December 2009 and 17 February 2010. Members of the public were advised on how to obtain relevant information both in the advertisement and via the Committee's website, and invited to submit their views to the Committee.

hearings may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct/25november2009/hearings.htm

and

www.aph.gov.au/house/committee/jsct/2february2010/hearings.htm

Agreement with Lebanon on Protecting the Welfare of Children

Introduction

- 2.1 The purpose of the *Agreement between Australia and the Republic of Lebanon regarding Cooperation on Protecting the Welfare of Children* is to establish formal procedures to assist Australian and Lebanese nationals whose children have been abducted by a parent to either Lebanon or Australia, or where difficulties with contact between a parent and child have arisen. No mechanisms currently exist as Lebanon is not party to the Hague Convention on the Civil Aspects of International Child Abduction (the Child Abduction Convention).¹
- 2.2 At the time of the Committee's inquiry, 17 of the 39 active child abduction cases receiving consular assistance from the Department of Foreign Affairs and Trade were in Lebanon.²

Reasons to take treaty action

- 2.3 The agreement reflects the provisions of the United Nations Convention on the Rights of the Child. States are obliged by Article 11 of that Convention to take measures to combat the illicit transfer and non-return

1 National Interest Analysis (NIA), paras 6 and 7.

2 Mrs Toni Pirani, *Transcript of Evidence*, 1 February 2010, p. 2.

of children abroad and to promote the conclusion of bilateral agreements to this end. Both Australia and Lebanon are party to the Convention.³

2.4 The Committee was informed that the agreement will secure some of the benefits of the Child Abduction Convention and is seen as an improvement on the current situation and a positive step to assist and protect the welfare of Australian and Lebanese Australian children.⁴

2.5 Mrs Toni Pirani of the Attorney-General's Department told the Committee:

The reason such agreements are necessary is that it has become clear that countries with child custody laws based on religious law are unlikely to join the more than 80 countries that have become parties to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.⁵

2.6 The only assistance currently available in relation to a child abducted to Lebanon is a grant of financial assistance under the Overseas (Child Custody Removal) Scheme administered by the Attorney-General's Department. This is a means-tested scheme that provides assistance with commencing legal proceedings, and can include the costs of engaging an overseas lawyer and travel costs. In the last five years, four applications have been made under this scheme in relation to Lebanon.⁶

Obligations

2.7 The agreement is administrative and facilitative, and has no measures that require legal enforcement. It extends to children who are of Australian, Lebanese or dual Australian and Lebanese nationality.

2.8 Article 3 of the agreement establishes a Joint Consultative Commission with representatives of both governments that will assist in locating children who have been abducted, encouraging dialogue between parents and facilitating the return of children in some cases.

2.9 In accordance with the laws of each party, the roles of the Commission will include monitoring and assistance in resolving individual cases; promoting awareness and cooperation between concerned authorities;

3 NIA, para 4.

4 Mrs Toni Pirani, *Transcript of Evidence*, 1 February 2010, pp. 2, 3.

5 Mrs Toni Pirani, *Transcript of Evidence*, 1 February 2010, p. 2.

6 Mrs Toni Pirani, *Transcript of Evidence*, 1 February 2010, p. 3.

facilitating and settling disputes between parents; and receiving, exchanging and facilitating the transmitting of information and documents between each party.⁷ The Committee was informed that the Government expects that consideration of the cases brought to the Commission will benefit from the knowledge and experience of Commission members and also their access to government networks.⁸

2.10 The Commission will use diplomatic channels for communication and can also meet where requested by either party.⁹

2.11 The agreement mandates that the 'best interests of the child' are of primary importance in relation to parents' rights of custody and access, and seeks to maintain the child's personal relations with both parents. The agreement recognises that a child's best interests are provided for in the United Nations Convention on the Rights of the Child.¹⁰

2.12 The agreement also aims to assist a child that may have been removed by a parent to recover from any harmful effects.¹¹

2.13 The Committee was informed that if there was no success in reaching an arrangement between the parents, the parent in Australia could undertake legal proceedings in Lebanon for the return of the child. These proceedings would be governed by Lebanese laws.¹²

2.14 The agreement does not provide for Lebanese courts to recognise decisions by Australian courts.¹³ In cases where a child is removed to a country, such as Lebanon, that is not party to the Child Abduction Convention, and an Australian order exists:

It is a matter for the legal system of the country the child is in to make a determination as to whether the child has been abducted or needs to be returned to Australia, and other decisions relating to the custody of the child.¹⁴

2.15 The Committee sought clarification about Article 5(1) of the Agreement, which will require Australia to respect the decisions of Lebanon's religious

7 NIA, para 13.

8 Mrs Toni Pirani, *Transcript of Evidence*, 1 February 2010, p. 3.

9 NIA, para 14.

10 Article 1(b); Mrs Toni Pirani, *Transcript of Evidence*, 1 February 2010, p. 5.

11 NIA, para 8.

12 Mrs Toni Pirani, *Transcript of Evidence*, 1 February 2010, p. 4.

13 Mrs Toni Pirani, *Transcript of Evidence*, 1 February 2010, p. 4.

14 Mr Andrew Byrne, *Transcript of Evidence*, 1 February 2010, p. 6.

courts. The Attorney-General's Department told the Committee that even with the agreement those laws will still apply in Lebanon.¹⁵

- 2.16 The Committee also asked about Australia's consular capacity in relation to the agreement. It was informed that the Department of Foreign Affairs and Trade's consular role centres upon establishing the whereabouts and ensuring the welfare of the child. DFAT does not, in its consular role, become directly involved in legal issues surrounding custody or access to children.¹⁶

Implementation

- 2.17 Legislation is not required to implement the agreement. The Committee notes that the Government will utilise existing governmental and communication frameworks used for child abduction cases, and the expertise and experience of departmental officers in implementing the Child Abduction Convention.¹⁷

Consultation

- 2.18 Consultation was undertaken within the Commonwealth, with State and Territory Governments and representatives of the Lebanese community. Consulted parties were supportive of the agreement and raised no objections.¹⁸

Conclusion and recommendation

- 2.19 The statistics presented to the Committee suggest that Lebanon is a significant country in terms of the number of current child abduction cases receiving assistance from the Department of Foreign Affairs and Trade. The Committee recognises that Lebanon is unlikely to become party to the Child Abduction Convention and that this agreement, while it does not include all the benefits of that Convention, will be an improvement upon

15 Mrs Toni Pirani, *Transcript of Evidence*, 1 February 2010, p. 4.

16 Mr Andrew Byrne, *Transcript of Evidence*, 1 February 2010, p. 5.

17 NIA, para 17.

18 NIA, Consultation Attachment; Ms Toni Pirani, *Transcript of Evidence*, 1 February 2010, p. 3.

the arrangements currently in place to resolve these cases. The Committee therefore supports binding treaty action being taken.

Recommendation 1

The Committee supports the *Agreement between Australia and the Republic of Lebanon Regarding Cooperation on Protecting the Welfare of Children* and recommends that binding treaty action be taken.

Taxation Agreement with Singapore

Introduction

- 3.1 The purpose of the *Second Protocol Amending the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income as amended by the Protocol of 16 October 1989* is to update the Exchange of Information (EOI) provisions (Article 19) in the existing taxation agreement between Australia and Singapore.
- 3.2 The provisions are intended to improve the ability of the Australian Taxation Office (ATO) to exchange information with Singapore authorities by:
- expanding the taxes in respect of which information may be exchanged to all federal taxes rather than just the income taxes covered under the existing agreement; and
 - ensuring that neither Singapore nor Australia's tax authorities can refuse to provide the information solely because they do not have a domestic interest in such information, or because a bank or similar institution holds the information.¹

¹ National Interest Analysis (NIA), para 6.

Reasons to take treaty action

- 3.3 The Second Protocol will update the current agreement with Singapore and bring it into line with the internationally agreed tax standards developed by the OECD. Treasury advised the Committee that the enhanced provisions will contribute to Australia's efforts to combat offshore tax evasion by increasing the probability of detection.²
- 3.4 Treasury also advised that while Singapore is not considered overly significant in terms of tax evasion by Australians, the agreement was important:
- ... as a matter of closing off avenues for people who wish to take advantage of these jurisdictions by moving their money to further disguise or hide the source from the Australian government and the Australian Tax Office.³

Obligations

- 3.5 Article I(1) creates reciprocal obligations for the exchange of information that is foreseeably relevant for carrying out the agreement or to the administration and enforcement of each Party's domestic tax laws.⁴
- 3.6 Parties are obliged to treat such information as secret in the same manner as information obtained under the domestic laws of that State (Article I(2)).⁵
- 3.7 Article I(3) provides for either Party to decline a request for information in certain circumstances, for example, if the information would disclose a trade or business secret or breach human rights obligations.⁶ Some of the circumstances where a request might be denied include if the request was:
- contrary to public policy. For example, in Australia, if it were to expose a person to the death penalty;
 - outside what was permitted under domestic laws; and

2 Mr Michael Atfield, *Transcript of Evidence*, 1 February 2010, p. 23.

3 Mr John Meyer, *Transcript of Evidence*, 1 February 2010, p. 24.

4 NIA, para 8.

5 NIA, para 9.

6 NIA, para 10.

- not foreseeably relevant (ie, a ‘fishing expedition’).⁷

3.8 The Committee notes that this agreement provides for the spontaneous exchange of relevant information between jurisdictions. Unlike other recently concluded agreements with low-tax jurisdictions, the exchange of information is not contingent upon a specific request for information being made.⁸

Costs and implementation

3.9 Treasury advised that the estimated revenue impact of the Second Protocol is unquantifiable. However, as the Second Protocol is expected to expand the taxpayer information available to the ATO, it is anticipated to result in enhanced taxpayer compliance and additional tax revenue.⁹

3.10 There will be a minimal increase in the ATO’s administrative costs resulting from implementation of the Second Protocol. There is expected to be little or no change in ongoing compliance costs for Australian taxpayers.¹⁰

3.11 Implementation will require amendment to the *International Tax Agreements Act 1953* to give the Second Protocol the force of law in Australia. The Protocol will not affect the existing roles of the Commonwealth or the States and Territories in tax matters.¹¹

Consultation

3.12 Relevant Commonwealth Ministers and the ATO were consulted in development of the Agreement. The Committee notes that at the time of preparation of the National Interest Analysis, the agreement was yet to appear on the six-monthly schedule of treaties provided to the States and

7 Mr Gregory Wood, *Transcript of Evidence*, 1 February 2010, p. 25; Mr Michael Atfield, *Transcript of Evidence*, 1 February 2010, p. 25.

8 Mr Michael Atfield, *Transcript of Evidence*, 1 February 2010, p. 24; Mr Gregory Wood, *Transcript of Evidence*, 1 February 2010, p. 25.

9 Mr Michael Atfield, *Transcript of Evidence*, 1 February 2010, p. 24.

10 NIA, paras 16 and 17.

11 NIA, paras 13 and 14.

Territories. As the Second Protocol addresses administrative matters only, public consultation was not undertaken.¹²

Conclusion and recommendation

- 3.13 The Committee recognises the importance of updating and enhancing taxation agreements with countries such as Singapore in the interests of increasing tax transparency. The Committee therefore supports binding treaty action being taken.

Recommendation 2

The Committee supports the *Second Protocol amending the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income as amended by the Protocol of 16 October 1989* and recommends that binding treaty action be taken.

¹² NIA, paras 21 to 24.

Agreement between Australia and the Republic of Poland on Social Security

Background

- 4.1 The Agreement between Australia and the Republic of Poland on Social Security (the Agreement) is one of a number of international agreements on social security Australia has entered into, 24 of which have been ratified to date.¹
- 4.2 Australia's international social security agreements are bilateral treaties intended to address gaps in the coverage of certain social security payments to immigrants in Australia who are entitled to receive payments from another country.
- 4.3 This Agreement applies to Australian residents who have established an entitlement to certain types of Polish social security payments, and Polish residents who have established an entitlement to certain types of Australian social security payments.²

1 National Interest Analysis (NIA), Australian Social Security Agreements with Other Countries Attachment.

2 Ms Michelina Stawyskyj, *Transcript of Evidence*, 1 February 2010, p. 8.

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- 4.4 The Minister for Families, Housing, Community Services and Indigenous Affairs wrote to the Committee proposing an implementation date for the Agreement of 1 October 2010. In order to meet the proposed implementation date, the Minister requested that the Committee consider the Agreement and table a recommendation on binding treaty action before 25 February 2010.
- 4.5 Implementation in Australia requires an amendment to the *Social Security (International Agreements) Act 1999* to include the Agreement as a new Schedule to that Act, followed by the making of relevant legislative instruments, and then an exchange of notes between Australia and Poland to indicate that the formal processes for ratification have taken place.³
- 4.6 The Department of Families, Housing, Community Services and Indigenous Affairs (the Department) appeared before the Committee on 1 February 2010, and on the basis of this hearing, the Committee was satisfied that the request to expedite Committee consideration of the Agreement was in the public interest.
- 4.7 As a consequence, the Committee tabled a one page report (Report 108), including a recommendation that binding treaty action be taken in relation to the Agreement, on 4 February 2010.⁴

The Agreement

- 4.8 The Agreement permits the following to occur:
- people living in one country will be able to lodge a claim for a pension with the other country;⁵
 - qualification periods for the pensions covered will be 'totalised', enabling people to meet the minimum qualification periods for relevant pensions in both countries. Totalising in this instance means treating periods of residence in one of the signatory countries as part of the qualification period for relevant pensions in the other country;⁶

3 NIA, para 17.

4 Report 108 can be accessed here:
<<http://www.aph.gov.au/house/committee/jsct/25november2009/report.htm>>

5 Ms Michelina Stawyskyj, *Transcript of Evidence*, 1 February 2010, p. 8.

6 NIA, para 13.

- remove restrictions on portability of payments for people residing in either country by enabling payments from one country to be made into bank accounts in the other country;⁷ and
 - provide avenues for mutual assistance to help ensure that people are paid their correct entitlements.⁸
- 4.9 In addition, a person who works in both countries will not need to make compulsory retirement benefit contributions in both countries at the same time to retain retirement benefits entitlements.⁹
- 4.10 The Agreement mechanism likely to have the most significant effect relates to the qualification periods. With the addition of periods of residence in Australia to the qualification period for Polish pensions, the Department of Families, Housing, Community Services and Indigenous Affairs believes that many Australian residents who have not previously been entitled to a Polish pension will now meet the qualification period for the Polish pension.¹⁰
- 4.11 The Agreement limits the types of pension subject to these provisions. The Agreement covers:
- the Australian age pension;
 - the Polish age pension;
 - the Polish disability pension; and
 - the Polish survivor's pension.¹¹ A survivor's pension is the pension paid to a spouse or dependant on the death of a person eligible for an age pension.¹²
- 4.12 The Polish disability and survivor pensions will only be available to residents of Poland.¹³
- 4.13 The Department argued that the reason that the age pension was the only Australian pension involved was that the Australian payment was an automatic entitlement upon qualification, whereas the Polish pension

7 Ms Michelina Stawyskyj, *Transcript of Evidence*, 1 February 2010, p. 8.

8 NIA, para 4.

9 NIA, para 5.

10 Mr Peter Hutchison, *Transcript of Evidence*, 1 February 2010, p. 11.

11 Ms Michelina Stawyskyj, *Transcript of Evidence*, 1 February 2010, p. 8.

12 Organisation for Economic Cooperation and Development (OECD) website, <<http://www.oecd.org/dataoecd/50/48/33743823.pdf>>, viewed 12 February 2010.

13 Ms Michelina Stawyskyj, *Transcript of Evidence*, 1 February 2010, p. 8.

system was a contributory system, similar to a superannuation scheme.¹⁴ Although this statement is not strictly true in relation to the survivor's pension,¹⁵ there is no Australian equivalent of this pension, so there is no actual difference between the entitlements of Australian and Polish residents covered by the Agreement.

Payment arrangements

- 4.14 Where an Australian resident is entitled to a pension from Poland, their full entitlement to the Polish pension will be paid. That person's entitlement to the Australian pension will then be calculated based on the Australian social security income test.¹⁶
- 4.15 The Department estimates that the number of Polish residents eligible for an Australian pension numbers in the hundreds. On the other hand, the number of Australian residents currently eligible for Polish pensions numbers could be between 18,000 and 21,000.¹⁷
- 4.16 If this number of Australian residents become eligible for the Polish pension, the reduction in Australian pension payments will be significant. The National Interest Analysis indicates that the Agreement is expected to reduce administered outlays by \$19.721 million over the forward estimates to 2012-13.¹⁸

Conclusion

- 4.17 There can be no doubt that the Agreement represents a significant benefit to both Australia and to those who will be eligible to receive a pension to which they have not previously been entitled. The Department of Families, Housing, Community Services and Indigenous Affairs believes that, because of the effect of the social security income test, the number who will be adversely impacted by this Agreement is very small.¹⁹

14 Mr Peter Hutchison, *Transcript of Evidence*, 1 February 2010, p. 10.

15 Organisation for Economic Cooperation and Development (OECD) website, <<http://www.oecd.org/dataoecd/50/48/33743823.pdf>>, viewed 12 February 2010.

16 Mr Peter Hutchison, *Transcript of Evidence*, 1 February 2010, p. 11.

17 Mr Peter Hutchison, *Transcript of Evidence*, 1 February 2010, p. 10.

18 NIA, para 19.

19 Mr Peter Hutchison, *Transcript of Evidence*, 1 February 2010, p. 12.

4.18 Given the positive effect predicted, the Committee has no hesitation in endorsing its earlier decision to recommend binding treaty action.

Exchange of Notes constituting an Agreement between the Government of the United States of America and the Government of Australia to amend the Agreement concerning Space Vehicle Tracking and Communication Facilities of 29 May 1980, as amended.

Background

- 5.1 The 50th anniversary of treaty-level cooperation between the United States of America (the US) and Australia in space vehicle tracking was on 26 February 2010, and was celebrated with a signing ceremony for the Exchange of Notes constituting an Agreement between the Government of United States of America and the Government of Australia to amend the Agreement concerning Space Vehicle Tracking and Communication Facilities (the Exchange of Notes) in the Senate Courtyard.¹
- 5.2 The Agreement concerning Space Vehicle Tracking and Communication Facilities (the Agreement) has allowed Australia to be a part of some of the human race's greatest achievements. Images of the first few minutes of Neil Armstrong's walk on the moon were received first at Honeysuckle Creek tracking station, just outside Canberra.

1 National Interest Analysis (NIA), para 3.

- 5.3 The Agreement has provided significant benefits to Australian science, with the establishment of major space industry infrastructure in Australia. The Department of Innovation, Industry, Science and Research (DIISR) estimates that the US National Aeronautical and Space Administration (NASA) has spent hundreds of millions of dollars on space related activities in Australia since the relationship began.²
- 5.4 The Agreement also encourages collaboration between NASA and CSIRO scientists, allowing CSIRO scientists access to world class radio astronomy facilities at a reduced cost. In addition, the data gathered by NASA is freely available to Australian scientists and is used by Australian organisations such as Geoscience Australia and the Australian Bureau of Meteorology.³
- 5.5 The Agreement was first ratified in 1960 and has been reviewed every ten years since. The Agreement consists of a base Agreement with multiple subsequent Exchanges of Notes.⁴
- 5.6 The latest Exchange of Notes is the subject of this inquiry. It deals with two matters:
- the extension of the Agreement by two years; and
 - the inclusion in the Agreement of the Data Relay Satellite Ranging System facility at Dongara in Western Australia.⁵

Facilities covered by the Agreement

- 5.7 The CSIRO and the NASA jointly operate three facilities in Australia: the Canberra Deep Space Communication Complex (CDSCC) at Tidbinbilla in the ACT; and Tracking and Data Relay Satellite Ranging System facilities in Alice Springs in the NT and Dongara in WA.⁶

Canberra Deep Space Communication Complex

- 5.8 The most significant of these facilities is the CDSCC, which is one of three such facilities in the world, the others being in Madrid, Spain and

2 Dr Michael Green, *Transcript of Evidence*, 9 February 2010, p. 1.

3 Dr Michael Green, *Transcript of Evidence*, 9 February 2010, p. 2.

4 NIA para 5.

5 NIA para 11 and para 13.

6 NIA para 8.

Goldstone in the US. The facilities are responsible for providing a two way communications link for the guidance and control of robotic spacecraft in deep space and for the relay of images and data. The three facilities are spaced evenly around the globe to enable constant communication with the robotic spacecraft as the Earth rotates on its axis.⁷

- 5.9 The three facilities are in contact with more than 40 robotic spacecraft, including:
- Cassini, currently in orbit around Saturn;
 - Dawn, currently travelling to the asteroid belt between Mars and Jupiter;
 - LCROSS, recently responsible for discovering water on the Moon;
 - the Mars Rovers Spirit and Opportunity;
 - NHPC, currently travelling to Pluto; and
 - Voyagers 1 and 2, launched in 1977 and currently beyond the solar system.⁸
- 5.10 The CDSCC employs 130 specialist technicians and support staff. Management of the CDSCC is in the process of being transferred to the CSIRO after a period of time being operated under contract by Raytheon Australia. Staff at the facility will become CSIRO employees as part of this process.⁹

Data Relay Satellite Ranging System Facilities

- 5.11 The Data Relay Satellite Ranging System facilities in Alice Springs and Dongara are used for tracking and communication with earth orbiting civilian satellites and are part of the Tracking and Data Relay Satellite System (TDRSS), which is intended to increase the time earth orbiting satellites can communicate with the ground, thereby improving the amount of data that can be transferred.¹⁰ Each facility is automated with no permanent staff.¹¹

7 NIA para 8.

8 CDSCC website, <http://www.cdsc.nasa.gov/Pages/pg03_trackingtoday.html>, viewed 5 February 2010.

9 Dr Michael Green, *Transcript of Evidence*, 9 February 2010, p. 6.

10 Department of Innovation, Industry, Science and Research, *Submission No. 1*, p. 1.

11 Dr Michael Green, *Transcript of Evidence*, 9 February 2010, p. 5.

- 5.12 The Exchange of Notes adds the Dongara Facility to the Agreement. The Dongara Facility was removed from the Agreement by an amendment included in the last Exchange of Notes in 2000. Since then, the Facility has operated under a commercial contract between the CSIRO and NASA.¹²
- 5.13 The reinstatement of the Dongara Facility in the Agreement will have no practical effect on its operations. In other words, according to DIISR, the Dongara Facility will continue to operate as it has done in the past.¹³

A Consolidated Agreement

- 5.14 Both Australia and the US have agreed to develop a consolidated agreement incorporating the base Agreement and all the Exchanges of Notes into a single document. It was the intention of the US Government and the Australian Government to have the consolidated agreement finalised in time to be implemented on the 50th anniversary of the relationship between NASA and the CSIRO.¹⁴
- 5.15 However, DIISR advised the Committee that the timeframe estimated for completing the consolidated agreement was optimistic and could not be achieved before the Agreement expired.¹⁵
- 5.16 To provide more time to develop a consolidated agreement, the Exchange of Notes extends the life of the Agreement by two years.¹⁶
- 5.17 In the Committee's view, the reasons for the failure to negotiate a consolidated agreement are straightforward. The United States Presidential election cycle, with its attendant changes to the senior ranks of the United States federal public service, including NASA, would have made reaching an agreement at this time quite difficult.
- 5.18 In addition, NASA has just completed a thorough review of its strategic direction with regard to human space exploration,¹⁷ which will have a significant effect on the resources available for robotic space exploration. It is not surprising that NASA was not prepared to commit to a ten year agreement without knowing what resources would be available to it.

12 NIA para 14.

13 NIA para 14.

14 Dr Michael Green, *Transcript of Evidence*, 9 February 2010, p. 3.

15 Dr Michael Green, *Transcript of Evidence*, 9 February 2010, p. 3.

16 NIA para 11.

17 NASA, *Report of the Review of Human Spaceflight Plans Committee*, 2009.

- 5.19 The Department's failure to recognise that the environment for a consolidated agreement was not right may have been due to the lack of dedicated space policy resources until the Space Policy Unit was established within DIISR in July 2009.

Timing and Parliamentary and Public scrutiny

- 5.20 One of the effects of DIISR's optimistic approach to developing a consolidated agreement was that the Exchange of Notes was tabled in Parliament on 2 February 2010, only twenty four days before the Exchange of Notes needed to take effect.
- 5.21 The Minister for Innovation, Industry, Science and Research, Senator the Hon Kim Carr, requested that the Committee expedite its consideration of the Exchange of Notes.
- 5.22 Because of the importance of the relationship between the CSIRO and NASA to Australian scientists, the Committee was able to meet the requested time frame, and Report 109, supporting the Exchange of Notes and recommending binding treaty action be taken, was tabled on 11 February 2010.
- 5.23 This is one of a spate of recent requests by the Australian Government for the Committee to expedite consideration of a treaty. Other recent treaties that have been the subject of such a request include:
- the Measure 16 (2009) Amendment of Annex II to the Protocol on Environmental Protection to the Antarctic Treaty;
 - the Agreement between Australia and the Republic of Poland on Social Security;
 - the Proposed Amendment of the Articles of Agreement of the International Monetary Fund to Enhance Voice and Participation in the International Monetary Fund; and
 - the Proposed Amendment of the Articles of Agreement of the International Monetary Fund to Expand the Investment Authority of the International Monetary Fund.
- 5.24 There were, in each of these cases, grounds for expeditious consideration by the Committee, and in each case, the Committee was able to accede to the request. Nevertheless, in all of these cases, it would not have been

necessary to make such a request if the treaty making process had been planned effectively by the sponsoring agencies concerned.

- 5.25 Other than in exceptional circumstances, there is no justification for the Committee to be requested to truncate its inquiry timeframes, which have been agreed to with the Government.
- 5.26 The Committee's inquiries provide an important contribution to treaty making by subjecting treaties to parliamentary and public scrutiny, and providing legitimacy to the treaties. The value of the Committee's inquiries to the treaty making process is undermined when there is insufficient time to properly consider a treaty or allow public examination of a treaty.
- 5.27 The Committee is concerned that a request for expeditious treatment is becoming a solution to poor planning on the part of some departments. The Committee is of the view that the Minister for Foreign Affairs should remind other ministers of the need to include time for proper consideration by the Committee when planning to enter into a treaty.

Recommendation 3

The Committee recommends that the Minister for Foreign Affairs write to all other ministers to remind them that, when they are planning to enter into a treaty, they must factor in the agreed 15 to 20 sitting day timeframe for the Committee to conduct its inquiry.

Extradition Treaty between Australia and the Republic of India, and Treaty between Australia and the Republic of India on Mutual Legal Assistance in Criminal Matters

Background

- 6.1 The *Extradition Treaty between Australia and the Republic of India* (the Extradition Treaty) and the *Treaty between Australia and the Republic of India on Mutual Legal Assistance in Criminal Matters* (Mutual Legal Assistance Treaty) are regarded as linked treaties by the Australian Government and as a consequence will be examined together in this chapter.

The Extradition Treaty

- 6.2 The Extradition Treaty is based on a model extradition treaty developed by Australia to conform to Australia's domestic legislative framework.¹ Australia's model extradition treaty has been used to develop a network of bilateral extradition treaties that currently number 35.²
- 6.3 Australia's current extradition relationship with India is based on the *Commonwealth Scheme for the Rendition of Fugitive Offenders 1966*. This was

1 Extradition NIA para 5.

2 Extradition NIA para 5.

an agreement of less than treaty status between members of the Commonwealth. Consequently, the agreement is non-binding in international law and imposes no obligations on participating states.³

6.4 The Australian Government has negotiated this treaty because of the requirement under the Commonwealth Scheme to provide a full brief of evidence sufficient to establish a prima facie case in support of an extradition request.⁴ The Attorney-General's Department (AGD) described the requirement to establish a prima facie case as:

...a very high evidentiary standard [that] can cause considerable delay, both in the requesting country, which has to prepare the brief of evidence, and for the requested country, which has to analyse whether a prima facie case has been made out.

6.5 According to the AGD, international developments in extradition matters since the late 1980s have indicated a trend towards simplifying the extradition process by establishing a 'no evidence' standard of information for extradition requests.⁵ The no evidence standard means that a country requesting an extradition is not required to make an evidentiary case as part of the extradition request.

6.6 The no evidence standard is argued to be a useful tool to aid extradition to and from countries that use a civil law system. The AGD asserted that the legal framework in a civil law system means that many of the system's practitioners do not understand what is meant by a prima facie case.⁶

6.7 In practice, the no evidence standard still involves some assessment by the requested Government as to the legitimacy of the request. The assessment is principally against the grounds for refusing an extradition request,⁷ which are set out below.

6.8 While Australia prefers a no evidence standard; that is, no evidence is required to be included as part of an extradition request, Indian domestic legal requirements necessitate that the requesting country must include an

3 Extradition Treaty National Interest Analysis (NIA) para 8.

4 Extradition Treaty NIA para 9.

5 Ms Maggie Jackson, *Transcript of Evidence*, 22 February 2010, p. 2. It should be noted that the no evidence standard is not used in all cases Australia's extradition treaties with the United States of America and South Korea, for example, contain similar provisions to those in the India treaty.

6 Ms Maggie Jackson, *Transcript of Evidence*, 22 February 2010, p. 6.

7 Ms Maggie Jackson, *Transcript of Evidence*, 22 February 2010, p. 5.

evidentiary case that is a less than prima facie case as part of the extradition request.⁸

6.9 According to the AGD:

The standard required in this treaty is such information as would reasonably establish that the person sought has committed the offence for which extradition is requested and to establish that the person requested is the person to whom the warrant refers. This standard does not require that every element of an offence be supported by evidence. Instead, there needs to be evidence that links the individual to the crime without necessarily proving each element of the offence.⁹

Proposed extradition process

6.10 The Extradition Treaty will apply to Australian and Indian nationals who are wanted for prosecution, or for the imposition or enforcement of a sentence, in relation to sentences with a minimum punishment of at least one year in jail.¹⁰

6.11 Where a request for extradition is received, the Extradition Treaty will require that the receiving country represent the requesting country in the extradition matter, including representing the requesting country in any proceedings arising out of the request.¹¹

6.12 There are a number of grounds for refusing extradition:

- the offence concerned is a military offence and there is no similar offence under criminal law;
- the period of time available to commence a prosecution has lapsed;
- the offence concerned carries the death penalty, and the requesting nation has not guaranteed that the death penalty will not be imposed or carried out;
- the offence concerned is of a political character;
- the person concerned will be exposed to double jeopardy (that is, they will be at risk of standing trial twice for the same offence);

8 Extradition Treaty NIA para 9.

9 Ms Maggie Jackson, *Transcript of Evidence*, 22 February 2010, p. 2.

10 Extradition Treaty NIA para 10.

11 Extradition Treaty NIA para 25.

- there are grounds for suspecting that the extradition request was made on account of the person's race, sex, religion, nationality or political opinion;
 - the person is liable to be tried or sentenced in an extraordinary or ad hoc court; and
 - The request does not comply with international treaties such as the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.¹²
- 6.13 If a request for extradition is not granted, the requesting country can then ask that the person be tried where they are. The country in receipt of this request must submit the case to its competent authorities for prosecution.¹³
- 6.14 The Extradition Treaty also establishes agreed procedures for dealing with the following extradition related matters:
- the provisional arrest of the person concerned pending consideration of a request;
 - the receipt of extradition requests from two different countries for the same person;
 - the transfer of the person to the requesting country;
 - the transfer of the property of the extradited person to the requesting country; and
 - the postponement of an extradition where the person is already under prosecution or serving a sentence.¹⁴

The Mutual Legal Assistance Treaty

- 6.15 Like the Extradition Treaty, the Mutual Legal Assistance Treaty is based on a model mutual legal assistance treaty developed by Australia. The model mutual legal assistance treaty has been used to develop a network of bilateral treaties that currently number 25.¹⁵
- 6.16 The Mutual Legal Assistance Treaty is intended to assist the signatory countries to investigate, prosecute and suppress crimes including
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12 Extradition Treaty NIA para 12.

13 Extradition Treaty NIA para 15.

14 Extradition Treaty NIA paras 18 – 22.

15 Mutual Legal Assistance NIA para 3.

terrorism, drug trafficking, fraud, money laundering and people trafficking.¹⁶

- 6.17 There are extensive similarities between the Extradition Treaty and the Mutual Legal Assistance Treaty, including the fact that the Mutual Legal Assistance Treaty will replace a Commonwealth based arrangement of less than treaty status, the *Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth*.¹⁷ However, in this case, there are no significant changes to the functional arrangements within the Treaty. The new Mutual Legal Assistance Treaty is limited to making the current arrangements subject to international law.¹⁸

Proposed legal assistance process

- 6.18 Under the Mutual Legal Assistance Treaty, Australia and India have agreed to grant each other assistance in:
- serving documents;
 - the taking of statements and evidence from a person;
 - locating and identifying a person;
 - executing requests to search premises and seize potential evidence; and
 - locating, restraining and forfeiting the proceeds of criminal activity.¹⁹
- 6.19 As with the Extradition Treaty, there are a number of grounds for refusing to comply with a request, including:
- the offence concerned is of a political character;
 - the request would expose the person concerned to double jeopardy (that is, they will be at risk of standing trial twice for the same offence);
 - there are grounds for suspecting that the request was made on account of the person's race, sex, religion, nationality or political opinion; and
 - complying with the request would impair the security or sovereignty of the country receiving the request.²⁰

16 Mutual Legal Assistance NIA para 3.

17 Mutual Legal Assistance NIA para 5.

18 Mutual Legal Assistance NIA para 8.

19 Mutual Legal Assistance NIA para 9.

20 Mutual Legal Assistance NIA para. 13.

Previous recommendations

- 6.20 The Committee last considered an extradition treaty and mutual legal assistance treaty (with the United Arab Emirates) in 2008, and reported its findings in Report 91.²¹ The Committee made a number of recommendations as part of that Report with the intention of establishing a process to monitor the trial status, health, and conditions of detention of people extradited from Australia. The Government's Response to that Report was tabled on 17 December 2009.
- 6.21 The relevant recommendations proposed the monitoring process take the following form:
- the country that has made the extradition request report on the trial status, and health of the person concerned, and the condition of the detention facilities in which they are held;
 - the Department of Foreign Affairs and Trade report on extradited Australian citizens;
 - where a foreign national is extradited to their country of origin, that country be required to report on their status to Australia; and
 - where a foreign national is extradited to a third country, that person's country of citizenship should be asked to report on their status to Australia.²²
- 6.22 The Government did not accept these recommendations on the following grounds:
- it is not aware of any precedents for such a requirement in existing bilateral and multilateral extradition agreements;²³
 - potential bilateral treaty partners would not accept a requirement to report on persons extradited from Australia, on the basis that it would provide an administrative burden that would hinder the operation of a treaty partner's judicial system;²⁴
 - extradited Australians are already provided normal consular support if they so request;²⁵ and

21 JSCOT, *Report 91: Treaties Tabled on 12 March 2008*, 2008, pp. 5-27.

22 JSCOT, *Report 91: Treaties Tabled on 12 March 2008*, 2008, Recommendations 2 and 3.

23 Minister for Foreign Affairs, *Government Response to Report 91*, 2009, p. 2.

24 Minister for Foreign Affairs, *Government Response to Report 91*, 2009, p. 2.

25 Minister for Foreign Affairs, *Government Response to Report 91*, 2009, p. 3.

- the conditions of extradited non citizens is a matter for their country of nationality.²⁶
- 6.23 During the current inquiry, the AGD reiterated the Government's response, and further added that:
- if a credible monitoring process was to be undertaken by Australia this would involve issues of resources and infringement of the sovereignty of the country requesting the extradition;²⁷ and
 - Australia can only offer consular assistance in relation to its own citizens where they have made a request for assistance.²⁸
- 6.24 The Committee notes that the Government's reasoning in rejecting these recommendations focuses on the procedural and administrative barriers to establishing a process to monitor the trial status, health, and conditions of detention of people extradited from Australia. The Government has not rejected the concept of monitoring per se.
- 6.25 The Committee believes the grounds for monitoring extradited persons are sound. The no evidence approach prevents the examination of the evidence for the offence that has prompted the extradition request. The evidence for the offence would in the past have been examined closely. In addition, the no evidence standard is designed to increase the speed at which extraditions can be processed. Both of these outcomes of the no evidence standard introduce risks for which, at the moment, there is no mitigation. The risks include that:
- an important aspect of the case that would normally have been examined in a prima facie case, and that may adversely affect the person facing deportation, is missed; and
 - as a result of faster processing and less thorough examination of a case, an important point, that should have come to light in a no evidence extradition process, is missed by accident.
- 6.26 The Committee believes that monitoring extradited persons would represent an effective means of mitigating the risks associated with a no evidence standard.
- 6.27 The Committee continues to believe, as pointed out in Report 91, that Australia has a moral obligation to protect the human rights of extradited persons beyond simply accepting the undertakings of countries making
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26 Minister for Foreign Affairs, *Government Response to Report 91*, 2009, p. 3.

27 Ms Maggie Jackson, *Transcript of Evidence*, 22 February 2010, p. 5.

28 Ms Maggie Jackson, *Transcript of Evidence*, 22 February 2010, p. 8.

extradition requests.²⁹ Australia must never be a party, directly or indirectly, to any injustice or abuse of the human rights of persons it has extradited, and regardless of whether the persons concerned are Australian citizens or not. While the Committee acknowledges that the risk of such an occurrence may be small, Australia currently has no formal process to ensure that, following extradition, a person's human rights are protected.

- 6.28 Monitoring the conditions of extradited persons could also enhance public confidence in Australia's extradition framework. Public confidence in Australia's approach to extradition could be severely damaged if abuses of an extradited person's human rights were to occur and Australia was found to have done nothing to try to prevent it.
- 6.29 For these reasons, the Committee wishes to make again the recommendation contained in Report 91.

Recommendation 4

The Committee recommends that new and revised extradition agreements should explicitly provide a requirement that the requesting country provide annual information concerning the trial status and health of extradited persons and the conditions of the detention facilities in which they are held.

Ensuring the wellbeing of Australian citizens

- 6.30 While Australian citizens who have been extradited have access to consular support where they request it, the Committee believes this is not sufficient to ensure the wellbeing of these Australians. There may be a number of reasons why a person does not request consular assistance. This may include the person not wanting assistance, but it may also include real or perceived intimidation, fear of reprisal, ignorance, poor mental or physical health, or difficulties communicating.
- 6.31 The Committee believes that, unless the person involved has made explicit their objection to consular assistance to the satisfaction of consular officers, all Australians who are subject to extradition should receive a face to face visit from a consular official at least annually.

29 JSCOT, *Report 91: Treaties Tabled on 12 March 2008*, 2008, pp. 12-13.

Recommendation 5

The Committee recommends that all Australians who are subject to extradition should receive a face to face meeting with an Australian consular official, except where the person has made explicit their objection to consular assistance to the satisfaction of consular officers.

Advice of extradition

- 6.32 In relation to foreign nationals who are extradited from Australia to a third country, the first step should be to formally advise the government of their home country that one of its nationals has been extradited from Australia to a third country. The Committee understands this does not occur at present.³⁰

Recommendation 6

The Committee recommends that, when a foreign national is extradited from Australia to a third country, the Australian Government formally advise the government of that person's country of citizenship that one of its nationals has been extradited from Australia to a third country.

Conclusion

- 6.33 The Committee fully supports the Extradition Treaty and the Mutual Legal Assistance Treaty with India. It is clear that these treaties will streamline the extradition and legal assistance processes, improving the quality of law enforcement in Australia and India.
- 6.34 The bulk of the Committee's recommendations relate to future extradition treaties. It seems clear to the Committee that the concept of a process to monitor the trial status, health, and conditions of detention of people extradited from Australia has merit. The Committee believes that there is

30 Ms Maggie Jackson, *Transcript of Evidence*, 22 February 2010, p. 8.

a moral imperative that Australia never be a party to any injustice or abuse of the human rights of persons it has extradited.

Recommendation 7

The Committee supports the *Extradition Treaty between Australia and the Republic of India* and the *Treaty between Australia and the Republic of India on Mutual Legal Assistance in Criminal Matters* and recommends that binding treaty action be taken.

Measure 16 (2009) Amendments to Annex II to the Protocol on Environmental Protection to the Antarctic Treaty

Introduction

- 7.1 Measure 16 comprises amendments to Annex II to the Protocol on Environmental Protection to the Antarctic Treaty. The Protocol commits parties to the protection of the Antarctic environment, including its dependent and associated ecosystems, and designates Antarctica as a natural reserve.¹ There are six technical annexes to the Protocol that regulate human activities in Antarctica, five of which are in force. Annex II sets out measures for the conservation and protection of Antarctic fauna and flora.²
- 7.2 The amendments to Annex II (Measure 16) have been under negotiation since 2001 and were adopted by consensus at the Antarctic Treaty Consultative Meeting on 17 April 2009.³ Measure 16 will automatically enter into force on 17 April 2010 unless one of the Contracting Parties notifies that it seeks an extension of that period or that it is unable to approve the measure. Once effective, measures are legally binding on all Contracting Parties.⁴

1 National Interest Analysis (NIA), para 9.

2 NIA, para 2.

3 Mr Jonathon Barrington, *Transcript of Evidence*, 22 February 2010, p. 11.

4 NIA, paras 3, 4 and 6.

Reasons to take treaty action

- 7.3 Australia has been a Consultative Party to the Antarctic Treaty since it came into force in 1961. Since then, Australia has been a strong advocate for the importance of the Treaty and successive Australian governments have viewed maintenance of the Treaty and its associated agreements as a high priority.⁵
- 7.4 Australia was the principal proponent of the review of Annex II and the resulting Measure 16.⁶
- 7.5 Measure 16 is intended to enhance protection of the Antarctic environment in a number of ways, including through improving processes for listing Specially Protected Species, introducing permit requirements for the taking of native invertebrates, and strengthening controls on unintended introduction of non-native species and diseases.⁷
- 7.6 The Committee was informed that there is a very strong commitment to protection of the Antarctic environment amongst all parties to the Antarctic Treaty, and that there is no indication that any Consultative Party will seek a time extension or resile from approval of Measure 16.⁸

Obligations

- 7.7 The obligations arising from Measure 16 include:
- Extending the protection currently applied under Annex II to native mammals, birds and plants to include native invertebrates. Under the new arrangements, native invertebrates may only be taken with a permit and permits will only be issued for certain purposes, such as scientific study or to provide specimens for museums, educational institutions and zoos.⁹ Parties are also obliged to:
 - ⇒ limit the taking of native invertebrates under permits to those strictly necessary to meet the purpose of the permit;
 - ⇒ accord special protection to invertebrates designated as Specially Protected Species;

5 NIA, paras 9 and 10.

6 NIA, paras 6 and 8.

7 Mr Jonathon Barrington, *Transcript of Evidence*, 22 February 2010, p. 11.

8 Mr Jonathon Barrington, *Transcript of Evidence*, 22 February 2010, p. 11, 12.

9 Mr Jonathon Barrington, *Transcript of Evidence*, 22 February 2010, p. 11.

- ⇒ prohibit the issuing of permits for Specially Protected Species except with a compelling scientific purpose;
- ⇒ prohibit the use of lethal techniques on invertebrates; and
- ⇒ obtain and exchange information on the status of native invertebrates.¹⁰

- Improved processes for listing species for special protection. Evidence supporting the designation of a species as a Specially Protected Species will now be required and parties have adopted the International Union for Conservation of Nature (IUCN) threatened species criteria for use in assessing species.¹¹
- Broadening provisions for the introduction of non-native species and diseases to include unintended introductions, including:
 - ⇒ prohibiting the introduction of all non-indigenous living organisms except in accordance with a permit, and limiting the permitted purpose of importation;¹²
 - ⇒ obliging contracting parties to remove or dispose of any non-native species introduced without a permit where feasible and to take reasonable steps to control the harm caused by the introduction;¹³
 - ⇒ augmenting obligations to ensure that poultry and avian products are free from contamination by disease;¹⁴ and
 - ⇒ prohibiting the introduction of non-sterile soil.¹⁵

7.8 The Committee was informed that the circumstances in which a non-native species might be introduced to Antarctica include for scientific research, such as to test the reaction of species to intense cold and evaluate whether, as the Antarctic environment changes, species might be likely to extend their range into Antarctica.¹⁶

7.9 The unintended introduction of a non-native species might occur through cargo or personnel. The intent of this provision is to ensure that any species that might arrive does not become established in Antarctica.¹⁷

10 NIA, para 12.

11 Mr Jonathon Barrington, *Transcript of Evidence*, 22 February 2010, p. 11.

12 NIA, para 14.

13 NIA, para 14.

14 NIA, para 17.

15 NIA, para 18.

16 Mr Jonathon Barrington, *Transcript of Evidence*, 22 February 2010, p. 12.

17 Mr Ewan McIvor, *Transcript of Evidence*, 22 February 2010, p. 13.

Implementation

- 7.10 Measure 16 will be implemented through amendments to the *Antarctic Treaty (Environment Protection) Act 1980*. The Committee notes these amendments were introduced into the Parliament on 10 February 2010.¹⁸

Conclusions and recommendation

- 7.11 These amendments were adopted by the Antarctic Treaty Consultative Meeting on 17 April 2009 but were not tabled in the Parliament and referred to this Committee until 2 February 2010, with legislation implementing the amendments introduced on 10 February 2010. While the Committee acknowledges the need to legislate prior to the amendments' automatic entry into force, it considers that the Department of the Environment, Water, Heritage and the Arts and, given their involvement in Antarctic matters, the Department of Foreign Affairs and Trade need to more effectively manage the treaty making process to ensure that treaty actions are tabled in a timely manner and that this Committee's timeframes are respected. This is especially so in this case, as the Australian Government was the principal proponent of the Annex II review.
- 7.12 The Committee supports the priority that Australia places upon the protection of Antarctica through the Antarctic Treaty and the Protocol on Environmental Protection to the Antarctic Treaty. The proposed amendments to Annex II of the Protocol will extend and improve the level of environmental protection that is currently in place. The Committee therefore supports Measure 16 and recommends that binding treaty action be taken.

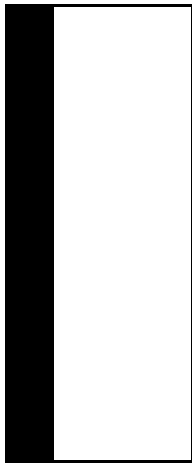
18 Mr Jonathon Barrington, *Transcript of Evidence*, 22 February 2010, p. 11.

Recommendation 8

The Committee supports *Measure 16 (2009) Amendment of Annex II to the Protocol on Environmental Protection to the Antarctic Treaty* and recommends that binding treaty action be taken.

Mr Kelvin Thomson MP

Chair



Dissenting report — Coalition Members and Senators

Chapter 6 – Extradition Treaty between Australia and the Republic of India, and Treaty between Australia and the Republic of India on Mutual Legal Assistance in Criminal Matters

The Coalition Members dissent from the majority Recommendation 4.

Recommendation 4 says that extradition agreements must require the requesting country to provide regular trial, health and conditions of detention reports to Australian officials.

This recommendation while pious is unrealistic. It is doubtful that any country would accept such a reporting procedure and it is likely to greatly delay if not prevent future signing of extradition treaties.

Moreover the Government are in agreement with the Coalition's analysis of Recommendation 4.

In evidence before the Committee the Government outlined their concerns as referenced in the Report 6.29. It states:

- there is no precedent for a monitoring process;
- an attempt to negotiate such a process will be rejected by treaty partners;
- Australians who have been extradited have access to consular assistance if they request it;
- Australia has no jurisdiction to monitor the conditions of foreign nationals extradited from Australia; and

- if Australia undertook the monitoring process, this would involve issues of resources and infringement of the sovereignty of the country in which the person is detained.

Equally Recommendation 4 is not necessary whilst Recommendation 5 stands.

Recommendation 5 states that Australians who have been extradited should receive consular support if requested.

Recommendation 5 will fulfil the intent of Recommendation 4 in regard to the well being of the extradited person.

Senator Julian McGauran
Deputy Chair

Senator Simon Birmingham

Senator Michaelia Cash

Mr John Forrest MP

Mr Luke Simpkins MP

Mr Jamie Briggs MP



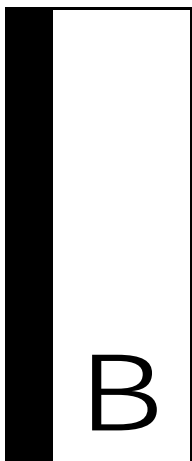
Appendix A — Submissions

Treaties tabled on 25 and 26 November 2009

- 1 Australian Patriot Movement
- 1.2 Australian Patriot Movement
- 1.3 Australian Patriot Movement
- 1.4 Australian Patriot Movement
- 42 Queensland Government
- 46 Department of Foreign Affairs and Trade

Treaties tabled on 2 February 2010

- 1 Department of Innovation, Industry, Science and Research
- 2 Australian Patriot Movement
- 2.2 Australian Patriot Movement
- 2.3 Australian Patriot Movement
- 3 Campaign for International Co-operation and Disarmament



Appendix B — Witnesses

Monday, 1 February 2010 - Canberra

Attorney-General's Department

Mrs Toni Pirani, Assistant Secretary, Family Law Branch

Australian Taxation Office

Mr John Meyer, Senior Director Offshore Compliance Program

Department of Families, Housing, Community Services and Indigenous Affairs

Mr Peter Hutchinson, Section Manager

Ms Michalina Stawyskyj, Branch Manager, International Branch

Department of Foreign Affairs and Trade

Mr Andrew Byrne, Assistant Secretary, Consular Policy Branch

Department of the Treasury

Mr Michael Atfield, Senior Adviser, Tax Treaties Unit, International Tax and Treaties Division

Ms Heather Sturgiss, Analyst Contributions and Treasury

Mr Gregory Wood, Manager, International Tax and Treaties Division

Tuesday, 9 February 2010 - Canberra

Department of Innovation, Industry, Science and Research

Dr Michael Green, General Manager

Ms Suzanne Milthorpe, Policy Officer

Monday, 22 February 2010 - Canberra

Attorney-General's Department

Ms Victoria Bickford, Director, Treaties, International Arrangements and Corruption Section

Ms Maggie Jackson, First Assistant Secretary, International Crime Cooperation Division

Department of Foreign Affairs and Trade

Dr Gregory French, Assistant Secretary, International Legal Branch

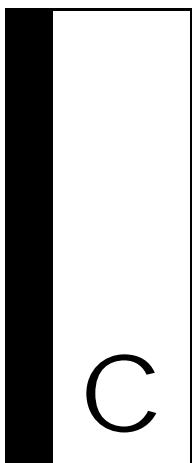
Mr David Holly, Assistant Secretary, South and Central Asia Branch

Mr David Mason, Executive Director, Treaties Secretariat, International Legal Branch

Department of the Environment, Water, Heritage and the Arts

Mr Ewan McIvor, Senior Environmental Policy Officer, Australian Antarctic Division

Mr Jonathon Barrington, Senior Policy Adviser, Australian Antarctic Division



Appendix C — Minor treaty actions

Minor treaty actions are identifiably minor treaties, generally technical amendments to existing treaties, which do not impact significantly on the national interest. Minor treaty actions are tabled with a one-page explanatory statement. The Joint Standing Committee on Treaties has the discretion to formally inquire into these treaty actions or indicate its acceptance of them without a formal inquiry and report.

The following minor treaty actions were considered by the Committee on the dates indicated. In each case the Committee determined not to hold a formal inquiry and agreed that binding treaty action may be taken.

Minor treaty action tabled on 18 November 2009

Considered by the Committee on 24 November 2009:

- Amendment to the Convention Establishing a Customs Cooperation Council, adopted at Brussels in 1952.

The amendment to the Convention Establishing a Customs Cooperation Council allows customs and economic unions to join the Customs Cooperation Council, also known as the World Customs Organisation (WCO), subject to the approval of the Council. The primary purpose of the amendment is to allow the European Community (EC) to be admitted to the WCO as a member.

The Australian Customs and Border Protection Service advises that the change will not confer any additional voting rights in the WCO on customs or economic unions or their member states. The financial and legal effect of the ECs accession is also said to be negligible.¹

¹ Explanatory Statement 10 of 2009, p. 1.

Minor treaty action tabled on 25 November 2009

Considered by the Committee on 2 February 2010:

- Amendments to the Annex of the Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto.

The amendments revise Annex VI of the International Convention for the Prevention of Pollution from Ships to give effect to a resolution adopted by the Marine Environment Protection Committee of the International Maritime Organization to further reduce harmful emissions from ships.

The Department of Infrastructure, Transport, Regional Development and Local Government advises that the practical, financial and legal effect of these amendments for Australia is negligible. The amendments are said to primarily involve a technical change to reduce the global sulphur level in shipping fuel oil. The amendment proposes a two-step reduction in the global sulphur cap from the current 4.5 per cent to 0.5 per cent in 2020. There is not expected to be any cost impact from the initial step on Australian vessels or fuel suppliers, and the second step is subject to a review in 2018 before it is confirmed.²

2 Explanatory Statement 6 of 2009, p. 1.