

---

The Parliament of the Commonwealth of Australia

# Report 112

Treaties tabled on 9, 10, 15, 16 and 29 March 2010

Agreement between Australia and the Czech Republic on Social Security

Exchange of Letters Amending the Agreement between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System

Agreement between the Government of Australia and the Government of the former Yugoslav Republic of Macedonia on Social Security

Amendment to Annex I of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) International Convention Against Doping in Sport of 19 October 2005

Amendment to Annex II of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) International Convention Against Doping in Sport of 19 October 2005

Agreement between the Government of Australia and the Government of the Cook Islands on the Exchange of Information with Respect to Taxes

Agreement between the Government of Australia and the Government of the Cook Islands on the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments

Agreement between the Government of Australia and the Government of Gibraltar on the Exchange of Information with Respect to Taxes

Agreement between the Government of Australia and the States of Guernsey for the Exchange of Information Relating to Tax Matters

Agreement between the Government of Australia and the States of Guernsey for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments

June 2010  
Canberra

---

© Commonwealth of Australia 2010

ISBN 978-0-642-79373-7 (Printed version)

ISBN 978-0-642-79374-4 (HTML version)



# Contents

Membership of the Committee .....	v
Resolution of Appointment .....	vii
List of recommendations .....	viii
<b>1 Introduction .....</b>	<b>1</b>
Purpose of the Report .....	1
Conduct of the Committee's Review .....	2
<b>2 Tax agreements with the Cook Islands, Gibraltar and the States of     Guernsey.....</b>	<b>5</b>
Introduction .....	5
Tax Information Exchange Agreements.....	6
Implementation and costs .....	7
Existing agreements.....	7
Allocation of taxing rights agreements.....	8
Obligations .....	8
Cook Islands .....	8
States of Guernsey .....	9
Implementation and Costs .....	10
Conclusion and recommendations .....	10

---

<b>3</b>	<b>Exchange of Letters amending the Agreement between the Government of Australia and the Government of New Zealand concerning a Joint Food Standards System</b> .....	<b>13</b>
	Background .....	13
	Food standards .....	14
	The Exchange of Letters .....	15
	One review .....	16
	Changing the circumstances under which a review can be called .....	17
	Separate standards for Australia and New Zealand .....	18
	Temporary standards .....	18
	Food Labelling Law and Policy Review.....	19
<b>4</b>	<b>Agreement between Australia and the Czech Republic on Social Security and Agreement between Australia and the Former Yugoslav Republic of Macedonia on Social Security</b> .....	<b>21</b>
	Background .....	21
	The Agreements .....	22
	Payment arrangements .....	24
	Criteria for selecting countries for bilateral treaties .....	25
	Conclusion .....	25
	<b>Appendix A — Submissions</b> .....	<b>27</b>
	<b>Appendix B — Witnesses</b> .....	<b>29</b>
	Monday, 10 May 2010 - Canberra.....	29
	<b>Appendix C — Minor treaty actions</b> .....	<b>31</b>
	Minor treaty actions tabled on 15 March 2010 .....	31



## Membership of the Committee

Chair Mr Kelvin Thomson MP

Deputy Chair Senator Julian McGauran

Members Mr Jamie Briggs MP

Senator Simon Birmingham

Hon Duncan Kerr SC, MP

Senator Michaelia Cash

Mr John Forrest MP

Senator Don Farrell

Ms Jill Hall MP

Senator Scott Ludlam

Hon John Murphy MP

Senator Louise Pratt

Ms Belinda Neal MP

Senator Dana Wortley

Ms Melissa Parke MP

Mr Luke Simpkins MP

## Committee Secretariat

Secretary Jerome Brown

Inquiry Secretaries Kevin Bodel

Julia Searle

Administrative Officers Heidi Lushtinetz

Dorota Cooley



# Resolution of Appointment

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

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

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



## List of recommendations

### 2 Tax agreements with the Cook Islands, Gibraltar and the States of Guernsey

#### Recommendation 1

The Committee supports the *Agreement between the Government of Australia and the Government of the Cook Islands on the Exchange of Information with Respect to Taxes* and recommends that binding treaty action be taken.

#### Recommendation 2

The Committee supports the *Agreement between the Government of Australia and the Government of the Cook Islands on the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments* and recommends that binding treaty action be taken.

#### Recommendation 3

The Committee supports the *Agreement between the Government of Australia and the Government of Gibraltar on the Exchange of Information with Respect to Taxes* and recommends that binding treaty action be taken.

#### Recommendation 4

The Committee supports the *Agreement between Government of Australia and the States of Guernsey for the Exchange of Information Relating to Tax Matters* and recommends that binding treaty action be taken.

#### Recommendation 5

The Committee supports the *Agreement between the Government of Australia and the States of Guernsey for the Allocation of Taxing Rights with*



*Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments* and recommends that binding treaty action be taken.

**3 Exchange of Letters amending the Agreement between the Government of Australia and the Government of New Zealand concerning a Joint Food Standards System**

**Recommendation 6**

The Committee supports the *Exchange of Letters amending the Agreement between the Government of Australia and the Government of New Zealand concerning a Joint Food Standards System* and recommends that binding treaty action be taken.

**4 Agreement between Australia and the Czech Republic on Social Security and Agreement between Australia and the Former Yugoslav Republic of Macedonia (FYR Macedonia) on Social Security**

**Recommendation 7**

The Committee supports the *Agreement between Australia and the Czech Republic on Social Security* and the *Agreement between Australia and the Former Yugoslav Republic of Macedonia on Social Security*, 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 ten treaty actions tabled in Parliament on 9, 10, 15, 16 and 29 March 2010. These treaty actions are the:
- *Agreement between Australia and the Czech Republic on Social Security (Canberra, 16 September 2009);*
  - *Exchange of Letters Amending the Agreement between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System (Canberra, 3 March 2010);*
  - *Agreement between the Government of Australia and the Government of the former Yugoslav Republic of Macedonia on Social Security (Canberra, 26 October 2009);*
  - *Amendment to Annex I of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) International Convention Against Doping in Sport of 19 October 2005;*
  - *Amendment to Annex II of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) International Convention Against Doping in Sport of 19 October 2005;*
  - *Agreement between the Government of Australia and the Government of the Cook Islands on the Exchange of Information with Respect to Taxes (Rarotonga, 27 October 2009);*
  - *Agreement between the Government of Australia and the Government of the Cook Islands on the Allocation of Taxing Rights with Respect to Certain*

*Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments (Rarotonga, 27 October 2009);*

- *Agreement between the Government of Australia and the Government of Gibraltar on the Exchange of Information with Respect to Taxes (London, 25 August 2009);*
- *Agreement between the Government of Australia and the States of Guernsey for the Exchange of Information Relating to Tax Matters (London, 7 October 2009); and*
- *Agreement between the Government of Australia and the States of Guernsey for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments (London, 7 October 2009).<sup>1</sup>*

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

[www.aph.gov.au/house/committee/jsct](http://www.aph.gov.au/house/committee/jsct)

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

[www.austlii.edu.au/au/other/dfat/](http://www.austlii.edu.au/au/other/dfat/)

## **Conduct of the Committee's Review**

1.4 The reviews contained in this report were advertised in the national press and on the Committee's website.<sup>2</sup> Invitations to lodge submissions were

---

1 Parliament of the Commonwealth of Australia, House of Representatives, *Votes and Proceedings* No. 149, p. 1665, No. 150, p. 1674, No. 153, p. 1697, No. 156, pp. 1728-1729; Parliament of the Commonwealth of Australia, Senate, *Journals of the Senate*, No. 113, p. 3241, No. 114, p. 3267, No. 117, p. 3323, No. 120, pp. 3423-3424.

2 The Committee's reviews of the proposed treaty actions were advertised in *The Australian* on 31 March and 14 April 2010. Members of the public were advised on how to obtain relevant information both in the advertisement and via the Committee's website, and invited to submit their views to the Committee.

also sent to all State Premiers, Chief Ministers, Presiding Officers of parliaments and to individuals who have expressed an interest in being kept informed of proposed treaty actions. Submissions received and their authors are listed at Appendix A.

- 1.5 The Committee also received evidence at a public hearing on 10 May 2010 in Canberra. A list of witnesses who appeared at the public hearings is at Appendix B. Transcripts of evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee's website at:

[http://www.aph.gov.au/house/committee/jsct/9\\_10\\_march2010/hearings.htm](http://www.aph.gov.au/house/committee/jsct/9_10_march2010/hearings.htm).



# Tax agreements with the Cook Islands, Gibraltar and the States of Guernsey

## Introduction

2.1 This chapter addresses five taxation agreements:

- *Agreement between Australia and the Cook Islands on the Exchange of Information with Respect to Taxes;*
- *Agreement between Australia and the Cook Islands on the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments;*
- *Agreement between Australia and Gibraltar on the Exchange of Information with Respect to Taxes;*
- *Agreement between Australia and the States of Guernsey for the Exchange of Information Relating to Tax Matters; and*
- *Agreement between Australia and the States of Guernsey for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments.*

2.2 These agreements are amongst a number of bilateral agreements being concluded as part of Australia's ongoing commitment to the OECD's work on eliminating harmful tax practices among low tax jurisdictions.<sup>1</sup> More than 40 low tax jurisdictions have publicly committed to OECD standards

---

<sup>1</sup> Cook Islands Tax Information Exchange Agreement (TIEA) National Interest Analysis (NIA), para 9.

of transparency and information exchange for tax purposes since 2002.<sup>2</sup> Australia has signed 13 tax information exchange agreements and six have entered into force.<sup>3</sup>

- 2.3 The agreements are intended to help Australia protect its revenue base and improve the integrity of the tax system by discouraging tax evasion.<sup>4</sup>
- 2.4 Low-tax jurisdictions can be used in arrangements designed to avoid paying tax elsewhere. In particular, assets and income that are subject to Australian tax can be concealed by their secrecy laws.<sup>5</sup>
- 2.5 The Cook Islands, Gibraltar and the States of Guernsey all have low tax structures and are recognised offshore financial centres. The level and type of economic activity between Australia and each of these countries is not fully known, however, AUSTRAC data indicates a significant flow of funds.<sup>6</sup> The Australian Taxation Office (ATO) indicated in evidence that it would like to obtain further information about Australian dealings with a number of trustee companies operating in the Cook Islands.<sup>7</sup>

## Tax Information Exchange Agreements

- 2.6 The three tax information exchange agreements establish the legal basis for the exchange of tax information between the Governments of Australia and the Cook Islands, Gibraltar and the States of Guernsey.<sup>8</sup> The agreements will allow the Commissioner for Taxation to seek relevant taxpayer information from these countries for both civil and criminal tax purposes.<sup>9</sup> Importantly, the agreements override domestic bank secrecy laws and a country cannot refuse to provide information on the basis that it does not have an interest in that information for its own domestic tax purposes.<sup>10</sup>

---

2 Cook Islands TIEA NIA, para 10.

3 Cook Islands TIEA NIA, para 7; Mr Malcolm Allen, *Transcript of Evidence*, 10 May 2010, p. 11. The Committee reviewed these treaties in JSCOT Reports 73, 87, 99, 102 and 107.

4 Cook Islands TIEA NIA, para 6.

5 Cook Islands TIEA NIA, para 12.

6 Cook Islands TIEA NIA, para 12; Gibraltar NIA, para 12; Guernsey TIEA NIA, para 12.

7 Mr Malcolm Allen, *Transcript of Evidence*, 10 May 2010, p. 9.

8 Cook Islands TIEA NIA, para 1; Gibraltar NIA, para 4;

9 Mr William Potts, *Transcript of Evidence*, 10 May 2010, p. 8.

10 Mr William Potts, *Transcript of Evidence*, 10 May 2010, p. 8.



- 2.7 The three agreements essentially follow the format of the model Australian tax information exchange agreement. The key obligations include:
- both parties are obliged to exchange information where the information is foreseeably relevant to the administration and enforcement of the parties' domestic tax laws;
  - where the requested party does not hold the information necessary to comply with the request, it must use its relevant information gathering powers to provide the requested information even if not required for domestic tax purposes;
  - information must be provided as promptly as possible and must be kept confidential;
  - requests can be refused if not in conformity with the agreement or if the requesting party cannot obtain the information under its own laws;
  - ordinary costs will be borne by the requested party and extraordinary costs by the requesting party unless otherwise agreed; and
  - both parties are obliged not to apply prejudicial or restrictive measures based on harmful tax practices to residents or nationals of either country while the agreement is in force.<sup>11</sup>

## Implementation and costs

- 2.8 No further legislation is required to implement these agreements.
- 2.9 The agreements will have a small administrative and financial impact on the ATO as it is likely that most requests for information will originate from Australia. A Memorandum of Understanding will be concluded with each country to clarify costs that will be borne by the ATO.<sup>12</sup>

## Existing agreements

- 2.10 The Committee asked about the operation of those agreements already in force. The ATO informed the Committee that the agreements with Bermuda, Netherlands Antilles, and Antigua and Barbuda have been used, with seven exchanges of information concluded and one in progress at the current time. In particular, the agreements have been useful in

---

11 Cook Islands TIEA NIA, paras 15-24; Guernsey TIEA NIA, paras 15-24; Gibraltar NIA, paras 15-24.

12 Cook Islands TIEA NIA, para 28; Guernsey TIEA NIA, para 28; Gibraltar NIA, para 28.

obtaining information relating to the repatriation of foreign funds to Australia through credit cards issued in these countries.<sup>13</sup>

## Allocation of taxing rights agreements

- 2.11 The agreements with the Cook Islands and the States of Guernsey provide for the allocation of taxing rights in order to prevent double taxation of the same income. They also establish a mechanism to assist in the resolution of disputes arising from transfer pricing adjustments made to taxpayers' income by the revenue authorities of Australia or the other countries.<sup>14</sup>
- 2.12 The agreements are part of a package of benefits offered to each country to encourage it to conclude the tax information exchange agreements.<sup>15</sup>
- 2.13 The Committee was informed that Gibraltar did not take up the offer of this agreement, possibly because its tax information exchange agreement was negotiated much more recently.<sup>16</sup> Since the G20 meeting in April 2009, a number of countries have been focussed upon concluding the required minimum of 12 agreements to gain global recognition of their commitment to the OECD principles and such incentives have been less relevant.<sup>17</sup>

## Obligations

### Cook Islands

- 2.14 The agreement provides for the allocation of taxing rights over certain income of certain individuals. It only applies to persons who are residents for taxation purposes of Australia and/or the Cook Islands.
- 2.15 Each party is obliged to forego its taxing rights over certain income derived by retirees, pensioners, government employees, students and business apprentices, where they are residents of the other party:
- Under Article 5, Australia cannot tax Australian source pensions and retirement annuities paid to residents of the Cook Islands, provided

---

13 Mr Malcolm Allen, *Transcript of Evidence*, 10 May 2010, p. 11.

14 Cook Islands Allocation NIA, para 4.

15 Cook Islands Allocation NIA, para 7.

16 Mr William Potts, *Transcript of Evidence*, 10 May 2010, p. 9.

17 Mr Malcolm Allen, *Transcript of Evidence*, 10 May 2010, p. 9.

such income is subject to tax in the Cook Islands. Australia can tax Cook Islands source pensions and retirement annuities paid to Australian residents.<sup>18</sup>

- Article 6 obliges Australia not to tax the salaries of government employees of the Cook Islands working in Australia in government service for non-commercial purposes. Australia and the Cook Islands will have sole taxing rights over the salaries paid to individuals undertaking government functions.<sup>19</sup>
- Under Article 7, Australia cannot tax maintenance, education or training payments received by students or business apprentices from the Cook Islands who are temporarily studying in Australia, where those payments are made from outside Australia. Other income will remain liable to Australian tax.<sup>20</sup>

2.16 The agreement also establishes a mechanism to resolve disputes arising from adjustments made to taxpayers' income by the revenue authorities of either country (Article 8).<sup>21</sup>

## States of Guernsey

2.17 The agreement with the States of Guernsey is substantially the same as that with the Cook Islands. The key difference is that this agreement will apply only to certain income derived by government employees, students and business apprentices.<sup>22</sup>

2.18 The agreement provides for the allocation of taxing rights over certain income of certain individuals and applies only to persons who are residents of Australia and/or Guernsey for taxation purposes.<sup>23</sup>

2.19 Articles 5 and 6 oblige each party to forego taxing rights:

- Australia is obliged by Article 5 not to tax the salaries of government employees of Guernsey working in Australia in government service. Australia and Guernsey will have sole taxing rights over the salaries paid to individuals undertaking government functions.<sup>24</sup>

---

18 Cook Islands Allocation NIA, para 12.

19 Cook Islands Allocation NIA, para 13.

20 Cook Islands Allocation NIA, para 14.

21 Cook Islands Allocation NIA, para 15.

22 Guernsey Allocation NIA, para 11.

23 Guernsey Allocation NIA, para 10.

24 Guernsey Allocation NIA, para 12.

- Australia cannot tax maintenance, education or training payments received by students or business apprentices from Guernsey who are temporarily studying in Australia, where those payments arise from sources outside Australia. Other income will remain liable to Australian tax (Article 6).<sup>25</sup>
- 2.20 Article 7 establishes a mechanism to resolve disputes arising from adjustments made to taxpayers' income by the revenue authorities of either country.

## Implementation and Costs

- 2.21 Minor amendments will be required to the *International Tax Agreements Act 1953* to give effect to these agreements. Treasury has indicated this legislation is expected to be introduced into Parliament in 2010.<sup>26</sup>
- 2.22 The agreements will have a financial impact on the ATO, however this is expected to be minimal given the small number of taxpayers likely to be affected by the agreements.<sup>27</sup>

## Conclusion and recommendations

- 2.23 The Committee recognises the importance of establishing effective arrangements with low-tax jurisdictions to help eliminate harmful taxation practices and supports the effort being made by the Government to conclude these agreements. The Committee therefore supports binding treaty action being taken.

---

### Recommendation 1

**The Committee supports the *Agreement between the Government of Australia and the Government of the Cook Islands on the Exchange of Information with Respect to Taxes* and recommends that binding treaty action be taken.**

---

25 Guernsey Allocation NIA, para 13.

26 Cook Islands Allocation NIA, para 17; Guernsey Allocation NIA, para 16.

27 Cook Islands Allocation NIA, para 19; Guernsey Allocation NIA, para 18.

**Recommendation 2**

**The Committee supports the *Agreement between the Government of Australia and the Government of the Cook Islands on the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments* and recommends that binding treaty action be taken.**

**Recommendation 3**

**The Committee supports the *Agreement between the Government of Australia and the Government of Gibraltar on the Exchange of Information with Respect to Taxes* and recommends that binding treaty action be taken.**

**Recommendation 4**

**The Committee supports the *Agreement between Government of Australia and the States of Guernsey for the Exchange of Information Relating to Tax Matters* and recommends that binding treaty action be taken.**

**Recommendation 5**

**The Committee supports the *Agreement between the Government of Australia and the States of Guernsey for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments* and recommends that binding treaty action be taken.**



## Exchange of Letters amending the Agreement between the Government of Australia and the Government of New Zealand concerning a Joint Food Standards System

### Background

- 3.1 The *Exchange of Letters amending the Agreement between the Government of Australia and the Government of New Zealand concerning a Joint Food Standards System* (the Exchange of Letters) seeks to amend the *Agreement between the Government of Australia and the Government of New Zealand concerning a Joint Food Standards System* (the Agreement), first made in 1995.<sup>1</sup>
- 3.2 The Agreement established the joint food standards system. The food standards system is a cooperative bilateral arrangement involving the Australian and New Zealand governments and the governments of the Australian States and Territories.<sup>2</sup>
- 3.3 The system comprises the Australian and New Zealand Food Regulation Ministerial Council, which is a deliberative body comprising relevant ministers from all the jurisdictions, and Food Standards Australia and

---

1 *Exchange of Letters Concerning a Joint Food Standards System National Interest Analysis (NIA)*, para 1.

2 Ms Kylie Jonasson, *Transcript of Evidence*, 10 May 2010, p. 2.

New Zealand (FSANZ), a bilateral statutory authority that administers the food standards system.<sup>3</sup>

3.4 Through the Agreement, the parties sought to:

- reduce unnecessary trade barriers;
- adopt a joint system for developing food standards; and
- provide for the timely development and review of food standards appropriate to both Australia and New Zealand.<sup>4</sup>

3.5 The Exchange of Letters implements the recommendations of a review of the Agreement completed in 2007.<sup>5</sup> Article 9 of the Agreement requires regular reviews of its effectiveness, and the 2007 review was one of these.<sup>6</sup>

3.6 The amendments to the Agreement recommended in the 2007 review were first agreed by the Australian Government and the State and Territory Governments before being negotiated with the Government of New Zealand.<sup>7</sup>

## Food standards

3.7 A food standard is a legally enforceable document that prescribes the nature, substance, composition, strength, weight, volume, quantity, purity or quality of any food, article, ingredient or component of a food.<sup>8</sup>

3.8 The impetus for developing a food standard usually originates in the Ministerial Council. The Ministerial Council will direct FSANZ to develop a draft food standard in accordance with policy guidelines delimited by the Council. Development of the draft standard will involve a public consultation process and the preparation of a Regulation Impact Statement, both of which provide interested parties with an opportunity to comment on the proposed standard.<sup>9</sup>

3.9 The draft standards or amendments are presented to the Ministerial Council, which must make a decision whether or not to adopt the draft

---

3 Ms Kylie Jonasson, *Transcript of Evidence*, 10 May 2010, p. 2.

4 Ms Kylie Jonasson, *Transcript of Evidence*, 10 May 2010, p. 2.

5 NIA, para 7.

6 NIA, para 3.

7 NIA, para 6.

8 FSANZ, *Australia New Zealand Food Standards Code, Issue 88*, p. 6.

9 Ms Kylie Jonasson, *Transcript of Evidence*, 10 May 2010, p. 5.



standard or amendment. The Ministerial Council may make two requests for the draft standard or amendment to be reviewed by FSANZ, after which the Ministerial Council must make a decision either to adopt or reject the draft standard or amendment. Once a standard or amendment has been adopted by the Ministerial Council, it becomes part of the Food Standards Code.<sup>10</sup>

3.10 The primary objectives of the food standards system are, in the following order:

- the protection of public health and safety;
- the provision of adequate information relating to food to enable consumers to make informed choices; and
- the prevention of misleading or deceptive conduct.<sup>11</sup>

3.11 However, FSANZ must also have regard to the following when drafting standards:

- the need for standards to be based on risk analysis using the best available scientific evidence;
- the promotion of consistency between domestic and international food standards;
- the desirability of an efficient and internationally competitive food industry;
- the promotion of fair trading in food; and
- any written policy guidelines formulated by the Council for the purposes of this paragraph and notified to the Authority.<sup>12</sup>

## The Exchange of Letters

3.12 The Exchange of Letters will:

- remove the ability for the Ministerial Council to request a second review of a draft standard or amendment;

---

10 NIA, para 6.

11 FSANZ, *Australia New Zealand Food Standards Code, Issue 88*, p. 2.

12 FSANZ, *Australia New Zealand Food Standards Code, Issue 88*, p. 2.

- remove the requirement that the Ministerial Council must request a review of the draft standard or amendment if one of the jurisdictions considers that a review is required;
- revise the circumstances under which a different standard can apply in Australia and New Zealand; and
- amend the process for adopting of temporary standards in urgent situations affecting public health and safety or environmental conditions.<sup>13</sup>

## One review

- 3.13 As indicated above, when a draft standard or amendment is presented to the Ministerial Council, the Agreement permits it to request two reviews of the draft standard or amendment.<sup>14</sup>
- 3.14 The Exchange of Letters will amend the Agreement to limit the Ministerial Council to a single review request for a draft standard or amendment, after which the Council must accept, amend or reject the standard or amendment.<sup>15</sup>
- 3.15 The Amendment will bring into effect amendments made to the *Food Standards Australia New Zealand Act 1992* in 2007.<sup>16</sup> The amendment responded to complaints from interested parties about the time taken to develop standards predating the review of the Agreement completed in 2007.<sup>17</sup>
- 3.16 The Department of Health and Ageing (DHA) advised the Committee that the reason for this change was that it was seen as:
- ...one of the quick wins, one of the easy ways to reduce the timeframes quite significantly.<sup>18</sup>
- 3.17 A second review can add some months to the time it takes to develop a standard.<sup>19</sup>
- 3.18 The Ministerial Council has requested a second review of a draft standard or amendment on five occasions since 2002. Three of these related to a
- 

13 NIA, paras 10-13.

14 NIA, para 10.

15 NIA, para 9.

16 Ms Kylie Jonasson, *Transcript of Evidence*, 10 May 2010, p. 3.

17 Ms Kylie Jonasson, *Transcript of Evidence*, 10 May 2010, p. 3.

18 Ms Kylie Jonasson, *Transcript of Evidence*, 10 May 2010, p. 6.

19 Ms Kylie Jonasson, *Transcript of Evidence*, 10 May 2010, p. 6.

group of draft standards on the use of a new ingredient in a number of different food groups. In effect, this group constituted a single request for a second review, as the draft standards were considered together. In that time, the Ministerial Council has made decisions on 229 draft standards or amendments.<sup>20</sup>

## Changing the circumstances under which a review can be called

- 3.19 The Agreement currently requires the Ministerial Council to request a review of a draft standard or amendment when one of the jurisdictions believes a review is necessary.<sup>21</sup>
- 3.20 Under this mechanism, 39 reviews have been requested of the 229 draft standards or amendments that have been considered by the Ministerial Council since 2002.<sup>22</sup>
- 3.21 The Exchange of Letters will remove this trigger for review and replace it with a deliberative process where the Ministerial Council can request a review where it considers that:
- it is not consistent with existing policy guidelines set by the Council;
  - it is not consistent with the objectives of the legislation which establishes FSANZ;
  - it does not protect public health and safety;
  - it does not promote consistency between domestic and international food standards where these are at variance;
  - it does not provide adequate information to enable informed choice;
  - it is difficult to enforce and/or comply with in both practical or resource terms;
  - it places an unreasonable cost burden on industry or consumers;
  - it is not consistent with the principles for the establishment of food standards set down in this Agreement, including consistency with both countries' World Trade Organization obligations and consistency with the domestic laws and regulations of both countries; and/or
  - it is inappropriate on the grounds of exceptional environmental or cultural factors.<sup>23</sup>

---

20 Department of Health and Ageing, *Submission No. 3*, pp. 1-3.

21 NIA, para 10.

22 Department of Health and Ageing, *Submission No. 3*, p. 1.

## Separate standards for Australia and New Zealand

- 3.22 Australia and New Zealand are permitted to apply separate standards in the following circumstances:
- where there is an exceptional health and safety or environmental reason; and
  - where New Zealand develops a standard that applies only in that country because of exceptional health and safety, environmental, third country trade, or cultural reason.
- 3.23 The Exchange of Letters will replace these provisions with a single exceptional circumstance mechanism for applying separate standards. Jurisdictions will only be able to vary from a standard for the following reasons: exceptional health and safety risk; third country trade; environmental risk; or cultural risk.<sup>24</sup>
- 3.24 These terms are not defined in the Exchange of Letters or the relevant legislation.<sup>25</sup> In the absence of a definition, the Committee anticipates that the meaning of these terms will be contested by those who participate in developing food standards.
- 3.25 When pressed, the DHA indicated that the Maori tradition of eating mutton bird might be an example of a cultural reason for an exceptional circumstance; and arrangements contained in a free trade agreement could result in an exceptional circumstance related to third country trade.<sup>26</sup>

## Temporary standards

- 3.26 Jurisdictions are permitted to adopt temporary standards when an issue of public health, safety or environmental conditions means there is no time for the normal development of a standard.<sup>27</sup>
- 3.27 Currently, a jurisdiction that makes a temporary standard is required to notify the Ministerial Council that it is doing so. The Agreement contains no provision for what is to be done after a temporary standard has been made. Under normal circumstances, the temporary standard is either withdrawn after the relevant issue has been resolved, or the process for

---

23 *Exchange of Letters Amending the Agreement between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System*, para 9.

24 NIA, para 12.

25 NIA, para 12.

26 Ms Kylie Jonasson, *Transcript of Evidence*, 10 May 2010, p. 4; and Mr Ian Turland, *Transcript of Evidence*, 10 May 2010, p. 5.

27 Ms Kylie Jonasson, *Transcript of Evidence*, 10 May 2010, p. 3.

developing a permanent standard is put in place. However, temporary standards have on occasion remained in place for a considerable period of time.<sup>28</sup>

- 3.28 The Exchange of Letters will amend this provision to require the jurisdiction to provide reasons and evidence supporting the temporary standard. To prevent temporary standards from applying for longer than is necessary, the jurisdiction that implements a temporary standard will be required to request the creation of a standard to cover the matters that prompted the adoption of the temporary standard. The temporary standard will cease to exist after consideration of the new standard by the Ministerial Council.<sup>29</sup>

## Food Labelling Law and Policy Review

- 3.29 As indicated above, one of the objectives of the food standards system is the provision of adequate information relating to food to enable consumers to make informed choices.<sup>30</sup>

- 3.30 In response to ongoing concerns about food labelling by industry, consumers and governments, the Council of Australian Governments tasked FSANZ to undertake a thorough Food Labelling Law and Policy Review. To undertake the review, FSANZ appointed an independent review panel chaired by Dr Neal Blewett AC. The review commenced in October 2009 and is expected to deliver its final report in early 2011.<sup>31</sup>

- 3.31 The terms of reference for the review require the review panel to:
- examine the policy drivers impacting on demands for food labelling;
  - consider what should be the role for government in the regulation of food labelling. What principles should guide decisions about government regulatory intervention?
  - consider what policies and mechanisms are needed to ensure that government plays its optimum role;

---

28 Ms Kylie Jonasson, *Transcript of Evidence*, 10 May 2010, p. 3.

29 NIA, para 13.

30 FSANZ, *Australia New Zealand Food Standards Code, Issue 88*, p. 2.

31 Food Labelling Law and Policy Review, *Issues Consultation Paper: Food Labelling Law and Policy Review*, 2010, p. 1.

- consider principles and approaches to achieve compliance with labelling requirements, and appropriate and consistent enforcement;
  - evaluate current policies, standards and laws relevant to food labelling and existing work on health claims and front of pack labelling against terms of reference 1-4 above; and
  - make recommendations to improve food labelling law and policy.<sup>32</sup>
- 3.32 DHA argued that the changes contained in the Exchange of Letters relate to the administration and operation of the food standards system, and are unlikely to undermine the outcome of the Food Labelling Law and Policy Review.
- 3.33 Given the terms of reference of the Food Labelling Law and Policy Review, it is possible that further changes to the administration and operation of the food standards system will be required in the near future.
- 3.34 An argument could be made that it would be more efficient and less disruptive to the food standards system to delay the changes contained in the Exchange of Letters and implement any changes resulting from the Food Labelling Law and Policy Review at the same time. However, the Committee has been assured by the DHA that:
- We certainly recommend you sign off on these amendments that will improve the operation of the treaty...<sup>33</sup>
- 3.35 Consequently, the Committee supports the Exchange of Letters.

## Recommendation 6

**The Committee supports the *Exchange of Letters amending the Agreement between the Government of Australia and the Government of New Zealand concerning a Joint Food Standards System* and recommends that binding treaty action be taken.**

32 Food Labelling Law and Policy Review, *Terms of Reference*, <<http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/Content/terms>>, viewed 14 May 2010.

33 Ms Kylie Jonasson, *Transcript of Evidence*, 10 May 2010, p 4.

## Agreement between Australia and the Czech Republic on Social Security and Agreement between Australia and the Former Yugoslav Republic of Macedonia on Social Security

### Background

- 4.1 This chapter discusses two bilateral social security agreements, the terms of which are very similar:
- the *Agreement between Australia and the Czech Republic on Social Security* (the Czech Agreement); and
  - the *Agreement between Australia and the Former Yugoslav Republic of Macedonia on Social Security* (the FYR Macedonia Agreement).
- 4.2 Australia's international social security agreements are bilateral treaties intended to address gaps in the coverage of certain social security payments to Australian residents who are entitled to receive payments from another country.<sup>1</sup>
- 4.3 These are the latest in a number of agreements on social security Australia has entered into, the most recent of which was the *Agreement with the*

---

1 Ms Michalina Stawyskyj, *Transcript of Evidence*, 10 May 2010, p. 12.

*Republic of Poland on Social Security*, reported on in Reports 108 and 110.<sup>2</sup>  
There are currently 23 ratified bilateral social security agreements.<sup>3</sup>

## The Agreements

- 4.4 These agreements apply to Australian residents who have established an entitlement to certain types of Czech or FYR Macedonian pension payments, and residents of either country who have established an entitlement to an Australian age pension.<sup>4</sup>
- 4.5 The agreements permit the following to occur:
- people living in one country will be able to lodge a claim for a pension with the other country;<sup>5</sup>
  - qualification periods for the pensions covered will be ‘totalised’, enabling people to meet the minimum qualification periods for relevant pensions in both countries. Totalising in this instance means treating periods of residence in one of the signatory countries as part of the qualification period for relevant pensions in the other country;<sup>6</sup>
  - remove restrictions on portability of payments for people residing in either country by enabling payments from one country to be made into bank accounts in the other country;<sup>7</sup> and
  - provide avenues for mutual assistance to help ensure that people are paid their correct entitlements.<sup>8</sup>
- 4.6 In addition, a person who works in Australia and one of either the Czech Republic or FYR Macedonia will not need to make compulsory retirement

---

2 JSCOT, *Report 108: Treaty tabled on 25 November 2009*, p. 2; and JSCOT, *Report 110: Treaties tabled on 18, 25 (2) and 26 November 2009 and 2 (2) February 2010*, pp. 15-19.

3 Department of Family, Housing, Community Services, and Indigenous Affairs, *Submission 3*, p. 1.

4 *Agreement between Australia and the Czech Republic on Social Security National Interest Analysis* (Czech Agreement NIA), para 4; and *Agreement between Australia and the Former Yugoslav Republic of Macedonia on Social Security National Interest Analysis* (FYR Macedonia Agreement NIA), para 4.

5 Czech Agreement NIA, para 4; and FYR Macedonia Agreement NIA, para 4.

6 Czech Agreement NIA, para 13; and FYR Macedonia Agreement NIA, para 13.

7 Czech Agreement NIA, para 4; and FYR Macedonia Agreement NIA, para 4.

8 Czech Agreement NIA, para 4; and FYR Macedonia Agreement NIA, para 4.



benefit contributions in both countries at the same time to retain pension entitlements.<sup>9</sup>

4.7 The agreements limit the types of pension subject to these provisions. The agreements cover:

- the Australian age pension;
- the Czech or FYR Macedonian age pension;
- the Czech invalidity and the FYR Macedonia disability pension; and
- the Czech or FYR Macedonian survivor's pension.<sup>10</sup>

4.8 The invalidity, disability and survivor pensions will only be available to residents of the relevant country.<sup>11</sup>

4.9 The Department of Family, Housing, Community Services, and Indigenous Affairs (FaHCSIA) has in the past discussed the reasons why the age pension is the only Australian pension involved.<sup>12</sup>

4.10 The Australian age pension payment is an automatic entitlement upon qualification, whereas pension systems such as that operating in the Czech Republic and FYR Macedonia are contributory systems, similar to a superannuation scheme.<sup>13</sup> Although this statement is not strictly true in relation to the survivor's pension,<sup>14</sup> there is no Australian equivalent of this pension, so there is no actual difference between the entitlements of Australian and Czech or FYR Macedonian residents covered by the agreements.

4.11 FaHCSIA estimates that 2,000 people across both countries will be affected by the Czech Agreement, which is a smaller number of affected persons than in previous agreements of this sort.<sup>15</sup> The FYR Macedonia Agreement will affect 4,000 people.<sup>16</sup>

---

9 Czech Agreement NIA, para 5; and FYR Macedonia Agreement NIA, para 5.

10 Czech Agreement NIA, para 13; and FYR Macedonia Agreement NIA, para 13. A survivor's pension is the pension paid to a spouse or dependant on the death of a person eligible for an age pension.

11 Czech Agreement NIA, para 13; and FYR Macedonia Agreement NIA, para 13.

12 JSCOT, *Report 110: Treaties tabled on 18, 25 (2) and 26 November 2009 and 2 (2) February 2010*, p. 17.

13 Czech Agreement NIA, para 13; and FYR Macedonia Agreement NIA, para 13.

14 Organisation for Economic Cooperation and Development (OECD) website, <<http://www.oecd.org/dataoecd/50/48/33743823.pdf>>, viewed 16 April 2010.

15 Czech Agreement NIA, para 10.

16 FYR Macedonia Agreement NIA, para 10.

## Payment arrangements

- 4.12 Where an Australian resident is entitled to a pension from either the Czech Republic or the FYR Macedonia, their full entitlement to that pension will be paid. That person's entitlement to the Australian pension will then be calculated based on the Australian social security income test.<sup>17</sup>
- 4.13 Agreements of this sort usually reduce the cost of age pensions for Australia but FaHCSIA estimates that, when the administration costs are taken into account, the Czech Agreement will cost Australia approximately \$1.1m annually<sup>18</sup> and the FYR Macedonia Agreement is expected to result in the payment of an additional \$1.459m in pensions and to cost \$4.19m to administer.<sup>19</sup>
- 4.14 FaHCSIA identified two reasons for the additional costs associated with these agreements. The first involves the value of the pensions paid to Australian residents by the Czech Republic and the FYR Macedonia. A number of factors combine to produce a situation in which Australian residents eligible for these pensions will still be entitled to an Australian pension of some sort.<sup>20</sup> The relevant factors include:
- the quantum of the age pension. The sum available from the Czech Republic and the FYR Macedonia is less than the sum available from Australia;
  - the fact that pensions in the Czech Republic and the FYR Macedonia are contributory schemes, in other words, if a person has only worked for part of their life in those countries, their pensions will be proportionately less than the maximum available; and
  - the exchange rate.<sup>21</sup>
- 4.15 The second reason for the additional cost to Australia is the small number of persons eligible for a pension from either of these countries. This means that the savings available do not outweigh the costs of administering the agreements.<sup>22</sup>

---

17 Mr Peter Hutchison, *Transcript of Evidence*, 10 May 2010, p. 14.

18 Czech Agreement NIA, para 19.

19 FYR Macedonia Agreement NIA para 19.

20 Mr Peter Hutchison, *Transcript of Evidence*, 10 May 2010, p. 11.

21 Mr Peter Hutchison, *Transcript of Evidence*, 10 May 2010, p. 14; and Ms Michalina Stawyskyj, *Transcript of Evidence*, 10 May 2010, p. 14.

22 Czech Agreement NIA, para 19; and FYR Macedonia Agreement NIA, para 19.

4.16 The administrative cost of each agreement reflects Centrelink's costs for administering it in Australia. Centrelink will attempt to identify and notify all persons who may have an entitlement under one of these agreements. Centrelink will also provide assistance to people to help them claim a foreign pension.<sup>23</sup>

## Criteria for selecting countries for bilateral treaties

4.17 Given that some Australian residents who contributed to the Czech scheme will not be eligible for a Czech pension because their entitlement resides with the now separate Slovak Republic, the Committee expressed some interest in how FaHCSIA identifies countries with which to reach a bilateral social security agreement.

4.18 FaHCSIA advised that a range of factors determined which countries are selected for bilateral social security agreements, including:

- the compatibility of the social security systems;
- approaches from foreign governments seeking bilateral relationships on these matters;
- agitation by an expatriate community in Australia; and
- the size of the relevant community.<sup>24</sup>

4.19 The Government of the day then makes a decision about whether to enter into negotiations or not.<sup>25</sup>

4.20 In relation to the Slovak Republic, FaHCSIA advised that negotiations for a bilateral social security agreement are under way, and will be concluded in the next 12 to 18 months.<sup>26</sup>

## Conclusion

4.21 While these agreements will have a net cost for Australia to administer, they will provide a significant improvement in the pension incomes of Australian residents entitled to a Czech or FYR Macedonian pension. The

---

23 Mr Peter Hutchison, *Transcript of Evidence*, 10 May 2010, p. 16.

24 Ms Michalina Stawyskyj, *Transcript of Evidence*, 10 May 2010, p. 13.

25 Ms Michalina Stawyskyj, *Transcript of Evidence*, 10 May 2010, p. 13.

26 Ms Michalina Stawyskyj, *Transcript of Evidence*, 10 May 2010, p. 18.

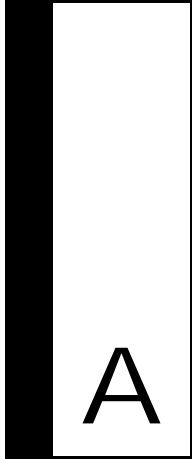
Committee is of the view that the social benefit in this instance outweighs the cost of entering into these agreements.

### **Recommendation 7**

**The Committee supports the *Agreement between Australia and the Czech Republic on Social Security* and the *Agreement between Australia and the Former Yugoslav Republic of Macedonia on Social Security*, and recommends that binding treaty action be taken.**

**Mr Kelvin Thomson MP**

**Chair**



## Appendix A — Submissions

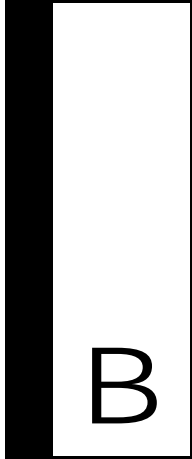
### Treaties tabled on 9 and 10 March 2010

- 1 Australian Patriot Movement
- 1.1 Australian Patriot Movement
- 2 Department of Health and Ageing
- 3 Department of Families, Housing, Community Services and Indigenous Affairs

### Treaties tabled on 29 March 2010

- 1 Australian Patriot Movement
- 1.1 Australian Patriot Movement
- 1.2 Australian Patriot Movement





## Appendix B — Witnesses

**Monday, 10 May 2010 - Canberra**

**Australian Taxation Office**

Mr Malcolm Allen, Assistant Commissioner - International Relations

**Department of Families, Housing, Community Services and Indigenous Affairs**

Mr Peter Hutchinson, Section Manager, International Agreements Section,  
International Branch

Ms Michalina Stawyskyj, Branch Manager, International Branch

**Department of Foreign Affairs and Trade**

Mr Sean Singh, Director, Southern Europe Section

Mr Ian Turland, Director, New Zealand Section

**Department of Health and Ageing**

Ms Kylie Jonasson, Assistant Secretary, Research, Regulation and Food  
Branch

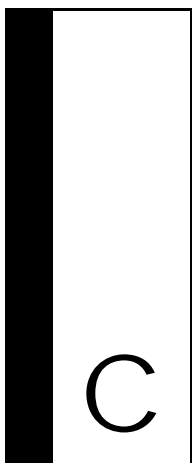
**Department of the Treasury**

Mr Nigel Murray, Manager, Contributions and Accumulation Unit,  
Personal and Retirement Income Division

Mr William Potts, Manager, International Tax Framework Unit







## Appendix C — Minor treaty actions

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

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

### Minor treaty actions tabled on 15 March 2010

*Considered by the Committee on 15 June 2010:*

- Amendment to Annex I of the United National Educational, Scientific and Cultural Organisation (UNESCO) *International Convention Against Doping in Sport* of 19 October 2005; and
- Amendment to Annex II of the UNESCO *International Convention Against Doping in Sport* of 19 October 2005.

Annex I of the *International Convention Against Doping in Sport* (the Convention) is the 2009 Prohibited List–International Standard (the Prohibited List) and identifies the substances and methods of doping which are prohibited in sport. The amendment to Annex I updates the Prohibited List to include the 2010 Prohibited List that has been adopted by the World Anti-Doping Agency (WADA).<sup>1</sup>

Annex II of the Convention is the Standards for Granting Therapeutic Use Exemptions (SGTUE). The amendment to Annex II reflects changes made by

---

<sup>1</sup> Explanatory Statement 2 of 2010, p. 1.

WADA to its International Standards for Therapeutic Use Exemptions, which form the basis of the SGTUE.<sup>2</sup>

---

2 Explanatory Statement 3 of 2009, p. 1.