

Report 75

**Treaties tabled on 11 October 2005 (2), 28 February and
28 March 2006 (2)**

Convention on the Marking of Plastic Explosives for the Purpose of Detection

Exchange of Notes constituting a Treaty to amend the Singapore – Australia
Free Trade Agreement (SAFTA)

Protocol of 2003 to the International Convention on the Establishment of an
International Fund for Compensation for Oil Pollution Damage

International Convention on Civil Liability for Bunker Oil Pollution Damage

Agreement establishing the Pacific Islands Forum

Amendments to Annexes VIII and IX of the Basel Convention on the Control of
Transboundary Movements on Hazardous Wastes and their Disposal

Agreement between the Government of Australia and the Government of New
Zealand in relation to Mutual Recognition of Securities Offerings

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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 upon:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions 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
- c) 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 abbreviations

AET	Applied Explosives Technology
AFP	Australian Federal Police
ASIC	Australian Securities and Investment Commission
Cth	Commonwealth
CSIRO	Commonwealth Scientific and Industrial Research Organisation
Customs	Australian Customs Service
DAFF	Department of Agriculture, Fisheries and Forestry
DFAT	Department of Foreign Affairs and Trade
DMNB	2,3-dimethyl-2,3-dinitrobutane
DSTO	Defence Science and Technology Organisation
FBI	Federal Bureau of Investigation
FLA	Formal Law Alliance
FTA	Free Trade Agreement
ICAO	International Civil Aviation Organization
IOS	Ion Mobility Spectrometer
JLV	Joint Law Venture
MAS	Monetary Authority of Singapore
MOU	Memorandum of Understanding

NIA	National Interest Analysis
NIFS	National Institute of Forensic Science
NMI	National Measurement Institute
PCBs	Polychlorinated biphenyls
PRG	Policy Reference Group
RIS	Regulation Impact Statement
SAFTA	Singapore-Australia Free Trade Agreement
SCOT	Commonwealth-State/Territory Standing Committee on Treaties
SDR	Special Drawing Rights
SIFT-MS	Selected Ion Flow Tube Mass Spectrometry
UN	United Nations
USSFTA	United States-Singapore Free Trade Agreement



List of recommendations

2 Convention on the Marking of Plastic Explosives for the Purpose of Detection

Recommendation 1

The Committee supports the *Convention on the Marking of Plastic Explosives for the Purpose of Detection* (Montreal, 1 March 1991) and recommends that binding treaty action be taken.

3 Exchange of Notes constituting a Treaty to amend the Singapore-Australia Free Trade Agreement

Recommendation 2

The Committee supports the *Exchange of Notes constituting a Treaty between the Government of Australia and the Government of the Republic of Singapore to amend the Singapore-Australia Free Trade Agreement of 17 February 2003* and recommends that binding treaty action be taken

4 Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage

Recommendation 3

The Committee supports the *Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, done at London on 16 May 2003*, and recommends that binding treaty action be taken.

5 International Convention on Civil Liability for Bunker Oil Pollution Damage

Recommendation 4

The Committee supports the *International Convention on Civil Liability for Bunker Oil Pollution Damage* and recommends that binding treaty action be taken.

6 Agreement establishing the Pacific Islands Forum

Recommendation 5

The Committee supports the *Agreement establishing the Pacific Islands Forum*, done at Port Moresby on 27 October 2005, and recommends that binding treaty action be taken.

8 Agreement with New Zealand in relation to Mutual Recognition of Securities Offerings

Recommendation 6

The Committee supports the *Agreement between the Government of Australia and the Government of New Zealand in relation to Mutual Recognition of Securities Offerings* 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 seven treaty actions tabled in Parliament on 11 October 2005¹, 28 February² and 28 March 2006.³ These treaty actions are:

11 October 2005⁴

- *Convention on the Marking of Plastic Explosives for the Purpose of Detection*

28 February 2006⁵

- *Exchange of Notes Constituting a Treaty between the Government of Australia and the Government of the Republic of Singapore to amend the Singapore-Australia Free Trade Agreement*

1 Australia, House of Representatives 2004-05-06, *Votes and Proceedings*, No. 60, p. 659; Australia, Senate 2004-06, *Journal*, No. 51, p. 1228.

2 Australia, House of Representatives 2004-05-06, *Votes and Proceedings*, No. 87, p. 979; Australia, Senate 2004-06, *Journal*, No. 73, p. 1902.

3 Australia, House of Representatives 2004-05-06, *Votes and Proceedings*, No. 91, p. 1026; Australia, Senate 2004-06, *Journal*, No. 77, p. 1993.

4 The review of the remaining treaty tabled on 11 October 2005 is included in the Committee's Report 69.

5 The remaining treaties tabled in February 2006 are included in the Committee's Report 73.

28 March 2006⁶

- *Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage*
- *International Convention on Civil Liability for Bunker Oil Pollution Damage*
- *Agreement establishing the Pacific Islands Forum*
- *Amendments to Annexes VIII and IX of the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention)*
- *Agreement between the Government of Australia and the Government of New Zealand in relation to Mutual Recognition of Securities Offerings*

Briefing documents

- 1.2 The advice in this Report refers to the National Interest Analyses (NIAs) prepared for the proposed treaty actions. These documents are prepared by the Government agency (or agencies) responsible for the administration of Australia's responsibilities under each treaty. Copies of the NIAs may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct/11october2005/tor.htm

www.aph.gov.au/house/committee/jsct/february2006/tor.htm

www.aph.gov.au/house/committee/jsct/28march2006/tor.htm

- 1.3 Copies of treaty actions and 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/

6 The *Agreement for Establishment of the Global Crop Diversity Trust* was also tabled on 28 March 2006 and included in the Committee's Report 74. The Committee has deferred consideration of the *Agreement between the Government of Australia and the Government of the Republic of Indonesia for Cooperation in Scientific Research and Technological Development* and the *Exchange of Letters constituting an Agreement between the Government of Australia and the Government of New Zealand to Amend Article 3 of the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)* pending further information.

Conduct of the Committee's review

- 1.4 The Review contained in this report was advertised in the national press and on the Committee's website.⁷ Letters were also sent inviting comment from all State Premiers, Chief Ministers, Presiding Members of Parliament and from individuals who have expressed an interest in being kept informed of proposed treaty actions such as these. A list of submissions and their authors is at Appendix A.
- 1.5 The Committee also received evidence at public hearings held on 7 November 2005, 27 February, 27 March and 8 May 2006. A list of witnesses who appeared before the Committee at these public hearings is at Appendix B. A transcript of evidence from the public hearings may be obtained from the Committee Secretariat or accessed through the Committee's website at:
- www.aph.gov.au/house/committee/jsct/11october2005/hearings.htm
www.aph.gov.au/house/committee/jsct/february2006/hearings.htm
www.aph.gov.au/house/committee/jsct/28march2006/hearings.htm

⁷ The Committee's review of the proposed treaty actions was advertised in *The Australian* on 19 October and 2 November 2005, 22 February, 8 March, 5 and 19 April 2006. Members of the public were advised on how to obtain relevant information and invited to submit their views to the Committee, both in the advertisement and via the Committee's website.

Convention on the Marking of Plastic Explosives for the Purpose of Detection

Introduction

- 2.1 The *Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1 March 1991)* (the Convention) is administered by the International Civil Aviation Organization (ICAO) and was drafted in response to the 1988 bombing of PAN Am Flight 103 over Lockerbie, Scotland¹ which claimed 270 lives.²
- 2.2 United Nations (UN) Security Council resolution 1373 of 28 September 2001 urges States to become parties to the relevant conventions and protocols relating to terrorism.³ Should Australia accede to this Convention, it will be party to all 13 of the UN's conventions and protocols on terrorism.⁴
- 2.3 The Committee was informed that accession to the Convention would signify Australia's continuing commitment to combating the threat of global terrorism and further strengthen Australia's reputation as an authority on counter terrorism initiatives, particularly in the Asia-Pacific region.⁵

1 National Interest Analysis (NIA), paras 1-3.

2 Mr Geoffrey McDonald, *Transcript of Evidence*, 7 November 2005, p. 8.

3 NIA, para. 5.

4 Mr Geoffrey McDonald, *Transcripts of Evidence*, 7 November 2005, p. 7 and 27 February 2006 p. 31.

5 NIA, para. 5; Mr Geoffrey McDonald, *Transcript of Evidence*, 7 November 2005, p. 7.

Background

- 2.4 In drafting the Convention, the international community was concerned that plastic explosives had been used in terrorist acts aimed at the destruction of aircraft and other targets.⁶
- 2.5 The international community was of the view that the marking of plastic explosives makes them more easily identifiable and detectable, thereby inhibiting their improper and unlawful use.⁷
- 2.6 Broadly, the Convention provides for the monitoring, regulation, manufacture, possession, import and export of plastic explosives internationally.⁸

Obligations under the Convention

- 2.7 As signatory to the Convention, Australia is required to:
- use one of the four ICAO recommended⁹ chemical detection agents¹⁰ in its minimum concentration¹¹ to mark plastic explosives
 - prohibit and prevent the manufacture in its territory, and the movement into and out of its territory of unmarked plastic explosives¹²
 - take necessary measures to destroy, as soon as possible, unmarked plastic explosives manufactured upon the Convention's entry into force.¹³

6 NIA, para. 4.

7 NIA, para. 4; Geoffrey McDonald, *Transcript of Evidence*, 7 November 2005, p. 8.

8 Mr Geoffrey McDonald, *Transcript of Evidence*, 27 February 2006, p. 31.

9 NIA, para. 14.

10 ICAO recommends 2,3-dimethyl-2,3-dinitrobutane (DMNB) as the most effective odorant for marking plastic explosives. NIA, para. 14; Mr Geoffrey McDonald, *Transcript of Evidence*, 7 November 2005, p. 8.

11 A recent amendment to Part 2 of the Technical annex, effective from 19 December 2005, increases the minimum concentration of DMNB from 0.1% to 1.0%. The other amendment, which came into effect on 27 March 2002, deleted ortho-Mononitrotoluene from the list of detection agents in the Table of the Technical Annex of the Convention. NIA, para. 15; Mr Geoffrey McDonald, *Transcript of Evidence*, 7 November 2005, p. 8.

12 Obligations under the Convention apply to explosives formulated with one or more high explosives, which in their pure form have a vapour pressure less than 10^{-4} Pa at a temperature of 25°C, are formulated with a binder material, and are, as a mixture malleable or flexible at room temperature. NIA, para. 8.

Control of existing stocks of plastic explosives

- 2.8 The Convention obliges States to exercise strict and effective control of the possession and transfer of existing stocks of unmarked plastic explosives.¹⁴
- 2.9 Existing stocks of unmarked plastic explosives must be either consumed, destroyed, marked or rendered permanently ineffective, consistent with obligations under the Convention within a period of:
- 3 years¹⁵ for those stocks of unmarked plastic explosives not held by authorities performing military functions
 - 15 years¹⁶ for those stocks of unmarked plastic explosives held by authorities performing military functions that are not incorporated as an integral part of duly authorised military devices¹⁷
 - as soon as possible¹⁸ for those stocks of unmarked plastic explosives that do not fall within the categories of exemptions for unmarked plastic explosives as described below.¹⁹

Categories of exemptions for unmarked plastic explosives

- 2.10 Exemptions under the Convention apply to those unmarked plastic explosives that continue to be manufactured or held in limited quantities for:
- authorised research and development
 - testing of new or modified explosives
 - authorised training in explosives detection
 - development or testing of explosives detection equipment
 - authorised forensic purposes.²⁰

13 NIA, para. 13.

14 NIA, para. 16.

15 From the date of the Convention's entry into force for Australia. NIA, para. 17.

16 From the date of the Convention's entry into force for Australia. NIA, para. 18.

17 NIA, paras 17-18.

18 NIA, para. 19.

19 NIA, para. 12.

20 NIA, para. 9.

- 2.11 A further exemption applies to those unmarked plastic explosives that are to be designated or are incorporated as an integral part of an authorised military device within 3 years²¹ of the Convention's entry into force.²²

International Explosives Technical Commission

- 2.12 The Convention establishes the International Explosives Technical Commission consisting of 15 to 19 expert members²³ appointed by ICAO to implement the Convention. The Commission provides technical assistance and facilitates the exchange of information relating to technical developments in the marking and detection of plastic explosives between States Parties. States Parties are required to keep ICAO informed of measures they have taken to implement the provisions of the Convention.²⁴

Dispute resolution

- 2.13 The Convention provides that a dispute between States Parties which cannot be settled through negotiation is required to be submitted to arbitration. If within six months of undergoing arbitration, the dispute remains unresolved, it may be referred to the International Court of Justice.²⁵
- 2.14 A State Party may at the time of its accession to the Convention, declare itself not bound by the dispute resolution process. Australia does not intend to make such a declaration and so will be bound by the dispute resolution process under the Convention.²⁶

Detecting marked and unmarked plastic explosives

- 2.15 The Committee was informed that there have been concerns raised about the ability of current technology to detect marked plastic explosives. Based on evidence received, the Committee initially held
-

21 Explosives produced within 3 years after the Convention's entry into force are deemed to be duly authorised military devices. NIA, para. 10.

22 NIA, para. 10.

23 Members shall be experts having direct and substantial experience in matters relating to the manufacture or detection of, or research in explosives. NIA, para. 21.

24 NIA, para. 23.

25 NIA, para. 24.

26 NIA, para. 25.

similar concerns in particular with respect to detecting both marked and unmarked plastic explosives.

2.16 Subsequently, the Committee received additional evidence that Australian ports have equipment in place that can detect trace or bulk explosives. This technology includes approximately 85 X-ray machines ranging in size which can detect the shape and density of explosives:

- 4 large sea cargo container X-ray units
- 5 pallet X-ray units
- 18 mobile X-ray vans
- the rest are cabinet X-ray units at airports and mail centres.²⁷

2.17 Another three types of equipment detect explosive residue with the exclusion of chemical markers and include:

- 41 ion mobility spectrometers (IOS) that can detect explosives and narcotics
- 5 specialised machines based on selected ion flow tube mass spectrometry (SIFT-MS)²⁸
- 10 units of an antibody-based detector machine, complementary to IOS used to confirm IOS readings, the antibody-based detector has a much lower false-positives rate.²⁹

2.18 A further set of specialised mass spectrometer machines can detect a range of volatile organic compounds and are used at sea cargo examination facilities. The manufacturer of the machine has informed the Australian Customs Service (Customs) that the machine may be programmed to test chemical markers, which Customs will explore further.³⁰

2.19 In relation to technology which potentially can detect chemical markers within plastic explosives, Customs stated:

27 Ms Roxanne Kelley, *Transcript of Evidence*, 27 February 2006, p. 33.

28 This machine may detect DMNB, o-MNT and p-MNT, the prescribed markers included in the Technical annex to the Convention. Attorney-General's Department, *Submission 10.1*, p. 1.

29 Ms Roxanne Kelley, *Transcript of Evidence*, 27 February 2006, p. 33.

30 Ms Roxanne Kelley, *Transcript of Evidence*, 27 February 2006, p. 33.

In terms of our range of technology for explosives, we have finalised an evaluation of some automatic explosive detection X-ray machines. We are going to deploy them at the Sydney and Melbourne postal facilities. We have also heard that another company has indicated that it has a product which can detect some markers or taggants. We have not tested that bit of equipment. Until we do, using our independent scientists to do a full evaluation, we would not feel comfortable to say that the machine is suitable for this purpose.³¹

- 2.20 The Committee also heard that Australian ports can detect plastic explosives but cannot at point of entry detect chemical markers or taggers. The current internationally accepted practice for identifying chemical markers is through laboratory testing. No country currently uses technology to detect chemical markers at international points of entry.³² Customs informed the Committee:

We have checked with other customs administrations and had a discussion with the FBI³³ around their process for markers and taggants. Our understanding is that their process is exactly the same as ours. They have technology capable of detecting the explosives but then they send the explosives to a laboratory for the marker and taggant to be identified. That seems to be the international process at the moment. Laboratories are used to identify the taggants and markers.³⁴

- 2.21 In further evidence presented to the Committee, the Hon Philip Ruddock MP, Attorney-General confirmed that it is currently not the practice to look for the odorant DMNB at Australian ports:

The Committee has previously been advised that the positive identification and quantitation of explosive markers would be undertaken by a fully accredited forensic laboratory such as the National Measurement Institute (NMI). This testing would be undertaken in line with the proposed regulatory approach outlined by the officials from the Australian Customs Service and [the Attorney-General's Department] at the Committee's [public hearing] on 27 February 2006.

31 Ms Roxanne Kelley, *Transcript of Evidence*, 27 February 2006, pp. 33-34.

32 Ms Roxanne Kelley, *Transcript of Evidence*, 27 February 2006, p. 37.

33 The United States of America's Federal Bureau of Investigation.

34 Ms Roxanne Kelley, *Transcript of Evidence*, 27 February 2006, p. 34.

The detection of the chemical marker in the plastic explosive by an accredited laboratory would assist in the enforcement of the offence provisions provided for in the *Law and Justice Legislation and Amendment (Marking of Plastic Explosives) Bill 2006*.³⁵

- 2.22 One issue surrounding the detection of the preferred odorant DMNB, which under the Convention would be included in plastic explosives, is that DMNB is volatile. The rate at which DMNB vaporises after it is combined with plastic explosive is as yet unknown. There is concern that the plastic explosive (to which DMNB has been added) could therefore remain viable longer than the odorant.³⁶ At the Committee's first hearing, the Department of Defence informed the Committee:

[DMNB] is supposed to be homogenous throughout the [plastic explosive] material - and it certainly is at the time of manufacture - but obviously, there will be a gradient created within the material over time as the volatile substance burns off from the outside and inwards. The technical data is not yet comprehensive enough to tell us how quickly that will occur.³⁷

- 2.23 To overcome this issue the Convention stipulates a large increase in the minimum concentration of DMNB to 1%. The Attorney-General's Department confirmed this at a later hearing:

... there was mention of the increase of the amount of [DMNB] in the plastic explosives. The purpose of that is to make sure the marker stays in it for a longer period of time. That was the main reason the percentage was increased.³⁸

- 2.24 The Committee was concerned that it had received conflicting evidence regarding the purpose of the odorant DMNB. On the one hand, in response to a question taken on notice from the Chair -

Was it ever the intention of the treaty that the odorant would be to find the explosive or is the odorant to identify where the explosive has come from?

35 Attorney-General's Department, *Submission 10.5*, p. 2.

36 Mr Wayne Hayward, *Transcript of Evidence*, 7 November 2005, p. 14.

37 Mr Wayne Hayward, *Transcript of Evidence*, 7 November 2005, p. 11.

38 Mr Geoffrey McDonald, *Transcript of Evidence*, 27 February 2006, p. 37.

2.25 The Attorney-General's Department responded with:

The intention of the Convention was to require a chemical detection agent to be incorporated into the plastic explosive in order to identify the presence of a plastic explosive, not to be able [to] identify the source of the manufacture of the plastic explosive.³⁹

2.26 In further evidence presented to the Committee, the Attorney-General clarified the purpose of adding DMNB to plastic explosive:

The chemical DMNB, is one of four types of chemical markers which are prescribed by the Technical Annex to the Convention as required to be incorporated into a plastic explosive.

The original idea of the Convention was to use marking to improve detection of plastic explosives. Although methods of detecting plastic explosives have improved since 1991, the Convention has utility in other respects.

For example, all but a handful of countries in the world have now marked their plastic explosives in line with the Convention. The Convention provides a way of distinguishing between explosives that come from legitimate sources as opposed to the black market. While [the] marker itself does not extend to forensically identifying the exact source of the explosives, the requirement to mark plastic explosives provides police with a useful charge in the event that there is uncertainty about the exact source of a plastic explosive and it is clear that a plastic explosive is not marked.⁴⁰

2.27 On the other hand, the Committee also discovered that while the odorant DMNB was proposed originally to aid in the detection of plastic explosives, it could also be used, after detonation, to identify where an explosive was manufactured.⁴¹ The Attorney-General's Department confirmed that Switzerland is the only major industrial country that currently incorporates chemical taggers into explosives from which the manufacturer and approximate date of manufacture can be identified post blast.⁴²

39 Attorney-General's Department, *Submission 10.3*, p. 1.

40 Attorney-General's Department, *Submission 10.5*, p. 1.

41 Mr Wayne Hayward, *Transcript of Evidence*, 7 November 2005, p. 15.

42 Attorney-General's Department, *Submission 10.3*, p. 1.

- 2.28 The Committee also heard that the Defence Science and Technology Organisation (DSTO) is currently researching the marking of plastic explosives with a view to improving technology in this area. This research will be ongoing once DMNB is incorporated into the manufacture of plastic explosives.⁴³ The Committee also received evidence that the National Institute of Forensic Science (NIFS) is researching the tagging of explosives⁴⁴ while the Commonwealth Scientific and Industrial Research Organisation (CSIRO) is conducting research into detection equipment.⁴⁵
- 2.29 Once the Convention is in place and in the lead up to the implementation of relevant legislation, the Australian Government will consider the purchase of specialised screening equipment that can detect DMNB.⁴⁶

Costs

- 2.30 A significant quantity of plastic explosive is produced and consumed annually in Australia. Over the next few years, a war reserve stock will be accumulated. Accession to the Convention would impact on the manufacturing process, stores management and transport costs of plastic explosive.⁴⁷
- 2.31 The Australian Government considers the most economical way to give effect to the obligations of the Convention is to require the incorporation of DMNB into plastic explosives at the time of manufacture.⁴⁸ This would significantly reduce the costs associated with ongoing monitoring and regulation of stocks of plastic explosive over their life.⁴⁹
- 2.32 Costs of accession to the Convention are estimated at \$500 000 with an annual recurring cost of \$1.125 million. The Department of Defence and the principal Australian manufacturer of plastic explosives, ADI

43 Mr Wayne Hayward, *Transcript of Evidence*, 7 November 2005, p. 14.

44 NIA, Consultation Annex, para. 4b.

45 Mr Wayne Hayward, *Transcript of Evidence*, 7 November 2005, p. 17.

46 Mr Geoffrey McDonald, *Transcript of Evidence*, 7 November 2005, p. 11.

47 NIA, para. 32.

48 As Australia does not produce DMNB, it would be imported and incorporated as a liquid into plastic explosive at the manufacturing stage at a cost of approximately \$5.50 for each unit of plastic explosive. Wayne Hayward, *Transcript of Evidence*, 7 November 2005, p. 11.

49 NIA, para. 34.

Limited, will bear the most significant financial burden in complying with the terms of the Convention.⁵⁰

- 2.33 There may also be a cost impact from occupational health and safety management issues associated with adding DMNB to plastic explosives. However, the Committee received evidence that ADI Limited already has in place strict safety standards in the manufacture and operation of hazardous materials.⁵¹
- 2.34 Other costs to Australia include the regulation and monitoring of marked plastic explosives through border security under Custom's control.⁵²
- 2.35 The proposed amendments to the *Criminal Code Act 1995* (Cth) are likely to require technology to allow it to determine whether imported or exported plastic explosives are marked or not at a cost of about \$1 million per unit. Multiple units would be needed in ports⁵³ around Australia.⁵⁴
- 2.36 Additional costs would include: maintaining and operating equipment, staff training, laboratory testing of plastic explosives to measure marker concentration, obtaining a capability to detect markers that are currently difficult or impossible to detect and handle, and transporting and storing plastic explosives.⁵⁵
- 2.37 When asked further about the cost of equipment, the Attorney-General's Department informed the Committee that the exact costs of equipment were presently unknown:

There are issues about how many we need and the like. We cannot give any further information on that at this time. You would appreciate that, at that sort of cost, this is not an inexpensive thing. On the other hand, the cost in lives and property damage in the event of something going wrong in this area would be very considerable.⁵⁶

The truth of it is that there are budget processes. That always makes it more difficult for me to talk about the global

50 NIA, para. 33.

51 NIA, para. 35.

52 NIA, para. 36.

53 'Ports' refers to international points of entry and does not include regional airports. Mr Paul Hill, *Transcript of Evidence*, 7 November 2005, pp. 17 & 20.

54 NIA, para. 37.

55 NIA, para. 37.

56 Mr Geoffrey McDonald, *Transcript of Evidence*, 7 November 2005, p. 15.

coverage of this. Also, in relation to equipment, there is often quite a deal of discussion between our various departments and the department of finance about the most economical way to go.⁵⁷

- 2.38 The Attorney-General added to comments provided to the Committee by the Attorney-General's Department at its first public hearing on the treaty:

[In reference]... to evidence provided to the Committee on 7 November 2005, by an officer from my Department concerning budgetary issues. The officer was correct in advising that he was not at liberty to disclose the outcome of budget deliberations. However, the officer was alluding to the fact that the cost was likely to be substantially less than the original estimate put forward in the National Interest Analysis because appropriate regulation can be achieved without the purchase of specific equipment. The officer has already indicated that there is equipment at the airport to detect explosives including plastic explosives, that equipment also exists which can be calibrated to detect chemical markers and that through utilisation of that equipment and further laboratory testing, there will be adequate protection to the public.⁵⁸

- 2.39 Customs stated that new technology may not be required to identify marked plastic explosives. There could instead be a reliance on written permission issued for the goods providing a cost saving.

... if any goods appeared at the border which did not have the required permission, Customs would be able to seize those goods as prohibited imports. It would also mean that we would not have to intervene with every movement of plastic explosives across the border. That obviously has an impact on trade, on legitimate companies that use plastic explosives, on the Department of Defence and so forth.

Even if there was a permission to import that we had reasonable suspicions about, we would be able to hold the goods and conduct tests on them – perhaps through a

57 Mr Geoffrey McDonald, *Transcript of Evidence*, 7 November 2005, p. 17.

58 Attorney-General's Department, *Submission 10.5*, p. 2.

laboratory – to confirm that they did meet the conditions of the permission to import.⁵⁹

2.40 On the use of detection equipment Customs added:

We need to factor in that technology is not going to solve all the problems. Because of that understanding, Customs is putting into place a layered approach. Part of what we were talking about with the permit-issuing approach, combined with our capacity to detect explosives is that it provides more of a safeguard than just spending a whole heap more money on technology.⁶⁰

2.41 Costs where permissions would be required would include: laboratory testing of plastic explosives to measure marker concentration, handling, transporting and storing plastic explosives, preparation and consideration of applications to import or export plastic explosives. Applicants would incur a further cost in preparing applications seeking import or export permission.⁶¹

Consultation

- 2.42 The Attorney-General's Department consulted extensively with a number of Commonwealth Government Departments,⁶² State and Territory Police, private sector manufacturers⁶³ and users of plastic explosives. The details of the Convention were also provided to the Commonwealth-States/Territories Standing Committee on Treaties.⁶⁴
- 2.43 All responses received from Police Commissions advised of the stocks of plastic explosives held by each State and Territory and supported Australia's accession to the Convention.⁶⁵
- 2.44 The Australian Bomb Data Centre of the Australian Federal Police (AFP) noted that marking plastic explosives would be effective from a

59 Mr Tim Chapman, *Transcript of Evidence*, 27 February 2006, p. 32.

60 Ms Roxanne Kelley, *Transcript of Evidence*, 27 February 2006, p. 36.

61 NIA, para. 38.

62 The Department of Prime Minister and Cabinet, the Department of Defence, the Department of Foreign Affairs and Trade, the Department of Transport and Regional Services and the Australian Customs Service. NIA, Consultation Annex.

63 The Attorney-General's Department consulted ADI Limited, Brandrill Limited, Adele Enterprises and Quin Investments. NIA, Consultation Annex.

64 NIA, Consultation Annex, para. 2.

65 NIA, Consultation Annex, para. 4.

law enforcement perspective if marking enabled the identification by batch of the explosive. It was noted however, that plastic explosives represented only a small part of the international explosive inventory, therefore, consideration should be given to the marking of all explosives. The AFP also drew attention to NIFS research on the tagging of explosives.⁶⁶

- 2.45 Of the private sector producers or consumers of plastic explosives, Applied Explosives Technology (AET) advised that they use PE4⁶⁷ in their research and development and in some fully manufactured articles. AET advised that the cost of DMNB is US\$240 per kilogram and that they had recently been involved in testing the effects of different DMNB concentrations in PE4 as part of NIFS and DSTO research.⁶⁸

Implementation

- 2.46 The Australian Government has made available to the Committee an exposure draft of the main legislative instrument that will implement the obligations under the Convention, the *Law and Justice Legislation Amendment (Marking of Plastic Explosives) Bill 2005*.⁶⁹
- 2.47 The *Criminal Code Act 1995* (Cth) will also be amended to incorporate Australia's obligations under the Convention. The *Customs Act 1901* (Cth), *Customs (Prohibited Imports) Regulations 1956* (Cth) and *Customs (Prohibited Exports) Regulations 1958* (Cth) will be amended to provide Customs and its officers with the necessary powers to give effect to the terms of the Convention.⁷⁰
- 2.48 As State and Territory legislation dealing with plastic explosives already exists, the Australian Government does not envisage the need for State provisions within the legislation.⁷¹
- 2.49 The legislation would commence immediately upon Royal Assent. However, a proposed provision within the legislation provides for a

66 NIA, Consultation Annex, para. 4b.

67 PE4 is a type of plastic explosive.

68 NIA, Consultation Annex, para. 8.

69 Attorney-General's Department, *Submission 10.2*, p. 1.

70 NIA, Consultation Annex, paras 26-30.

71 Mr Geoffrey McDonald, *Transcript of Evidence*, 7 November 2005, p. 9.

12-month delay for commencement for manufacturers of plastic explosive.⁷²

Entry into force and withdrawal

- 2.50 The Convention has been in force generally since 21 June 1998. There are currently 123 Parties to the Convention.⁷³ Pursuant to Article XIII(4), the Convention will enter into force for Australia sixty days after deposit of instrument of accession with ICAO.⁷⁴
- 2.51 Australia has delayed acceding to the Convention as other terrorism related legislation has taken priority.⁷⁵ However, the Committee was informed that the Australian Government has, over the last four years, solidly pursued the international obligations under the treaty.⁷⁶
- 2.52 As a manufacturer of explosives, Australia is classified as a 'Producer State' under the Convention and is obliged at the time of depositing its instrument of accession to officially declare its status.⁷⁷
- 2.53 Any States Party may withdraw from the Convention by written notification to ICAO with formal withdrawal taking effect 180 days on receipt of notification.⁷⁸

Conclusion

- 2.54 The Committee is supportive of further research being undertaken by DSTO, NIFS, CSIRO and Customs in the area of marking, tagging and detecting plastic explosives, but remains concerned that the technology in marking and detecting plastic explosives is not yet scientifically exact.

72 Attorney-General's Department, *Submission 10.1*, p. 1.

73 Canada, New Zealand, the United Kingdom, and the United States of America are also Parties to the Convention; International Civil Aviation Organization, viewed 13 March 2005, <www.icao.int/>.

74 NIA, para. 2.

75 Mr Geoffrey McDonald, *Transcript of Evidence*, 7 November 2005, p. 9 & 27 February 2006, p. 38.

76 Mr Geoffrey McDonald, *Transcript of Evidence*, 7 November 2005, p. 9.

77 NIA, para. 20.

78 NIA, paras 45-46.

- 2.55 However, on balance, the Committee believes the Convention will provide additional impetus for technological development and international technology sharing in marking and detecting plastic explosives.
- 2.56 The Committee is also of the view that accession to the Convention confirms Australia's commitment to combating the global threat of terrorism, in particular in the Asia-Pacific region.

Recommendation 1

The Committee supports the *Convention on the Marking of Plastic Explosives for the Purpose of Detection* (Montreal, 1 March 1991) and recommends that binding treaty action be taken.

Exchange of Notes constituting a Treaty to amend the Singapore-Australia Free Trade Agreement

Introduction

- 3.1 The *Exchange of Notes constituting a Treaty between the Government of Australia and the Government of the Republic of Singapore to amend the Singapore-Australia Free Trade Agreement of 17 February 2003 (the Amendments)* make three general amendments to the *Singapore-Australia Free Trade Agreement (SAFTA)*. The Amendments relate to joint law ventures and formal law alliances, the removal of Singapore's numerical quota on wholesale bank licences in relation to Australian banks from 1 January 2007, and the extension of the range of exceptions to Australia's obligations under SAFTA to include reservations made by Australia's State and Territory governments.
- 3.2 The Committee was informed that the Amendments will deliver additional benefits to Australia above those negotiated in SAFTA.¹ Moreover, the review process, which the Amendments are a result of, identifies emerging issues and keeps SAFTA up to date and relevant to Australian and Singaporean business.²

1 National Interest Analysis (NIA), para. 6.

2 Mr Miles Armitage, *Transcript of Evidence*, 27 March 2006, p. 1; NIA, para. 7.

Background

- 3.3 The Committee recommended binding treaty action be taken in relation to SAFTA in Report 52 and SAFTA entered into force on 28 July 2003.
- 3.4 Under Article 3 of Chapter 17 of SAFTA, a Ministerial Review was to be conducted a year after its entry into force and biennially thereafter. The first Ministerial Review took place in Sydney on 14 July 2004, and these Amendments are the second tranche of amendments resulting from the first Ministerial Review to be considered by the Committee. The first tranche of amendments were tabled in the Parliament in March 2005 and considered by the Committee in Report 66.
- 3.5 The trade in merchandise and services between Australia and Singapore is considerable, with Singapore currently Australia's sixth largest merchandise trading partner in 2005.³

In 2005, merchandise exports to Singapore were valued at A\$4.00 billion and imports were A\$8.67 billion. Australian services exports to Singapore were valued at A\$2.38 billion in 2005 and services imports were valued at A\$2.78 billion.⁴

The Amendments

Joint law ventures and formal law alliances

- 3.6 Currently under SAFTA, joint law ventures (JLVs) and formal law alliances (FLAs) must comprise at minimum four foreign lawyers resident in Singapore, with an aggregate experience of 20 years, and of whom at least two must be equity partners in the foreign law firm or members of the board of directors.⁵
- 3.7 Following the exchange of diplomatic notes between Australia and Singapore, Singapore agreed to amend these conditions and extend to Australia treatment no less favourable than that granted to the United

3 NIA, para. 5.

4 NIA, para. 5.

5 Section III (Waiver and Modifications of Statutory Conditions governing Joint Law Ventures and Formal Law Alliances in Singapore) of Annex 4-III Additional Commitments to Chapter 7 (Trade in Services) and Chapter 8 (Investment); NIA, para. 15.

States under the United States-Singapore Free Trade Agreement (USSFTA).⁶

- 3.8 The Amendments will require JLVs and FLAs to comprise at minimum three foreign lawyers resident in Singapore, with an aggregate experience of 15 years and at least two of whom must be either equity partners or members of the board of directors of the foreign law firm.⁷

Wholesale bank licences

- 3.9 Currently under SAFTA, Singapore will lift its numerical quota on wholesale bank licences in relation to Australian banks on 28 July 2007.⁸
- 3.10 Following the entry into force of the Amendments, Singapore will lift its numerical quota on wholesale bank licences in relation to Australian banks from 1 January 2007.⁹
- 3.11 Prior to this Amendment only 20 new wholesale bank licences were to be issued by the Monetary Authority of Singapore (MAS) during the period from 30 June 2001 to 30 June 2003.¹⁰ During the period from 1 July 2003 to 28 July 2007, the MAS advised that it was prepared to issue a limited number of wholesale bank licences but that no formal quota had been set.¹¹
- 3.12 This Amendment is a result of Singapore's agreement to extend the same commitment to Australia in relation to wholesale bank licences as is extended to the United States under the United States-Singapore Free Trade Agreement (USSFTA).¹²
- 3.13 The Committee was informed that the lifting of the numerical quota, in line with the USSFTA:

6 NIA, para. 17.

7 NIA, paras 16 and 17.

8 Section V (Note to Singapore's Commitments for Financial Services) of Annex 4-III Additional Commitments to Chapter 7 (Trade in Services) and Chapter 8 (Investment) of SAFTA; NIA, para. 14.

9 Mr Miles Armitage, *Transcript of Evidence*, 27 March 2006, p. 2; NIA, para 14.

10 Department of Foreign Affairs and Trade, *Submission 6*.

11 Department of Foreign Affairs and Trade, *Submission 6*.

12 NIA, para. 14.

... really puts them on a level playing field with any US banks which may want to open up in Singapore. Australian banks now have the same opportunity if they wish to take it up.¹³

State and Territory reservations

3.14 The Amendments incorporate reservations to SAFTA made by Australia's State and Territory governments. The Committee was informed by representatives from the Department of Foreign Affairs and Trade that the reservations were not included in the original SAFTA because:

Negotiating with eight states and territories takes some time, and so it was decided to conclude the agreement on time. Both sides agreed to continue with the consultations with states and territories to come to an agreement that both sides would be happy with. That took about 18 months to do.¹⁴

3.15 The Amendments to Annexes 4-I and 4-II of SAFTA incorporate the reservations and reflect non-conforming measures in trade in services and investment which are maintained at the State and Territory government levels.¹⁵

3.16 The Committee was informed that although in principle, the State and Territory reservations were limiting Singapore's access under SAFTA, overall access was improved:

These amendments essentially allow Singapore business access under the national treatment and market access rules to anything that the states and territories have control over. So, technically, that expands their access to the Australian market. However, in giving them that extra access, the states and territories have said, 'We would like to just take out some reservations on things that we would not necessarily like to give to them straightaway.'¹⁶

3.17 Moreover, no further reservations are able to be made under Annex 4-I of SAFTA, with any future reservations now limited to Annex 4-II.¹⁷

13 Ms Joanne Loundes, *Transcript of Evidence*, 27 March 2006, p. 3.

14 Ms Joanne Loundes, *Transcript of Evidence*, 27 March 2006, p. 3.

15 NIA, para. 10.

16 Ms Joanne Loundes, *Transcript of Evidence*, 27 March 2006, p. 4.

17 Ms Joanne Loundes, *Transcript of Evidence*, 27 March 2006, p. 5.

- 3.18 Mr Kevin Foley MP, the Deputy Premier and the Minister for Industry and Trade in the South Australian Parliament, wrote to the Committee regarding the wording of the reservation for South Australia's legal services contained in Annex 4-I(A)-7 of the Amendments.¹⁸
- 3.19 South Australia's reservation in this instance was approved as set out below rather than as it is set out in the tabled treaty text:

South Australia

Natural persons practising foreign law in South Australia may only join a local law firm as a consultant and may not enter into partnership with or employ local lawyers. There are restrictions on the circumstances in which a corporation may obtain a practising certificate.

A person is not taken to be practising the profession of the law if he or she is only providing legal advice or services relating to the law of a place outside Australia.

A company that is a subsidiary of a foreign law firm is not permitted to obtain a practising certificate and is not permitted to share profits with any other company or firm.

Entry into force

- 3.20 The Amendments will enter into force following an exchange of notes between Singapore and Australia upon the completion of the Parties' respective domestic procedures.¹⁹

Future treaty action

- 3.21 The next Ministerial Review is scheduled for July 2006.²⁰
- 3.22 Issues likely to arise at the next Ministerial Review include:

18 Government of South Australia, *Submission 7.1*.

19 NIA, para. 3.

20 Mr Miles Armitage, *Transcript of Evidence*, 27 March 2006, p. 1.

... improvement to the rules in SAFTA in relation to investment and rules of origin, recognition of more Australian law degrees, revision of the intellectual property chapter to reflect harmonisation of Australia's and Singapore's intellectual property laws, cooperation in competition policy, and commitments under the government procurement chapter.²¹

- 3.23 The Committee was also informed that the focus of future trade negotiations will be in further liberalising the services sector, as there is only limited scope for generating greater access and trade in merchandise due to low tariffs prior to SAFTA.²²

Costs and implementation

- 3.24 The National Interest Analysis states that the Amendments will not introduce any additional costs above what was associated with SAFTA at the time of entry into force.²³
- 3.25 No additional measures or changes to legislation are required in order for Australia to meet its obligations under the Amendments.²⁴

Consultation

- 3.26 Leading up to the first Ministerial Review, the Department of Foreign Affairs and Trade consulted widely with State and Territory governments, other Commonwealth Departments, businesses and universities.²⁵

21 Mr Miles Armitage, *Transcript of Evidence*, 27 March 2006, p. 2.

22 Mr Miles Armitage, *Transcript of Evidence*, 27 March 2006, p.6 and Mr Damian White, *Transcript of Evidence*, 27 March 2006, p. 6.

23 NIA, para. 19.

24 NIA, para. 18.

25 See the 'Consultation' section of the NIA, in addition to the 'Consultation' section of the *Singapore-Australia Free Trade Agreement Amendments NIA*, tabled in the Parliament on 15 March 2005 and available from the JSCOT website at <www.apf.gov.au/house/committee/jsct/15march05/treaties/safta_nia.pdf>

Conclusion and recommendation

- 3.27 The Committee acknowledges that the Amendments are part of an ongoing commitment to trade liberalisation and the expansion of trade and investment links between Australia and Singapore.

Recommendation 2

The Committee supports the *Exchange of Notes constituting a Treaty between the Government of Australia and the Government of the Republic of Singapore to amend the Singapore-Australia Free Trade Agreement of 17 February 2003* and recommends that binding treaty action be taken

Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage

Introduction

- 4.1 The *Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage* (the Protocol) establishes a Supplementary Fund to provide additional compensation to victims of oil spills. At present, compensation is available to victims of oil spills under a two-tier system of compensation. The Protocol would provide an additional third tier of compensation in situations where the maximum amount of compensation available under the previous two tiers proves insufficient.¹

¹ Mr Michael Sutton, *Transcript of Evidence*, Monday 8 May 2006, p. 1; National Interest Analysis (NIA), para. 6.

Background

- 4.2 At present, compensation is available to victims of oil spills first under the *International Convention on Civil Liability for Oil Pollution Damage* (Civil Liability Convention) and second under the *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage* (Fund Convention).
- 4.3 Under the Civil Liability Convention, the tanker owner is strictly liable for damage resulting from a spill of persistent oil. Owners are required to maintain insurance to cover their liability under the Civil Liability Convention if they are carrying more than 2,000 tons of persistent oil.² Owners are able to limit their liability with the liability limit set in proportion to the size of the tanker.
- 4.4 If the compensation limits of the Civil Liability Convention are reached, the Fund Convention provides additional compensation for victims of oil spills.³ Under the Fund Convention, compensation
- ... is financed by levies imposed on persons or entities who receive by sea transport more than 150,000 tonnes of heavy oils in a calendar year. The costs vary from year to year as they are dependent on the number and severity of incidents that occur within states that are party to the fund convention.⁴
- 4.5 The Committee was informed that currently the maximum liability limit or compensation able to be obtained in the first instance is approximately \$175 million. Under the Fund Convention, the maximum compensation obtainable is approximately \$395 million.⁵
- 4.6 The two-tier compensation system proved insufficient to compensate victims of oil spills in three recent high profile instances: the *Nakhodka* off the coast of Japan in 1996, the *Erika* off the coast of France in 1999 and the *Prestige* off the coast of Spain in 2002.⁶

2 NIA, para 5. 'Persistent oil' is defined in the Civil Liability Convention as crude oils, including residual fuel oil, heavy diesel oil and lubricating oil.

3 NIA, para. 6.

4 Mr Michael Sutton, *Transcript of Evidence*, 8 May 2006, p. 2.

5 Mr Michael Sutton, *Transcript of Evidence*, 8 May 2006, p. 2.

6 NIA, para. 7; Mr Michael Sutton, *Transcript of Evidence*, 8 May 2006, p. 2.

The Protocol

- 4.7 The Protocol established a Supplementary Fund which will provide additional compensation for victims of oil spills up to 750 million Special Drawing Rights (SDR), approximately \$1.46 billion, per incident that affects Contracting States.⁷
- 4.8 The Supplementary Fund will be financed through levies on public or private entities in receipt of more than 150,000 tonnes of contributing oil per year in Contracting States.⁸ Thus, the Supplementary Fund is
- ...financed in the same way as the [Fund Convention] is financed – that is, by levies on persons or entities who receive more than 150,000 tonnes of heavy oils in a calendar year – though contributions from member states will be calculated as if they had received a minimum of one million tonnes of heavy oils in a calendar year.⁹
- 4.9 Contracting States are required to communicate to the Supplementary Fund information of any person or public or private entity in that State who is liable to contribute, in addition to the quantity of contributing oil received.¹⁰
- 4.10 In practice, levies for the Supplementary Fund would only be collected after an oil spill occurred and after the first two tiers of compensation are exhausted:
- The fund would work out the number of claimants and the likely amount of payment and a particular amount per tonne of imported oil would be levied against each of the contributors. For a major incident, that could be over three or maybe four years.¹¹
- 4.11 It is likely that contributions to the Supplementary Fund would vary in accordance with the changing levels of imported contributing oil in

7 SDR is a unit of account defined by the International Monetary Fund. The value of the SDR varies from day to day in accordance with changes in currency values. As at 10 May 2006, one SDR was worth approximately A\$1.92; Mr Michael Sutton, *Transcript of Evidence*, 8 May 2006, p. 2.

8 Article 10 of the Protocol; Under Article I of the Fund Convention, 'Contributing oil' means crude oil and heavy fuel.

9 Mr Michael Sutton, *Transcript of Evidence*, 8 May 2006, p. 2.

10 Articles 13 and 20 of the Protocol; NIA, para. 19.

11 Mr John Gillies, *Transcript of Evidence*, 8 May 2006, p. 4.

any given year.¹² For instance, Australian contributions to the Fund Convention have ranged from approximately A\$2.44 million to A\$5.77 million.¹³

- 4.12 Contracting States must receive a minimum of 1 million tonnes of contributing oil.¹⁴ Where a Contracting State does not receive the minimum amount of contributing oil, it can collect the difference from oil importing entities in its State.¹⁵
- 4.13 The Supplementary Fund must be given legal personality by Contracting States under Article 2(2) of the Protocol. Furthermore, Article 7 provides that:
- Australian courts must be given jurisdiction to entertain action against the Supplementary Fund for compensation
 - the Supplementary Fund must be given the right to intervene in proceedings for compensation initiated under the Civil Liability Convention.¹⁶

Costs and consultation

- 4.14 The National Interest Analysis provides that the costs to the Australian Government of entering into the Protocol are negligible, as the costs are borne by oil importing entities.¹⁷

Implementation and entry into force

- 4.15 The Protocol entered into force generally on 3 March 2005.¹⁸
- 4.16 The Australian Maritime Safety Authority in the course of its duties will ensure that relevant Australian companies submit their contributing oil returns to the Supplementary Fund.¹⁹

12 NIA, para. 30.

13 NIA, para. 30.

14 Article 14 of the Protocol; NIA, para. 21.

15 Article 14 of the Protocol; NIA, para. 21.

16 NIA, para. 23.

17 NIA, para. 27.

18 Mr Michael Sutton, *Transcript of Evidence*, 8 May 2006, p. 2.

19 NIA, para. 20

- 4.17 It is expected that legislation will be required to give force to the Protocol. The *Protection of the Sea (International Oil Pollution Compensation Supplementary Fund) Bill* is expected to be introduced into Parliament in late 2006.²⁰

Conclusion and recommendation

- 4.18 The Committee supports the efforts of the international community to ensure adequate compensation is available to victims of oil spills.

Recommendation 3

The Committee supports the *Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, done at London on 16 May 2003*, and recommends that binding treaty action be taken.

20 NIA, para. 24.

International Convention on Civil Liability for Bunker Oil Pollution Damage

Introduction

- 5.1 The *International Convention on Civil Liability for Bunker Oil Pollution Damage* (the Bunkers Convention) establishes a liability and compensation regime for pollution damage caused by spills of bunker oil.¹ Bunker oil means any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of a ship.²

Background

- 5.2 The Bunkers Convention is different from the *Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage* (discussed in Chapter 4 of this Report) as that Protocol applies only to spills from oil tankers. At

1 National Interest Analysis (NIA), para. 4. 'Pollution damage' is defined in Article 1(9) to include loss or damage resulting from the escape or discharge of bunker oil from the ship and the costs of preventative measures taken after an incident to prevent or minimise pollution damage.

2 Article 1(5) of the Bunkers Convention

present, there is no international agreement relating to spills from ships that are not oil tankers.³

- 5.3 Representatives from the Department of Transport and Regional Services informed the Committee of the difference between the two agreements:

The Supplementary Fund Protocol ... and the two existing conventions, the 1992 civil liability convention and the 1992 fund convention, relate to spills from oil tankers. The bunkers convention relates to oil spilled from ships that carry oil as a means of propulsion not as a cargo. So the bunkers convention is quite different in scope to this one.⁴

The Bunkers Convention

- 5.4 At present in Australia, liability for pollution damage caused by a bunker oil spill is based on the fault of the shipowner:

If the shipowner is not at fault, the shipowner is not obliged to pay any compensation. If the shipowner is found to be at fault, the shipowner's liability is limited by an existing convention: the Convention on Limitation of Liability for Maritime Claims. As an example, the liability limit of, say, a typical ship with a gross tonnage of 40,000 gross tons is roughly 15 million SDRs, which is roughly \$A30 million.⁵

- 5.5 Under the Bunkers Convention, the shipowner is strictly liable for pollution damage caused by bunker oil on board or originating from the ship.⁶ This includes liability for economic loss, as often the victims of a spill are the fishing and tourism industries.⁷

3 NIA, para. 8.

4 Mr Michael Sutton, *Transcript of Evidence*, 8 May 2006, p. 3.

5 Mr Robert Alchin, *Transcript of Evidence*, 8 May 2006, p. 5. The *Convention on Limitation of Liability for Maritime Claims* is implemented in Australia by the *Limitation of Liability for Maritime Claims Act 1989* (Cth). Special Drawing Right (SDR) is a unit of account defined by the International Monetary Fund. The value of the SDR varies from day to day in accordance with changes in currency values. As at 10 May 2006, one SDR was worth approximately A\$1.92.

6 Article 3. 'Shipowner' is defined in Article 1(3) to mean the owner, including the registered owner, bareboat charterer, manager and operator of the ship.

7 Mr Robert Alchin, *Transcript of Evidence*, 8 May 2006, p. 6.

- 5.6 Shipowners of ships having a gross tonnage greater than 1,000 are required to maintain insurance to cover their liabilities.⁸ In addition, ships are required to carry insurance certificates, issued by a State Party attesting that the appropriate insurance is in force.⁹ A State Party may also issue a certificate to any ship registered in a State that is not a Party to the Bunkers Convention.¹⁰ A State Party must not allow a ship, with a gross tonnage over 1,000, to operate in its territory if it does not have insurance.¹¹
- 5.7 In Australia, the implementing legislation will make it an offence for a ship to enter or leave a port in Australian territory or arrive at or leave an offshore terminal in Australia's territorial sea without an insurance certificate on board.
- 5.8 Shipowners are able to limit their liability.¹² In Australia, the *Convention on Limitation of Liability for Maritime Claims, 1976*, as implemented by the *Limitation of Liability for Maritime Claims Act 1989* (Cth), sets out the liability limits:¹³
- One million Special Drawing Rights (SDR) for a ship with a gross tonnage not exceeding 2,000;
 - For a ship with a gross tonnage in excess of 2,000, the following additional amount:
 - ⇒ 400 SDR for each tonne from 2,001 to 30,000 tonnes
 - ⇒ 300 SDR for each tonne from 30,001 to 70,000 tonnes
 - ⇒ 200 SDR for each tonne in excess of 70,000 tonnes.
- 5.9 States Parties to the Bunkers Convention must ensure that courts in their jurisdictions are able to consider actions for compensation under the Bunkers Convention and that they are able to recognise and enforce judgements made by courts of other States Parties under the Bunkers Convention.¹⁴

8 Article 7(1).

9 Article 7.

10 NIA, para. 13.

11 NIA, para. 16; Article 7(12).

12 Article 6.

13 NIA, para. 12.

14 Article 9; NIA, para. 17.

Regulation Impact Statement

- 5.10 A Regulation Impact Statement (RIS) was prepared for the Bunkers Convention. It notes that the only compensation regime for oil spills is the *International Convention on Civil Liability for Oil Pollution Damage* (the Civil Liability Convention) which only applies to oil spills from oil tankers.
- 5.11 At present, Part IIIA of the *Protection of the Sea (Civil Liability) Act 1981* (Cth) (the Civil Liability Act) requires ships with a gross tonnage of 400 or more entering Australian ports to be insured to cover the liability of the owner for pollution damage caused in Australia.
- 5.12 The RIS recommends developing legislation to enable Australia to ratify the Bunkers Convention while maintaining the current legislation relating to ships with a gross tonnage of 400 or more, with an amendment to ensure there is no duplication of requirements. This option would maintain the existing requirements for proof of insurance as well as keep Australia in step with the requirements of international law.¹⁵

Costs and consultation

- 5.13 There will be minor costs associated with ensuring compliance with the Bunkers Convention, in particular, Australian Customs Service will be responsible for verifying that ships are carrying the relevant certificates. However, similar inspection and certification procedures are already in place so the existing checks will be extended to cover the insurance certificate.¹⁶ Furthermore, ships entering Australian ports are already required by the Civil Liability Act to be insured to cover pollution damage.¹⁷
- 5.14 Consultation was undertaken with stakeholders in three stages: first, during the development of proposals for a new convention and the preparation of technical briefs for the Australian delegation attending the Legal Committee sessions where the text of the Convention was being drafted; second, during the preparation of the brief on the final text for the Australian delegation attending the Diplomatic

15 Regulation Impact Statement (RIS), paras 3.3 and 4.13.

16 NIA, para. 19.

17 NIA, para. 19.

Conference; and third, after the Bunkers Convention was adopted, when determining whether Australia should adopt the Bunkers Convention.¹⁸

- 5.15 Key groups within the shipping industry, including the Australian Shipowners Association, Shipping Australia Limited (which represents overseas shipowners operating in Australia) and the Association of Australian Ports and Marine Authorities all support adoption of the Bunkers Convention.¹⁹

Implementation

- 5.16 The Bunkers Convention will be implemented by a proposed Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Bill which is expected to be introduced into Parliament in 2006.²⁰

Conclusion and recommendation

- 5.17 The Committee supports the establishment of a liability and compensation regime for oil pollution damage caused by oil spills other than from oil tankers.

Recommendation 4

The Committee supports the *International Convention on Civil Liability for Bunker Oil Pollution Damage* and recommends that binding treaty action be taken.

18 NIA, 'Consultation'. More detailed information on consultation is provided in this section of the NIA.

19 RIS, para. 5.1.

20 NIA, para. 18.

Agreement establishing the Pacific Islands Forum

Introduction

- 6.1 The *Agreement establishing the Pacific Islands Forum* (the Agreement) will terminate and replace the *Agreement establishing the Pacific Islands Forum Secretariat*, done at Tarawa on 30 October 2000 (the 2000 Agreement).¹
- 6.2 The Agreement restructures the Forum Secretariat, increases its focus on the agreed upon areas of governance, security, economic growth and sustainable development, and will also provide the Forum with status as an international organisation.²

1 National Interest Analysis (NIA), para. 5.

2 Mr Peter Hooton, *Transcript of Evidence*, 8 May 2006, p. 8; National Interest Analysis (NIA), para. 11.

Background

- 6.3 The Pacific Islands Forum comprises 16 independent and self-governing States in the Pacific.³ It is regarded as the Pacific region's premier political and economic policy organisation.⁴

The Forum has no formal rules governing its operations or the conduct of its meetings. The agenda is based on reports from the Secretariat and related regional organisations and committees, as well as other issues that members may wish to raise. Decisions by the Leaders are reached by consensus and are outlined in a Forum Communiqué, from which policies are developed and a work programme is prepared. The annual Forum meetings are chaired by the Head of Government of the Host Country, who remains as Forum Chair until the next meeting.⁵

- 6.4 Australia has been a member of the Forum since 1971, making it one of the seven founding members.⁶ Since then, Forum Leaders have met annually, providing an opportunity to discuss a range of issues at the highest level.⁷ Traditionally, Forum meetings have focused heavily on regional trade and economic issues.⁸
- 6.5 In 2004, Leaders agreed to reform the Forum and its Secretariat. The Forum would focus on issues of good governance, security, economic growth and sustainable development and Leaders committed to identifying sectors where the region could gain the most from sharing

3 Member countries of the Pacific Islands Forum: Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Niue, Palau, Papua New Guinea, the Republic of the Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. Pacific Islands Forum Secretariat website, accessed 11 May 2006
<<http://www.forumsec.org.fj/>>

4 Department of Foreign Affairs and Trade website, accessed 11 May 2006:
<http://www.dfat.gov.au/geo/spacific/regional_orgs/spf.html>; Mr Peter Hooton, *Transcript of Evidence*, 8 May 2006, p. 8.

5 Pacific Islands Forum Secretariat website, 'About Us', accessed 11 May 2006
<<http://www.forumsec.org.fj/>>

6 Australia, Cook Islands, Fiji, Nauru, New Zealand, Tonga and Western Samoa (now Samoa) were the seven founding members.

7 Mr Peter Hooton, *Transcript of Evidence*, 8 May 2006, p. 8.

8 Department of Foreign Affairs and Trade website, accessed 11 May 2006:
<http://www.dfat.gov.au/geo/spacific/regional_orgs/spf.html>

resources of governance and aligning policies.⁹ The Agreement is the result of these reforms.

The Agreement

6.6 The key purpose of the Agreement is detailed in Article II:

The purpose of the Forum is to strengthen regional cooperation and integration, including through the pooling of regional resources of good governance and the alignment of policies in order to further Forum members' shared goals of economic growth, sustainable development, good governance and security.¹⁰

6.7 In addition to its new priorities, the Committee was informed that the Pacific Plan, which was endorsed by Forum Leaders at the 2005 Forum held in Papua New Guinea, provides a framework for regional cooperation:

The plan is intended to enhance regional cooperation and, to the extent possible, to allow Pacific island countries to take advantage of synergies and opportunities to do things together and thereby save resources. Some very small states find it difficult to do everything for themselves and would find it is easier to do some things regionally. The Pacific Plan provides a framework, or a basis, for some of that activity to be taken forward.¹¹

6.8 The Agreement establishes the Forum as an international organisation.¹² To give the Forum legal capacity within the jurisdiction of its members, Australia and other member countries are obliged to confer any privileges or immunities, in accordance with domestic legislation, upon the Forum as might be necessary to fulfil its purpose and carry out its functions.¹³

To give effect to the new agreement, it will only be necessary to make some minor amendments to nomenclature in existing

9 Department of Foreign Affairs and Trade website, accessed 11 May 2006: <http://www.dfat.gov.au/geo/spacific/regional_orgs/spf.html>

10 Article II of the Agreement; NIA, para. 15.

11 Mr Peter Hooton, *Transcript of Evidence*, 8 May 2006, p. 11.

12 Article I(1) of the Agreement; NIA, para. 16.

13 Article X of the Agreement; NIA, para. 16.

domestic regulations. It is possible that further down the track we may need to negotiate with the forum secretariat a separate arrangement on privileges and immunities, in large part to cover the operations of the Pacific Islands Trade and Investment Commission office in Sydney. Of course, any future agreement that necessitated changes to the International Organisations (Privileges and Immunities) Act would have to undergo the usual treaty-making processes, including tabling in parliament. But at this stage there is really nothing to do apart from those minor changes to the nomenclature.¹⁴

- 6.9 Membership of the Pacific Islands Forum is limited to States that are independent or self-governing. However, the Agreement will allow non-sovereign Pacific territories whose constitutional arrangements would not permit full membership or associate membership to the Forum.¹⁵ Requests for associate membership, and the nature and extent of the rights and obligations of such members, will be determined by the Forum Leaders from time to time.¹⁶ At present, it is intended that associate members would be able to attend and speak at the plenary session of the Forum but would not have voting rights or attend the Forum Leaders' retreat.¹⁷
- 6.10 Similarly, Forum Observers may be invited by the Forum Leaders to participate in the Pacific Islands Forum. Forum Observers might include other territories and intergovernmental organisations – but not non-governmental organisations – whose membership includes a significant number of Forum Members. The entitlements of Forum Observers will be determined by the Forum Leaders from time to time.¹⁸

14 Mr Peter Hooton, *Transcript of Evidence*, 8 May 2006, p. 9.

15 NIA, para. 12.

16 Article I(3) of the Agreement.

17 NIA, para. 12.

18 Article I(4); NIA, para. 12.

Costs

- 6.11 Australia's contribution to the Pacific Islands Forum Secretariat is A\$3 million per annum for the current and next two calendar years.¹⁹
- 6.12 The Committee was informed that in March 2005, the Pacific Islands Forum Secretariat requested additional Australian funding for activities associated with implementation of specific Pacific Plan related initiatives not identified or budgeted for at the time the 2005/2006 work plan was completed.²⁰ The Committee was further informed that AusAID has considered this request and has indicated that Australia will support up to A\$1.8 million over the period 2005/2006 – 2007/2008.²¹
- 6.13 The Committee was informed that the amount member countries contribute to the Forum is decided by consensus from time to time, subject to review by Forum Leaders at their discretion. Furthermore, it is likely that while these cost sharing arrangements continue, Australia's proportion of those costs would remain approximately the same.²²

Consultation and entry into force

- 6.14 The Standing Committee on Treaties was kept informed throughout the negotiation process and raised no objections.²³ No other consultation was undertaken.²⁴
- 6.15 The Agreement will only enter into force on the day on which the last Member Country of the Forum lodges its instrument of ratification with the depository, the Government of the Republic of the Fiji Island.²⁵ If the Agreement is not ratified by the time of the next Forum meeting, expected to be held on 23-28 October in Tonga, the Forum will continue to operate under the existing Agreement.²⁶

19 Department of Foreign Affairs and Trade, *Submission 4.1*, p. 2.

20 Department of Foreign Affairs and Trade, *Submission 4.1*, p. 2. AusAID is the Australian Agency for International Development.

21 Department of Foreign Affairs and Trade, *Submission 4.1*, p. 2.

22 Mr Peter Hooton, *Transcript of Evidence*, 8 May 2006, p. 12.

23 NIA 'Consultation'.

24 NIA 'Consultation'.

25 NIA, para. 2; Mr Claus Dirnberger, *Transcript of Evidence*, 8 May 2006, p. 10.

26 Mr Peter Hooton, *Transcript of Evidence*, 8 May 2006, p. 15.

Implementation

- 6.16 Minor amendments need to be made to the *South Pacific Forum Secretariat (Privileges and Immunities) Regulations 1992 (Cth)* (the Regulations) to give effect to the Agreement.²⁷
- 6.17 If Australia enters into a bilateral agreement of privileges and immunities then further changes to the Regulations would be required.²⁸

Conclusion and recommendation

- 6.18 The Committee recognises the importance of the Pacific Islands Forum as the key political and economic policy organisation in the region and supports the directional changes in policy realised in the Agreement.

Recommendation 5

The Committee supports the *Agreement establishing the Pacific Islands Forum*, done at Port Moresby on 27 October 2005, and recommends that binding treaty action be taken.

27 NIA, para. 20.

28 NIA, para. 21.

Amendments to Annexes VIII and IX of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

Introduction

- 7.1 The *Amendments to Annexes VIII and IX of the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* (the Amendments) clarifies certain provisions of Annex VIII and Annex IX of the Basel Convention.¹

Background

- 7.2 The Amendments are a result of the seventh meeting of the Conference of the Parties to the Basel Convention in Geneva from 25 to 29 October 2004 and the Amendments entered into force for all Parties, including Australia, on 8 October 2005.² The Amendments were tabled in Parliament on 28 March 2006.
- 7.3 As a result, the Committee did not have the opportunity to consider the Amendments before they had entered into force.

1 National Interest Analysis (NIA), para. 5

2 NIA, paras 2 and 4; Ms Mary Harwood, *Transcript of Evidence*, 8 May 2006, p. 16.

- 7.4 The Minister for the Environment and Heritage, Senator the Hon Ian Campbell, wrote to the Chair of the Committee to inform him that the Amendments were not tabled in the Parliament when they should have been. The Minister also informed the Committee that there are now procedures in place within the work area which will ensure sufficient time for future treaty actions to be considered by the Committee.³
- 7.5 Representatives from the Department of the Environment and Heritage informed the Committee that:
- There is a greater awareness of the requirements and ... processes that mean that, where such amendments arise, we will bring them to the attention of the committee.⁴
- 7.6 The Basel Convention was established to control the movement of hazardous wastes between countries. The Basel Convention requires that a State must provide prior consent to the importation or movement of hazardous waste into or through its territory.⁵ The Basel Convention also puts the onus on exporting countries to ensure that hazardous wastes are managed in an environmentally sound manner in the country of import.⁶

The Amendments

- 7.7 The Amendments clarify which wastes are or are not covered by the Basel Convention by inserting a new entry A 1190 in Annex VIII and a new entry B 115 in Annex IX.
- 7.8 Annexes VIII and IX were adopted as part of the Basel Convention in 1998 to clarify whether particular wastes should be regarded as hazardous wastes for the purposes of the Basel Convention.⁷ The Annexes do not alter the existing obligations under the Basel Convention.⁸

3 Senator the Hon Ian Campbell, Minister for the Environment and Heritage, *Letter*, 24 March 2006.

4 Ms Mary Harwood, *Transcript of Evidence*, 8 May 2006, p. 17.

5 NIA, para. 7; Article 4 of the Basel Convention.

6 NIA, para. 7.

7 NIA, para. 9.

8 NIA, paras 9 and 11.

7.9 Annex VIII lists wastes that are to be considered hazardous and Annex IX lists wastes that are not to be considered hazardous.⁹

7.10 The new entry A 1190 in Annex VIII provides that:

Waste cables coated or insulated with plastics containing or contaminated with coal tar, PCB¹⁰, lead, cadmium, other organohalogen compounds or other Annex I constituents to an extent that they exhibit Annex III characteristics.

7.11 The new entry B 1115 in Annex IX provides that:

Waste metal cables coated or insulated with plastics not included in list A A1190, excluding those destined for Annex IVA operations or any other disposal operations involving, at any stage, uncontrolled thermal processes, such as open-burning.

Costs and consultation

7.12 The National Interest Analysis provides that there will be no additional costs as no new controls are required to implement the Amendments.

7.13 Consultation relating to the Amendments was undertaken with State and Territory governments and through the Hazardous Waste Act Policy Reference Group (PRG). The PRG is made up of industry and environment stakeholders in addition to interested Commonwealth Governmental departmental and agency officers.¹¹

Conclusion

7.14 The Committee supports further clarification of Australia's obligations relating to hazardous wastes. However, the Committee reiterates the importance of the treaty scrutiny process and encourages further awareness within all Commonwealth Government departments of this process so that all treaty actions are tabled in the Parliament to allow sufficient time for review, prior to their entry into force.

9 NIA, para. 9.

10 Polychlorinated biphenyls (PCBs). PCBs are at concentration level of 50mg/kg or more. The Basel Convention.

11 NIA 'Consultation', para. 1.

Agreement with New Zealand in relation to Mutual Recognition of Securities Offerings

Background

- 8.1 The proposed *Agreement between the Government of Australia and the Government of New Zealand in relation to Mutual Recognition of Securities Offerings* (the Agreement)¹ is part of a general initiative for greater coordination of business law between Australia and New Zealand.²
- 8.2 A Memorandum of Understanding (MOU) provides the framework for the coordination of business law between Australia and New Zealand.³ The first such MOU formed part of the 1988 review of the *Australia New Zealand Closer Economic Relations Trade Agreement* (ANZCERTA).⁴
- 8.3 New Zealand is Australia's fifth largest merchandise export market and Australia is New Zealand's top merchandise export market. New Zealand is the sixth largest foreign investor in Australia and Australia

1 The Agreement was signed in Melbourne, Australia on the 22 February 2006.

2 Regulation Impact Statement (RIS), p. 1.

3 The long title is: *Memorandum of Understanding between the Government of Australia and the Government of New Zealand on the Coordination of Business Law*. The most recent version was signed on 22 February 2006.

4 RIS, p. 1.

is the largest investor in New Zealand. In 2004, two-way investment between the nations was A\$61.8 billion.⁵

- 8.4 The economic and trade relationship between the countries has been shaped by ANZCERTA since it came into effect in 1983. Both the Australian and New Zealand governments have also indicated that they are committed to working towards a trans-Tasman single economic market.⁶
- 8.5 On 4 October 2001, the Australian Minister for Financial Services and Regulation wrote to the New Zealand Minister for Commerce proposing that Australia and New Zealand consider formal processes for mutual recognition in financial services regulation.⁷
- 8.6 Under the current regulatory regime issuers from one country (the home jurisdiction) who wish to offer securities to investors in the other country (the host jurisdiction) need to comply with two substantive regimes.⁸

Purpose of the Agreement

- 8.7 The Agreement provides for a scheme to offer securities⁹ and managed investment interests in both Australia and New Zealand, in the same manner and with the same offer documents.¹⁰ Securities include shares¹¹ and debentures.¹²

5 NIA, para. 8; Ms Ruth Smith, *Transcript of Evidence*, 8 May 2006, p. 29.

6 This is subject to certain exceptions. NIA, para. 7.

7 RIS, p. 1.

8 RIS, p. 1.

9 The Agreement defines securities as debt securities, equity securities, interests in collective investment schemes and any interest in, or an option to acquire such securities. In the context of financial markets securities are written undertakings securing repayment of money. They are typically negotiable instruments such as bonds, bills of exchange, promissory notes or share certificates which establish ownership and payment rights between parties. The word 'securities' has come to mean any interest-bearing piece of paper traded in financial markets. Securities in the sense of 'marketable securities' may be unsecured (that is, simply debt obligations) and so a holder may not have security in the generally accepted sense. Carew, E, *The Language of Money*, ANZ Bank, viewed 11 April 2006, <www.anz.com>

10 This is subject to certain entry and ongoing requirements. NIA, para. 3.

11 Part of the ownership of a company. A person who buys a portion of a company's capital becomes a shareholder in that company's assets and as such receives a share of the company's profits in the form of an annual dividend. Carew, E, *The Language of Money*, ANZ Bank, viewed 11 April 2006, <www.anz.com>

- 8.8 The Agreement is a further step towards a single trans-Tasman economic market, based on common regulatory frameworks. Entering into the Agreement will remove regulatory barriers for business and allow for increased investment with New Zealand resulting in an increased choice for investors from both countries.¹³
- 8.9 The Committee received evidence that it is likely that the Agreement will be of more benefit to New Zealand than to Australia because of New Zealand's smaller economy and evidence that issuers issuing into Australia do not currently issue into New Zealand due to additional costs and requirements. This does not diminish the importance of the Agreement for Australia as it will serve to promote trans-Tasman investment.¹⁴
- 8.10 Treasury informed the Committee of the benefits of the Agreement:
- ... this treaty achieves a balance of outcomes that will remove unnecessary regulatory barriers for business, allowing for increased investment with New Zealand and increased choice for investors while ensuring investor confidence in the regulation of securities offerings is maintained. The proposed treaty when implemented will produce a positive economic and political benefit. Gains include a reduction in compliance costs and red tape for companies offering into New Zealand with enhanced competition in capital markets and increased choice for investors. The treaty also reaffirms Australia's previous commitment to a single trans-Tasman economic market based on common regulatory frameworks.¹⁵

12 A type of fixed-interest security, issued by companies (as borrowers) in return for medium and long-term investment of funds. A debenture is evidence of the borrower's debt to the lender. Debentures are issued to the general public through a prospectus and are secured by a trust deed which spells out the terms and conditions of the fundraising and the rights of the debenture-holders. Typical issuers of debentures are finance companies and large industrial companies. Debenture-holders' funds are invested with the borrowing company as secured loans, with the security usually in the form of a fixed or floating charge over the assets of the borrowing company. As secured lenders, debenture-holders' claims to the company's assets rank ahead of those of ordinary shareholders, should the company be wound up; also, interest is payable on debentures whether the company makes a profit or not. Debentures are issued for fixed periods but if a debenture-holder wants to get his or her money back, the securities can be sold. Carew, E, *The Language of Money*, ANZ Bank, viewed 25 May 2006, <www.anz.com>

13 NIA, para. 5; Ms Ruth Smith, *Transcript of Evidence*, 8 May 2006, p. 28.

14 NIA, para. 11; Ms Ruth Smith, *Transcript of Evidence*, 8 May 2006, pp. 27-28.

15 Ms Ruth Smith, *Transcript of Evidence*, 8 May 2006, pp. 29-30.

- 8.11 In relation to a single trans-Tasman Economic Market, Treasury stated:

There is also work ongoing between the various attorney-generals' departments on closer harmonisation of court proceedings. We have now also launched negotiations between Australia and New Zealand on adding an investment protocol.¹⁶

- 8.12 The Committee also received evidence that in addition to working towards a joint therapeutic products agency and having in place ANZCERTA, Australia and New Zealand are also considering other areas of cooperation in business law which include:

Mutual disqualification of directors and those involved in managing a company and mutual disqualification of financial intermediaries or mutual recognition of qualification as a financial intermediary. They are some of the aspects that we are looking at. Also, accounting standards are being examined.¹⁷

Entry into force and withdrawal

- 8.13 The Agreement will enter into force when the Parties exchange diplomatic notes.¹⁸ Either Party may terminate the Agreement by giving written notice through diplomatic channels on a date agreed or one year after the date on which the notice was received.¹⁹

Consultation

- 8.14 Relevant Australian Government agencies have been kept informed at all stages of the development process and were consulted prior to commencing negotiations and before the finalisation of the

16 Mr Hans Saxinger, *Transcript of Evidence*, 8 May 2006, p. 30.

17 Ms Ruth Smith, *Transcript of Evidence*, 8 May 2006, p. 30.

18 NIA, para. 2.

19 NIA, para. 28.

Agreement.²⁰ States and Territories were consulted at the early stages of negotiations and were kept informed through the Ministerial Council for Corporations. States and Territories will also be consulted on the legislative amendments to the Corporations Act and the approval of the Ministerial Council prior to introduction.²¹

- 8.15 The Australian and New Zealand Governments prepared a discussion paper which outlined three possible models and identified Australia and New Zealand's preferred model.²² Most of the submissions preferred the adopted model.²³

Costs

- 8.16 Compliance costs associated with the need to adhere to the different regulatory requirements for Australia and New Zealand are likely to be reduced. There may be some small additional costs for ASIC in relation to trans-Tasman enforcement. While there are no estimates as to how much this will be, the additional costs are likely to be negligible.²⁴

20 These agencies include: the Attorney-General's Department, the Department of Prime Minister and Cabinet, the Department of Foreign Affairs and Trade and the Australian Securities and Investments Commission (ASIC).

21 NIA Consultation Annex.

22 NIA Consultation Annex, para. 3.

23 The following organisations and individuals made submissions: Australia and New Zealand Banking Group Ltd, Australian Shareholders' Association Ltd, Australian Stock Exchange, Challenger Financial Services Group, Clayton Utz Simpson Grierson, Commonwealth Bank of Australia, Consumers' Institute, Dowler, Mr Rob WM, Employers and Manufacturers Association (Northern) Inc, Financial Services Federation, HRL Morrison & Co Ltd, Institute of Financial Professionals New Zealand Inc, International Banks and Securities Association of Australia, Investment Savings and Insurance Association, Izard Weston Lawyers, Macquarie New Zealand Ltd, New Zealand Bankers' Association, New Zealand Exchange Ltd, New Zealand Law Society, New Zealand Securities Commission, PriceWaterhouseCoopers, Promina Group Ltd, Securities and Derivatives Industry Association, Securities Institute of Australia, Takeovers Panel, Telecom, Trustee Corporation of New Zealand, Walker, Professor Gordon, La Trobe University Law School.

24 NIA, paras 21-22.

Legislation

- 8.17 The *Corporations Act 2001* (Cth) will be amended to give effect to Australia's obligations under the Agreement.²⁵ The Government has indicated that relevant amending legislation will be introduced into Parliament in late 2006.²⁶

Conclusion and recommendation

- 8.18 The Committee understands that Australia and New Zealand share a close relationship created through migration, trade, tourism, defence cooperation, and strong personal links. Australia and New Zealand also maintain a close political relationship and work together through regional bodies such as the Pacific Islands Forum, the Asia-Pacific Economic Forum and the Southeast Asian Nations Regional Security Forum.
- 8.19 The Committee believes that this Agreement will serve to increase two-way investment between Australia and New Zealand and also strengthen existing ties between the countries to forge a greater link towards a single trans-Tasman market.

Recommendation 6

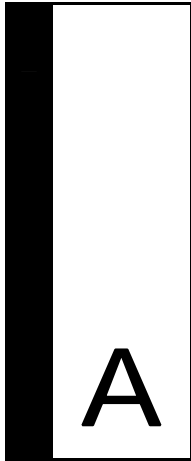
The Committee supports the Agreement between the Government of Australia and the Government of New Zealand in relation to Mutual Recognition of Securities Offerings and recommends that binding treaty action be taken.

Dr Andrew Southcott MP

Committee Chair

²⁵ NIA, para. 18.

²⁶ NIA, para. 2.



Appendix A - Submissions

Treaty tabled on 11 October 2005

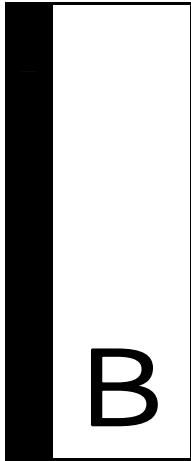
- 1 Australian Patriot Movement
- 6 Government of Western Australia
- 8 Northern Territory Government
- 9 Confidential
- 10 Attorney-General's Department
- 10.2 Attorney-General's Department
- 10.3 Attorney-General's Department
- 10.4 Attorney-General's Department
- 10.5 Attorney-General's Department
- 11 Senator The Hon Robert Hill
- 12 Confidential

Treaty tabled on 28 February 2006

- 1.5 Confidential
- 4.1 ACT Government
- 5.1 Queensland Government
- 6 Department of Foreign Affairs and Trade
- 7.1 Government of South Australia

Treaties tabled on 28 March 2006

- 2.1 Australian Patriot Movement
- 2.2 Australian Patriot Movement
- 2.3 Australian Patriot Movement
- 2.4 Australian Patriot Movement
- 2.6 Australian Patriot Movement
- 2.7 Australian Patriot Movement
- 3 ACT Government
- 4 Department of Foreign Affairs and Trade
- 4.1 Department of Foreign Affairs and Trade
- 5 Department of the Environment and Heritage



Appendix B - Witnesses

Monday, 7 November 2005 – Canberra

Attorney-General's Department

Ms Annabel Knott, Legal Officer, Security Law Branch, Security and Critical Infrastructure Division

Ms Renee Leon, First Assistant Secretary, Office of International Law

Mr Geoffrey McDonald, Assistant Secretary, Security Law Branch, Security and Critical Infrastructure Division

Australian Customs Service

Mr Paul Hill, Director, Law Enforcement Policy, Law Enforcement Strategy and Security Branch

Department of Defence

Mr Wayne Hayward, Director, Non-Guided Explosive Ordnance System Program Office

Department of Foreign Affairs and Trade

Mr Andrew Rose, Executive Officer, International Law and Transnational Crime Section

Mr Michael Jonathan Thwaites, Executive Director, Treaties Secretariat

Monday, 27 February 2006 – Canberra

Attorney-General's Department

Dr Rachel Bacon, Acting Assistant Secretary, Office of International Law

Ms Karen Bishop, Acting Principal Legal Officer, Security Law Branch, Security and Critical Infrastructure Division

Ms Annabel Knott, Legal Officer, Security Law Branch, Security and Critical Infrastructure Division

Mr Geoffrey McDonald, Assistant Secretary, Security Law Branch, Security and Critical Infrastructure Division

Australian Customs Service

Mr Tim Chapman, National Manager, Cargo Branch, Cargo and Trade Division

Ms Roxanne Kelley, National Manager, Research and Development

Department of Defence

Mr Wayne Hayward, Director, Non-Guided Explosive Ordnance System Program Office

Department of Foreign Affairs and Trade

Mr Andrew Rose, Executive Officer, International Law and Transnational Crime Section, Legal Branch, International Organisations and Legal Division

Mr Michael Jonathan Thwaites, Executive Director, Treaties Secretariat

Monday, 27 March 2006 - Canberra

Department of Foreign Affairs and Trade

Mr Miles Armitage, Assistant Secretary, Maritime South-East Asia Branch

Dr Joanne Loundes, Executive Officer, Malaysia, Brunei, Singapore Section

Mr Peter Rayner, Director, Malaysia, Brunei, Singapore Section

Mr Michael Jonathan Thwaites, Executive Director, Treaties Secretariat

Mr Damian White, Executive Officer, Malaysia, Brunei, Singapore Section

Monday, 8 May 2006 - Canberra

Attorney-General's Department

Mr William McFadyen Campbell, First Assistant Secretary, Office of International Law

Australian Customs Service

Mr Matthew Bannon, Director, Valuation and Origin

Australian Maritime Safety Authority

Mr John Gillies, Principal Adviser, Policy and Regulatory

Department of Agriculture, Fisheries and Forestry

Mr Dominic Pyne, Manager, Free Trade Agreement Coordination, Free Trade Agreement Taskforce, International Division

Department of Foreign Affairs and Trade

Mr Claus Dirnberger, Executive Officer, Pacific Regional Section, Pacific Regional and NZ Branch

Mr Peter Hooton, Assistant Secretary, Pacific Regional and New Zealand Branch

Ms Elizabeth Peak, Executive Officer, International Law and Transnational Crime Section, Legal Branch

Mr Andrew Rose, Executive Officer, International Law and Transnational Crime Section, Legal Branch, International Organisations and Legal Division

Mr Hans Saxinger, Director, New Zealand Section, South Pacific, Africa and Middle East Division

Mr Michael Jonathan Thwaites, Executive Director, Treaties Secretariat

Ms Sonja Weinberg, Executive Officer, New Zealand Section

Department of Industry, Tourism and Resources

Mr Kym Malycha, Assistant Manager

Mr Kenneth Miley, General Manager, Trade and International

Department of the Environment and Heritage

Ms Mary Harwood, First Assistant Secretary, Environment Quality
Division

The Treasury

Mr Geoff Miller, General Manager, Corporations and Financial
Services Division

Ms Ruth Smith, Manager, Market Integrity Unit

Department of Transport and Regional Services

Mr Robert Alchin, Policy Adviser

Mr Michael Sutton, General Manager

Mrs Tracey Wilkinson, Policy Officer