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The Parliament of the Commonwealth of Australia

# **Report 55**

**Treaties tabled on 9 September 2003**

**Two Agreements on Taxation — United Kingdom and Mexico**

**Trade in Wine — European Union**

**Regional Assistance Mission to Solomon Islands**

**ILO Convention No. 155 — Occupational Safety and Health**

**Stockholm Convention on Persistent Organic Pollutants**

**Rotterdam Convention on Notification of Hazardous Chemicals and Pesticides**

**Whaling Convention — Amendments to Schedule**

October 2003  
Canberra

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## **Membership of the Committee**

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**Deputy Chair**   Mr Kim Wilkie MP

**Members**        Hon Dick Adams MP

Mr Kerry Bartlett MP

Mr Steven Ciobo MP

Mr Martyn Evans MP

Mr Greg Hunt MP

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Senator Andrew Bartlett

Senator Linda Kirk

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## **Terms of reference**

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 Analysis 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

ACCI	Australian Chamber of Commerce and Industry
ACTU	Australian Council of Trade Unions
AFP	Australian Federal Police
AusAID	Australian Agency for International Development
AWBC	Australian Wine and Brandy Corporation
BCA	Business Council of Australia
CTA	Corporate Tax Association
DFAT	Department of Foreign Affairs and Trade
DNA	Designated national authority
DWT	Dividend withholding tax
DTC	Double taxation convention
EU	European Union
GDP	Gross Domestic Product
GI	Geographical Indicators
ILO	International Labor Organization
IWC	International Whaling Commission

IWT	Interest withholding tax
NAFTA	North American Free Trade Agreement
NGO	Non-Government Organisation
NIA	National Interest Analysis
NICNAS	National Industrial Chemicals Notification and Assessment Scheme
NRS	National Registration Scheme for Agricultural and Veterinary Chemicals
OECD	Organisation for Economic Co-operation and Development
OHS	Occupational Health and Safety
PIC	Prior Informed Consent (Procedure)
POP(s)	Persistent Organic Pollutant(s)
RAMSI	Regional Assistance Mission in Solomon Islands
RBT	Review of Business Taxation (the 'Ralph Review')
RIS	Regulation Impact Statement
RITA	Review of International Taxation Arrangements
RWT	Royalty withholding tax
SI	Solomon Islands
TE	Traditional Expressions
WFA	Winemakers' Federation of Australia
WHT	Withholding tax



## List of recommendations

### Two Double Taxation Agreements — United Kingdom and Mexico

#### Recommendation 1

The Committee supports the *Convention between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains, done at Canberra on 21 August 2003, and an Associated Exchange of Notes* 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 United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, and Protocol, done at Mexico City on 9 September 2002* and recommends that binding treaty action be taken.

#### Recommendation 3

Further to comments made at paragraphs 2.34 and 2.35, the Committee recommends that the Government give greater consideration to the timing of the introduction of legislation to bring proposed treaty actions into force, so that the incidence of enabling legislation being introduced prior to the conclusion of the Committee's review is reduced.

## **Amending Agreement between the European Community and Australia on trade in wine**

### **Recommendation 4**

The Committee supports the *Agreement between the European Community and Australia amending the Agreement between Australia and the European Community on Trade in Wine, and Protocol, of 1994* and recommends that binding treaty action be taken.

## **International Labor Organization Convention No. 155: Occupational Safety and Health**

### **Recommendation 5**

The Committee supports the *International Labour Organization Convention No. 155: Occupational Safety and Health, 1981*, and recommends that binding treaty action be taken.

## **Stockholm Convention on Persistent Organic Pollutants (POPs)**

### **Recommendation 6**

The Committee recommends that the Government, in consultation with relevant parties, consider the formation of a negotiating forum, of a size and management as may be appropriate, to include State and Territory governments, in order to address concerns raised by the Queensland Government in its submission.

### **Recommendation 7**

The Committee supports the *Stockholm Convention on Persistent Organic Pollutants, done at Stockholm on 22 May 2001*, and recommends that binding treaty action be taken.

## **Rotterdam Convention — Notification of Certain Hazardous Chemicals and Pesticides**

### **Recommendation 8**

The Committee supports the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, done at Rotterdam on 10 September 1998*, and recommends that binding treaty action be taken.

## Amendments to the International Convention for Regulation of Whaling

### Recommendation 9

The Committee supports the *Amendments, done at Berlin, Germany on 19 June 2003, to the Schedule to the International Convention for Regulation of Whaling, done at Washington on 2 December 1946.*



## Introduction

### Purpose of Report

- 1.1 This report contains advice to Parliament on the review by the Joint Standing Committee on Treaties of a series of proposed treaty actions tabled on 9 September 2003<sup>1</sup> specifically:
- *Agreement between the Government of Australia and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, and Protocol, done at Mexico City on 9 September 2002*
  - *Convention between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains, done at Canberra on 21 August 2003, and an Associated Exchange of Notes*
  - *Agreement between the European Community and Australia amending the Agreement between Australia and the European Community on Trade in Wine, and Protocol, of 1994*
  - *Agreement, done at Townsville on 24 July 2003, between Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa and Tonga concerning the operations and status of the Police and Armed*

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<sup>1</sup> *Senate Journal*, 9 September 2003, p. 2309 and *House of Representatives Votes and Proceedings*, 9 September 2003, p. 1142.

*Forces and Other Personnel deployed to Solomon Islands to assist in the restoration of law and order and security*

- *International Labour Organization Convention No. 155: Occupational Safety and Health, 1981*
- *Stockholm Convention on Persistent Organic Pollutants (POPs), done at Stockholm on 22 May 2001*
- *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, done at Rotterdam on 10 September 1998*
- *Amendments, done at Berlin, Germany on 19 June 2003, to the Schedule to the International Convention for Regulation of Whaling, done at Washington on 2 December 1946.*

## **Briefing documents**

- 1.2 The advice in this report refers to the National Interest Analyses (NIAs) prepared for these proposed treaty actions. Copies of the NIAs are available from the Committee's website at <http://www.aph.gov.au/house/committee/jsct/index.htm> or may be obtained from the Committee Secretariat. These documents were prepared by the Government agency (or agencies) responsible for the administration of Australia's responsibilities under each treaty.
- 1.3 Copies of treaty actions and NIAs can also be obtained from the Australian Treaties Library maintained on the internet by the Department of Foreign Affairs and Trade (DFAT). The Australian Treaties Library is accessible through the Committee's website or directly at <http://www.austlii.edu.au/au/other/dfat>.

## **Conduct of Committee's review**

- 1.4 The Committee's review of the treaty actions canvassed in this report was advertised in the national press and on the Committee's website.<sup>2</sup> In addition, letters inviting comment were sent to all State Premiers
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2 The Committee's review of the proposed treaty actions was advertised in *The Australian* on 17 September 2003. Members of the public were advised on how to obtain relevant information and invited to submit their views to the Committee.



and Chief Ministers and to 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 took evidence at a public hearing held on 15 September 2003. A list of witnesses who gave evidence at the public hearing is at Appendix B. A transcript of evidence from the public hearing can be obtained from the Committee Secretariat or accessed through the Committee's internet site at <http://www.aph.gov.au/house/committee/jsct/index.htm>.

## **Two Double Taxation Agreements — United Kingdom and Mexico**

### **Introduction**

- 2.1 The Committee has examined several double taxation agreements since it was first established in 1996. Generally, the objectives of such agreements are to facilitate trade and investment and combat fiscal evasion. The two proposed agreements tabled in September and considered here have some differences in background and approach but are based around similar objectives.
- 2.2 The objectives of the *Agreement between the Government of Australia and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, and Protocol, done at Mexico City on 9 September 2002*, are to improve Australia's relations with Mexico, facilitate trade and investment, combat fiscal evasion, protect Australian tax revenues, and maintain Australia's position in the international tax community.
- 2.3 The objectives of the *Convention between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains, done at Canberra on 21 August 2003, and an Associated Exchange of Notes* are similar, but it replaces an existing double taxation treaty with the United Kingdom that was signed in 1967 and modified in 1980. According to the National Interest Analysis (NIA), the agreement

‘moves towards a more residence-based tax treaty policy and updates an important part of Australia’s aging (sic) treaty network.’<sup>1</sup>

2.4 The Department of the Treasury’s efforts at quantifying the costs and benefits of double taxation agreements in order to better assess their effectiveness are noted, and these efforts will be discussed later in this Chapter.

2.5 The Committee heard that the broad objectives of taxation treaties can be categorised as follows:

Firstly, they aim to promote the flow of investment, trade and skilled personnel between the two countries by eliminating double taxation and providing a reasonable element of legal and fiscal certainty for commerce between the respective countries. Secondly, they aim to improve the integrity of the tax system by creating a framework through which the tax administrations of both countries can prevent international fiscal evasion and eliminate double taxation. Thirdly, they aim to develop and improve bilateral relations with the countries concerned. Fourthly, they aim to maintain Australia’s position in the international tax community. At the highest level, these treaties form part of the network of tax treaties which ultimately support Australia’s geopolitical, strategic, security and regional interests.<sup>2</sup>

## United Kingdom

2.6 The economy of the United Kingdom is the fourth-largest in the world. The NIA states that its average real economic growth of 2 per cent per annum since the mid-1990s underlines the importance of the UK as a treaty partner.<sup>3</sup> The Committee understands that Australia’s investment and trade relationship with the UK is the largest that Australia has with any European country.<sup>4</sup> There are over 1,000 Australian companies active in the United Kingdom with a large

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1 National Interest Analysis (NIA), para. 4.

2 Mr David Parker, *Transcript of Evidence*, 8 September 2003, p. 2.

3 NIA, para. 10.

4 NIA, para. 11.

number using Britain as a base for trade and investment into the European Union.<sup>5</sup> According to the NIA:

The international economic significance of the United Kingdom, the size of the Australia-United Kingdom investment and trade relationships, and the gateway relationships that the United Kingdom has with Europe and Australia has with Asia, show the importance of an updated DTC.<sup>6</sup>

## Purpose of the DTA with the United Kingdom

2.7 The Committee heard that the treaty, originally negotiated in 1967 and updated in 1980, ‘needed updating to reflect changes to Australian and UK treaty policy and business practices’,<sup>7</sup> and that this is consistent with the Government’s response to the *Review of International Taxation Arrangements*.<sup>8</sup> The Committee understands that the update of the treaty will bring it into line:

with international norms, as set out in the OECD’s *Model Tax Convention*, and with the direction set in the recent Protocol to the Australia-US Double Tax Convention.<sup>9</sup>

2.8 The Committee also understands that strategic aspects of the proposed treaty impact on Australia’s relations with the United Kingdom:<sup>10</sup>

These include the implications of the maturing of the Australian economy, the endorsement by the Government of the recommendations of the Review of International Taxation Arrangements (RITA), the extension to the United Kingdom of the WHT outcomes of the recent US Protocol, and the globalising force of international capital mobility.<sup>11</sup>

2.9 In reference to the extension of the outcomes of the recently renegotiated and ratified US protocol to the UK, the Business Council of Australia (BCA) notes that:

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5 Regulation Impact Statement (RIS), para. 15.

6 NIA, para. 7.

7 Mr David Parker, *Transcript of Evidence*, 8 September 2003, p. 2.

8 NIA, para. 4. RITA is a Treasury Consultation Paper which was released in August 2002.

9 NIA, para. 4.

10 NIA, para. 14.

11 NIA, para. 14.

It would be regarded as inequitable treatment to not extend similar withholding tax outcomes to an important treaty partner.<sup>12</sup>

- 2.10 The Committee understands that renegotiation of the Australia-UK treaty commenced in February 2001. A second round of negotiations was held in March 2002 and a third round in November 2002.<sup>13</sup>

## Features of the UK Agreement

- 2.11 The Committee recognises the claims by the Department of the Treasury that the existing double taxation treaty has become out of step with modern treaty practice, in particular it:
- does not deal with Australian capital gains
  - does not include an *Income from Real Property* Article
  - does not include an *Other Income* Article
  - does not include a *Source of Income* Article
  - does not include a *Residence* Article
  - deals with 'industrial or commercial profits' rather than 'business profits'
  - does not expressly deal with Australia's Petroleum Resource Rent Tax
  - does not deal with taxation of fringe benefits
  - does not include a *Non-discrimination* Article
  - does not define some terms and contains narrower definitions than those now found in Australia's tax treaties (such as the definitions of 'permanent establishment' and 'royalties').<sup>14</sup>
- 2.12 The NIA states that the proposed Treaty will reduce rate limits for dividend withholding tax (DWT) and royalty withholding tax (RWT), apply a nil interest withholding tax (IWT) rate limit to interest paid to a financial institution, preserve Australia's right to tax capital gains, and 'locks-in' these arrangements.<sup>15</sup>

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12 Business Council of Australia (BCA), *Submission*, pp. 2-3.

13 RIS, para. 10.

14 *The Costs and Benefits of the Previous Australia-UK Tax Treaty and Protocol*, tabled at public hearing on 8 September 2003, paras 9 and 10.

15 NIA, para. 5.

2.13 The Committee understands the importance of the shift in tax treaty policy towards a more residence-based approach, in line with the recent US Protocol. The Committee also recognises that this shift was recommended by the Board of Taxation,<sup>16</sup> and is supported by the Business Council of Australia (BCA) and the Corporate Tax Association (CTA).<sup>17</sup> Ms Ariane Pickering, from the Department of the Treasury, explained that:

The residence basis [of tax treaties] is that residents are taxed on their worldwide income. The source basis is that nonresidents and residents are taxed on income arising from sources within a country... Traditionally, we have sought to protect our revenue base as much as possible by having a stronger focus on source taxation—that is, by taxing nonresidents on their Australian sourced income. The shift in the last few treaties has been towards saying ‘there are benefits from claiming less source taxation and focusing more on residence based taxation’—that is, focusing more on the taxation of our own residents.<sup>18</sup>

2.14 The Committee understands that the reduction in WHT, which is a tax on source, demonstrates the move towards residence based taxation, bringing it into greater alignment with Organisation for Economic Co-operation and Development (OECD) norms.

2.15 The Committee was advised that the proposed treaty aims to minimise disincentives to the expansion of international trade and investment in a number of ways:

- by clearly allocating tax jurisdictions between the parties
- where taxing rights are allocated to both countries, source country taxation rights are given priority and double tax is avoided through the provision of tax relief by the residence country
- by providing mechanisms to resolve disputes in a contentious area
- by mutually reducing WHT rate limits.<sup>19</sup>

2.16 The Committee was advised that the new treaty will:

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16 NIA Annexure – Consultations.

17 BCA, *Submission*, p. 2.

18 Ms Ariane Pickering, *Transcript of Evidence*, 8 September 2003, p. 22.

19 NIA, paras 19 and 21.

Provide long-term benefits for businesses, making it cheaper for Australian-based businesses to obtain intellectual property, equity and finance for expansion. It will also remove obstacles currently inhibiting Australian corporate expansion offshore.<sup>20</sup>

## Mexico

- 2.17 Australia's trade and investment relationship with Mexico is the largest Australia has with any Latin American country but 'it does not figure' among Australia's top ten relationships.<sup>21</sup> Total Australia-Mexico trade exceeded A\$1 billion in 2002, with exports growing at an annual rate of more than 27 per cent over the past five years.<sup>22</sup> The NIA suggests that the size of the Mexican economy (ninth largest in the world) and its growth rate underlines the potential importance of the economic relationship<sup>23</sup> and that a tax treaty with Mexico is 'clearly important for future economic relations', given Mexico's international economic significance.<sup>24</sup>

### Purpose of DTA with Mexico

- 2.18 The treaty will complete Australia's tax treaty network with North American Free Trade Agreement (NAFTA) countries.<sup>25</sup> The NIA states that the international economic significance of Mexico means that an Australia-Mexico treaty is important for providing the framework for future economic relations between the two countries.<sup>26</sup> It further suggests that obstacles to trade and investment will be removed and the international competitiveness of the Australian tax system improved by the treaty's reductions in rate limits of DWT, RWT and its locking-in of limits to IWTs. Also:

The proposed Treaty provisions for clarification and allocation of taxing jurisdiction (including clarification of capital gains taxation) and exchange of information will

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20 Mr David Parker, *Transcript of Evidence*, 8 September 2003, p. 4.

21 NIA, para. 9.

22 NIA, para. 10.

23 NIA, para. 9.

24 NIA, para. 12.

25 NIA, para. 3.

26 NIA, para. 7.

improve tax system integrity and reduce uncertainty for taxpayers. They will also assist in overcoming fiscal evasion, and in this way protect Australian tax revenues.<sup>27</sup>

## Features of the DTA with Mexico

2.19 According to the Regulation Impact Statement (RIS), the proposed tax treaty is based on the OECD model with some influences from the United Nations model. Both countries have also included variations to reflect their economic interests and legal circumstances.<sup>28</sup>

2.20 Further to those features concerning taxing jurisdictions and exchange of information listed above, Mr David Parker from the Department of the Treasury stated that the proposed treaty:

... will protect Australia's rights to tax profits, income and gains earned by Mexican residents who undertake activities in Australia by giving priority to source tax rights where shared rights are allocated.<sup>29</sup>

## Costs and benefits

2.21 The Committee recognises the difficulties inherent in empirically quantifying benefits, that is:

it is reasonably possible to make a firm estimate of the up-front headline cost of a treaty action. The benefits of the treaty are relatively clear and transparent, being in the form of promotion of commerce between the countries, but again, taking the next step to quantify those benefits is relatively difficult.<sup>30</sup>

2.22 The RIS explains that:

While the direct cost to Australian revenue of withholding tax changes can be quantified relatively easily, other cost impacts such as compliance costs are inherently difficult to quantify.

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27 NIA, para. 5.

28 RIS, p. 1.

29 Mr David Parker, *Transcript of Evidence*, 8 September 2003, p. 5.

30 Mr David Parker, *Transcript of Evidence*, 8 September 2003, p. 2.



## United Kingdom

2.23 A document entitled *The Costs and Benefits of the Previous Australia-UK Tax Treaty and Protocol* was tabled by representatives of the Department of the Treasury at the public hearing on 8 September 2003. The paper outlined the effects of WHT collections with and without a taxation treaty, that is:

a simulation model of the old economy could be constructed that has all the elements of the actual economy aside from the old UK-Australia tax treaty. A comparison could then be made between the size of relevant variables [including tax revenues, trade and investment] in this model economy with the size of the variables in the actual economy at some precise point in time. The differences would be attributable to the presence of the UK-Australia tax treaty.<sup>31</sup>

2.24 The paper recognised that ‘this measure is subject to many influences and it cannot be regarded as definitive’ and that ‘this situation suggests that only more general statements can be made about the relation between the existence of a treaty and investment levels.’<sup>32</sup>

2.25 The Committee understands that the expected cost (about A\$100 million per annum) to revenue of the changes to WHT in the proposed UK treaty will be ‘more than offset by a consequential increase in future corporate taxes and GDP-boosted gains to revenue’,<sup>33</sup> whereas the consequences of maintaining an outdated treaty, which ‘does not comprehensively deal with all the income flows and taxes covered by Australia’s modern double tax treaties’ would be deleterious.<sup>34</sup>

## Mexico

2.26 In the case of the proposed DTA with Mexico, the NIA states that the cost to Commonwealth revenue resulting from the WHT reductions (approximately A\$2 million per annum) is likely to be offset by reductions in Australian tax relief claims for Mexican taxes,

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31 *The Costs and Benefits of the Previous Australia-UK Tax Treaty and Protocol*, tabled at public hearing on 8 September 2003, para 3.

32 *The Costs and Benefits of the Previous Australia-UK Tax Treaty and Protocol*, paras 9 and 10.

33 NIA, para. 6.

34 *The Costs and Benefits of the Previous Australia-UK Tax Treaty and Protocol*, para. 11.

however, the proposed Treaty also has more general benefits of promoting investment and trade flows.<sup>35</sup>

## Ongoing concerns about costs and benefits of DTAs

2.27 The Committee notes the increasing focus on the importance of the international network of taxation treaties, the broad support from business groups such as the BCA and the CTA for the shift in tax policy internationally, and the increasingly detailed efforts by the Department of the Treasury to supply methodologies on the costs and benefit analyses of taxation agreements.

2.28 The Committee also understands the point illustrated by Mr Parker that:

At the very broadest level, if you tax something you tend to depress the level of activity. What tax treaties do, by removing double taxation, is reduce the level of tax on international trade and investment between countries and, therefore, you would expect there to be more of it.<sup>36</sup>

2.29 The Committee has continuing concerns, however, at the broad claims as to the benefits of taxation agreements without demonstration of clear quantifiable reasons as to their success. The Committee expects that the Department of the Treasury will continue with the development of methodologies to demonstrate the costs and benefits of tax treaties more clearly, so that the Australian public are able to clearly see their relevance and importance to increasing Australia's economic prosperity.

## Consultation

2.30 The Committee notes that information was provided regarding both proposed taxation agreements to State and Territory governments through the Commonwealth-State Standing Committee on Treaties' Schedule of Treaty Action, although the proposed treaty applies only to federal taxation.

2.31 Annexure 1 to the proposed agreement with the UK claims that since the Government's acceptance of the Review of Business Taxation

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35 NIA, para. 6.

36 Mr David Parker, *Transcript of Evidence*, 8 September 2003, p. 10.

(RBT - the Ralph Review), the wider business community has been aware that Australia would renegotiate with its major treaty partners, including the United Kingdom. The Committee understands that:

In general, business and industry groups supported the recent US Protocol and encouraged the Government to pursue a similar result in the proposed treaty with the United Kingdom. While some of those consulted recommended going further than the changes negotiated with the recent US Protocol, most recognised the need for both a consistent treaty policy and a degree of moderation in the extent to which Australia can afford to concede taxing rights.<sup>37</sup>

- 2.32 Annexure 1 to the proposed agreement with Mexico states that the treaty was submitted for consideration and review by the Australian Tax Office's advisory panel, comprising industry representatives and tax practitioners. The panel's concerns were addressed and the panel had no objections to the signature of the Agreement.<sup>38</sup>
- 2.33 The Committee was satisfied with the range and outcomes of the consultation processes undertaken by the Department of the Treasury in relation to both of the proposed treaty actions.

## Timing of introduction of legislation

- 2.34 As noted in recent reports by the Committee, the introduction of legislation to allow the provisions of the proposed treaty action to be met has continued to cause concern. The Committee has stated on several occasions that the introduction of legislation prior to the conclusion of the Committee's review has the potential to undermine the operation of the review process for treaties.
- 2.35 The BCA notes in its submission that the relevant legislation, the *International Tax Agreements Amendment Bill 2003*, contains a number of start dates which are relevant to the 2003/04 business cycle. In this instance, while the Committee appreciates that Australian businesses 'need to be given the opportunity to prepare for the changes that come with the treaty and to adjust their systems'<sup>39</sup>, the timing of the

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37 NIA Annexure – Consultations (UK).

38 NIA Annexure – Consultations (Mexico).

39 BCA, *Submission*, p. 2.

tabling of proposed treaty actions and their entry into force should be considered during the negotiation process.

## Concluding observations and recommendations

2.36 The Committee agrees with the conclusion of the Department of the Treasury that the operation of the existing UK tax treaty appears to have had a positive benefit on bilateral investment, but that the treaty has not kept pace with emerging business and tax policy trends, necessitating its renegotiation.<sup>40</sup> The Committee also concurs with the opinion expressed by Mr David Parker that:

The proposed new treaty achieves a balance of outcomes that will provide Australia with a competitive tax framework for international trade and investment while ensuring the Australian revenue base is sustainable and suitably protected.<sup>41</sup>

### Recommendation 1

**The Committee supports the *Convention between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains, done at Canberra on 21 August 2003, and an Associated Exchange of Notes* and recommends that binding treaty action be taken.**

2.37 The Committee also concurs with the view expressed by Mr Parker that:

The proposed Mexican treaty will only have a very small impact on the forward estimates that is likely to be much more than offset by gains to tax revenues from the improved profitability of Australian companies with operations in Mexico.<sup>42</sup>

40 *The Costs and Benefits of the Previous Australia-UK Tax Treaty and Protocol*, para. 17.

41 Mr David Parker, *Transcript of Evidence*, 8 September 2003, p. 3.

42 Mr David Parker, *Transcript of Evidence*, 8 September 2003, p. 5.

**Recommendation 2**

**The Committee supports the *Agreement between the Government of Australia and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, and Protocol, done at Mexico City on 9 September 2002* and recommends that binding treaty action be taken.**

**Recommendation 3**

**Further to comments made at paragraphs 2.34 and 2.35, the Committee recommends that the Government give greater consideration to the timing of the introduction of legislation to bring proposed treaty actions into force, so that the incidence of enabling legislation being introduced prior to the conclusion of the Committee's review is reduced.**

## **Amending Agreement between the European Community and Australia on trade in wine**

### **Introduction**

- 3.1 The purpose of the *Agreement between the European Community and Australia amending the Agreement between Australia and the European Community on Trade in Wine, and Protocol, of 1994* (amending Agreement) is to extend the existing authorisation for the use of cation exchange resins for wine making purposes by one year from '30 June 2003' until '30 June 2004'.
- 3.2 The proposed amending Agreement would enable the continuation of a practice that has been in operation since the signing of the original Agreement in 1994. It would also enable Australia's wine producers to continue using a common practice in the wine industry for exports to the European Union, worth over \$1 billion per year.<sup>1</sup>

### **Background**

- 3.3 Annex I of the bilateral *Agreement between Australia and the European Community on Trade in Wine, and Protocol, of 1994* (1994 Agreement)

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<sup>1</sup> National Interest Analysis (NIA), para. 10.

lists the oenological practices and processes that were approved for wines originating in Australia to be exported into the European Community, and wine from the European Community to be exported into Australia.<sup>2</sup> Point 1(b) of the Annex authorises the use of cation exchange resins, provided that the resins are sufficiently stable not to transfer substances to the wine in quantities which could endanger human health, for the purpose of stabilising Australian wines imported and marketed in the European Community.

- 3.4 Mr Michael Alder, Manager, Wine Policy, Food and Agriculture, from the Department of Agriculture, Fisheries and Forestry, advised the Committee that:

There are no health or safety issues as far as Australia is concerned. The practice of ion exchange is used in the water industry, I believe, in water waste management and so on. It is a practice that is approved in the Food Standards Code in Australia and that has been used for many years. However, it is not a practice that is approved for usage in the commercial wine industry in Europe. It is not so much a matter of health, safety or other issues; they do not like the practice generally and they wish to consider it further before approval.<sup>3</sup>

- 3.5 Further, Mr Alder noted:

as far as I am aware, ion exchange is used in the US, Canada, South America and South Africa. It is a particularly European approach to this practice.<sup>4</sup>

- 3.6 Under the 1994 Agreement, the use of cation exchange resins originally had provisional authorisation until 31 December 1998 to allow for further scientific evaluation and consideration of the practice by the European Community.<sup>5</sup> The date of derogation has been subsequently extended three times to continue enabling Australian producers to use the wine making practice pending permanent agreement by the European Community.<sup>6</sup> It was first extended for one and a half years from 31 December 1998 until 30 June 2000, secondly for a period of one year until 30 June 2001, and lastly for a period of two years until 30 June 2003.<sup>7</sup> The amending

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2 Mr Michael Alder, *Transcript of Evidence*, 15 September 2003, p. 2 and NIA, para. 7.

3 Mr Michael Alder, *Transcript of Evidence*, 15 September 2003, p. 3.

4 Mr Michael Alder, *Transcript of Evidence*, 15 September 2003, p. 4.

5 NIA, para. 7.

6 Mr Michael Alder, *Transcript of Evidence*, 15 September 2003, p. 2.

7 Mr Russell Wild, *Transcript of Evidence*, 15 September 2003, p. 3 and p. 5.

Agreement provides for further extension of the period of authorisation for this particular wine making practice until '30 June 2004'.

- 3.7 The National Interest Analysis (NIA) states that officials of the European Community have informally agreed to the proposed permanent derogation for cation exchange resins for wine stabilisation purposes under the 1994 Agreement.<sup>8</sup> Further, Mr Alder advised the Committee that the delay in obtaining permanent approval for the practice has been political.<sup>9</sup>
- 3.8 The NIA also notes that discussions scheduled for November 2003 will include setting phase-out dates for the use of remaining EU geographical indicators (GI) by Australian producers; arrangements for the protection of EU traditional expressions (TE); the use of GIs and TEs in existing and future trademarks; the use of labelling descriptors by Australian producers and procedures for the approval of current and new oenological practices.<sup>10</sup>

## Entry into force

- 3.9 The NIA states that the meaning of the 1994 Agreement will remain unaffected by these extensions to the derogation and that no new obligations or legislation will be required to implement the proposed treaty action.<sup>11</sup> It further notes that implementation of the amending Agreement will be undertaken as soon as practicable.<sup>12</sup>

## Costs

- 3.10 Mr Michael Alder advised the Committee that there would be no financial costs to Australia as a result of the proposed amending

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8 NIA, para. 18.

9 Mr Michael Alder, *Transcript of Evidence*, 15 September 2003, p. 3.

10 NIA, para. 9.

11 NIA, para. 8.

12 NIA, para. 4.



Agreement. In fact, the NIA stipulates that high costs might be incurred by wine exporters if the treaty action is not ratified.<sup>13</sup>

## Consultation

- 3.11 The Committee noted that regular meetings are held throughout the year between members of the Winemakers' Federation of Australia (WFA), Australian Wine and Brandy Corporation (AWBC) and various government departments to discuss domestic legislative matters, international wine trade issues and also enable preparation for international meetings.<sup>14</sup> Members of the WFA and AWBC are the official representatives on the Australian Delegation for discussions between Australia and the European Commission.<sup>15</sup>
- 3.12 The Consultations Annexure of the NIA states that the Australian wine industry sought extensions for the continued use of cation exchange resins, as it is safer and more cost effective than alternative wine making practices. Subsequently, the Australia wine industry strongly supports the amending Agreement and regards the derogation for cation exchange resins as important for its ability to competitively price wine sold into the European community.<sup>16</sup>
- 3.13 The Committee noted that, as the changes in the amending Agreement are minor, there will be no impact on the States and Territories. Consultation was limited to the extent that no State or Territory was advised or consulted.<sup>17</sup>

## Conclusion and recommendation

- 3.14 The Committee agrees that there are benefits to be gained by extending the date of derogation for the use of cation exchange resins for wine stabilisation purposes for wine exported from Australia to the European Community from '30 June 2003' until '30 June 2004'.

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13 NIA, para. 13.

14 NIA, Annexure - Consultations.

15 NIA, Annexure - Consultations.

16 NIA, para. 10.

17 NIA, para. 14 and Annexure - Consultation.

#### **Recommendation 4**

**The Committee supports the *Agreement between the European Community and Australia amending the Agreement between Australia and the European Community on Trade in Wine, and Protocol, of 1994* and recommends that binding treaty action be taken.**

## **Agreement on the operations and status of personnel deployed to Solomon Islands**

### **Introduction**

- 4.1 The purpose of the *Agreement, done at Townsville on 24 July 2003, between Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa and Tonga concerning the operations and status of the Police and Armed Forces and Other Personnel deployed to Solomon Islands to assist in the restoration of law and order and security* is to provide part of the necessary framework at international law for Australia and other Assisting Countries to deliver assistance to Solomon Islands and restore law and order, security and good governance and provide nation-building assistance.

### **Background**

- 4.2 The Agreement is one of three key documents that provide the legal authority for the operation of the Visiting Contingent, known as the Regional Assistance Mission in Solomon Islands (RAMSI). The first document is the letter dated 4 July 2003 to Prime Minister John Howard from the Solomon Islands Governor-General, His Excellency Father Sir John Ini Lapli, requesting assistance, on the advice of the Solomon Islands Cabinet. The other is the *Facilitation of International Assistance Act 2003* (SI) passed by the Solomon Islands Parliament,

which provides the necessary authority in Solomon Islands domestic law for the activities of RAMSI. Mr William Campbell from the Attorney-General's Department advised the Treaties Committee that the Solomon Islands legislation entered into force on 22 July 2003 and that its terms predominately mirror the provisions of the Agreement.<sup>1</sup>

- 4.3 Mr Campbell further advised that the Agreement, and the other two documents:

have provided a satisfactory basis to this date for the operations of the regional assistance mission since it commenced its operations on 24 July 2003.<sup>2</sup>

## Features of the Agreement

- 4.4 The multilateral Agreement enables Assisting Countries to contribute to the Visiting Contingent of police forces, armed forces and other personnel to Solomon Islands. The Agreement also governs the relationship between the Solomon Islands Government and the Visiting Contingent, the relationship between Assisting Countries and their members of the Visiting Contingent, and establishes the structure and powers afforded to the members of the Visiting Contingent.<sup>3</sup>
- 4.5 Mr Campbell informed the Committee that some of the provisions of the Agreement are similar to other treaties such as those concerning the visiting contingents in Bougainville, while others relate to the particular circumstances and assistance provided in Solomon Islands.<sup>4</sup> For example, some provisions relate to the structure, command and powers of the Visiting Contingent, with its military, police and civilian components, while others concern certain differences in the claims provisions.<sup>5</sup>
- 4.6 The NIA states that the Agreement imposes certain obligations on Assisting Countries, such as:

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1 Mr William Campbell, *Transcript of Evidence*, 15 September 2003, p. 6.

2 Mr William Campbell, *Transcript of Evidence*, 15 September 2003, p. 7.

3 Mr William Campbell, *Transcript of Evidence*, 15 September 2003, pp. 6-7.

4 Mr William Campbell, *Transcript of Evidence*, 15 September 2003, p. 7 and p. 8.

5 Mr William Campbell, *Transcript of Evidence*, 15 September 2003, p. 8.

- consultation with the Government of Solomon Islands over the period of time the Visiting Contingent will be deployed within Solomon Islands
  - consultation with Solomon Islands and other Assisting Countries if a significant number of members of the Visiting Contingent are going to be withdrawn from Solomon Islands
  - compliance within three months with any written request from the Government of Solomon Islands to withdraw personnel from Solomon Islands.<sup>6</sup>
- 4.7 Article 24.4 of the Agreement provides that it will expire on the complete withdrawal of the Visiting Contingent from Solomon Islands.

## The Visiting Contingent

- 4.8 The Committee was interested in the expected duration of Australia's involvement in RAMSI. Mr Graham Fletcher, from the Solomon Islands Task Force, DFAT, advised that the Australian Defence Force will be the first part of the Australian contingent to leave Solomon Islands in the coming months and that:

we are not setting specific deadlines because it is results based – we will not leave until the job is done ... The policing component will be there longer. We want to leave police support there until we are confident that the Royal Solomon Islands Police Force is a credible, effective, sustainable force ... The civilian AusAID type development assistance will be much longer term. We have not put a time line on that but we expect about 10 years of substantial assistance will be required to leave the country in good shape.<sup>7</sup>

- 4.9 Mr Mark Walters from the Australian Federal Police (AFP) advised the Committee that at the time of the public hearing there were 134 AFP and 54 Australian Protective Service officers in Solomon Islands.<sup>8</sup>

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6 National Interest Analysis (NIA), para. 13.

7 Mr Graham Fletcher, *Transcript of Evidence*, 15 September 2003, p. 9.

8 Mr William Campbell, *Transcript of Evidence*, 15 September 2003, p. 11.

- 4.10 Mr Walters reported that a gun amnesty and operation to seize weapons and ammunition had been successful. As at 15 September 2003, 3 627 weapons had been seized by or surrendered to the participating police force, and of which, 878 had been destroyed.<sup>9</sup> Mr Walters advised that the type of weapons seized had been quite diverse, ranging from homemade weapons to high-calibre weapons.

## Consultation

- 4.11 Mr Campbell advised the Committee that the Agreement had been prepared by the Attorney-General's Department, in consultation with the DFAT, the AFP and the Australian Defence Force. Furthermore, the Attorney-General's Department had:

had a number of discussions, both over the telephone and in person, with the Attorney-General for the Solomon Islands and we also had a good deal of discussion, both over the phone and through email, with New Zealand over the content of the agreement. The agreement was circulated, I believe, through posts to other countries prior to its signature, so they had the opportunity to make comment on it.<sup>10</sup>

- 4.12 Annexure 1 of the NIA states that it was not possible to consult extensively within Australia prior to the Agreement's entry into force. The Committee was advised however that the departments of the State and Territory Premiers and Chief Ministers had been notified by DFAT according to the Commonwealth-State-Territory Committee on Treaties process.<sup>11</sup>

## Costs

- 4.13 The NIA states that Article 16.4 of the Agreement establishes that Assisting Countries are responsible for the salary, allowances, removal expenses, costs of transport to Solomon Islands, and medical and dental expenses of members of the Visiting Contingent.<sup>12</sup>

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9 Mr Mark Walters, *Transcript of Evidence*, 15 September 2003, p. 16.

10 Mr William Campbell, *Transcript of Evidence*, 15 September 2003, p. 8.

11 NIA Annexure 1 - Consultations.

12 NIA, para. 25.

## Entry into force

- 4.14 At the time of the public hearing, 16 Pacific states had signed the Agreement, which had entered into force for six states, namely Australia, Fiji, Kiribati, New Zealand, Solomon Islands and Tonga.<sup>13</sup> The other 14 states had not issued the required notification for entry into force.
- 4.15 The NIA states that no legislation was required to implement Australia's obligations under the Agreement.<sup>14</sup> The NIA also notes that amendments being introduced to the *Crimes (Overseas) Act 1964* will, among other matters, ensure that Australia is able to exercise criminal jurisdiction over its members of the Visiting Contingent.<sup>15</sup>

## National Interest Exception provision

- 4.16 Generally, after treaties have been signed for Australia they are tabled in both Houses of Parliament for at least 15 sitting days prior to binding treaty action being taken. During this period the Committee normally reviews the proposed treaty action and presents its conclusions and recommendations to the Parliament.
- 4.17 Where it is in Australia's national interest to proceed with an urgent treaty action, however, the 15 or 20 sitting day tabling requirement may be varied or waived. The National Interest Exception provision was invoked in relation to the Agreement concerning the Regional Assistance Mission in Solomon Islands.
- 4.18 The Minister for Foreign Affairs and Trade, the Hon Alexander Downer, MP, advised the Committee of the urgent need for the Agreement to be in force to enable Australia to deploy its members of RAMSI on 24 July 2003. The Agreement was subsequently tabled on 9 September 2003.<sup>16</sup>

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13 Mr Damien White, *Transcript of Evidence*, 15 September 2003, p. 7 and p. 8.

14 NIA, para. 23.

15 NIA, para. 23.

16 *Senate Journal*, 9 September 2003, p. 2309 and *House of Representatives Votes and Proceedings*, 9 September 2003, p. 1142.

## Conclusions

- 4.19 The Committee supports the Agreement, which provides part of the framework at international law for Australia and other Assisting Countries to deliver assistance to Solomon Islands.
- 4.20 The Committee acknowledges the urgent need for the Agreement to enter into force on or before 24 July 2003, when the RAMSI was deployed, and prior to the treaty action being tabled in Parliament and parliamentary consideration of the Agreement.



## **International Labor Organization Convention No. 155: Occupational Safety and Health**

### **Introduction**

- 5.1 The purpose of *International Labour Organization Convention No. 155: Occupational Safety and Health, 1981* (the Convention) is to ensure ratifying states formulate, implement and periodically review a coherent national policy on occupational safety and health in the work environment following consultation with the most representative organisations of employers and workers. The aim of the policy is to prevent workplace accidents and injury to health by minimising, as far as possible, the causes of hazards inherent in the work environment.
- 5.2 Ratification of the Convention will demonstrate that Australian governments are committed to ensuring the safety of people at work, and maintaining proper laws and practices for achieving such safety.<sup>1</sup>

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1 Mr Rex Hoy, *Transcript of Evidence*, 15 September 2003, p. 17.

## Background

- 5.3 The National Interest Analysis (NIA) states that the International Labour Organization (ILO) adopted Convention No. 155 on 22 June 1981 and that it entered into force generally on 11 August 1983. The Committee was advised at the public hearing held on 15 September 2003 that 40 countries had ratified the Convention.<sup>2</sup>
- 5.4 The Commonwealth Government brought about compliance at that level with Convention No. 155 soon after 1983. Mr John Rowling from the Department of Employment and Workplace Relations advised the Committee that in 1985 the Commonwealth Government introduced the *National Occupational Health and Safety Commission Act 1985*, establishing the National Occupational Health and Safety Commission, and the required national structures in relation to the Convention.<sup>3</sup> In 1991 and 1993, the Australian Government also introduced legislation in relation to Commonwealth employees and seafarers in compliance with the Convention.<sup>4</sup>
- 5.5 State and Territory governments formally agreed to ratify the Convention over a period of twelve years between 1989 and 2001. Western Australia was the first to agree in 1989 and New South Wales was the last to formally comply in 2001.<sup>5</sup> During this time, the Convention was considered at the meetings of Australian, State and Territory officials responsible for ILO matters.<sup>6</sup> Mr Rex Hoy, from the Department of Employment and Workplace Relations, advised the Committee that the 12 year time-frame was the result of State and Territory governments bringing their legislation into compliance with the Convention.<sup>7</sup>
- 5.6 In May 2002, the National Occupational Health and Safety Commission released the *National OHS Strategy 2002-2012*. The Strategy commits Commonwealth, State and Territory governments, industry, the Australian Council of Trade Unions (ACTU) and the Australian Chamber of Commerce and Industry (ACCI) to work together on national priorities to improve occupational health and

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2 Mr Rex Hoy, *Transcript of Evidence*, 15 September 2003, p. 17.

3 Mr John Rowling, *Transcript of Evidence*, 15 September 2003, p. 19.

4 *Occupational Health and Safety (Commonwealth Employment) Act 1991*, and *Occupational Health and Safety (Maritime Industry) Act 1993*.

5 National Interest Analysis (NIA) Annexure 1 - Consultations.

6 NIA Annexure 1 - Consultations.

7 Mr Rex Hoy, *Transcript of Evidence*, 15 September 2003, pp. 17-18.

safety and to meet minimum national targets for reducing the incidence of work-related fatalities (a reduction of a least 20% by 30 June 2012) and workplace injuries (a reduction of at least 40% by 30 June 2012).<sup>8</sup> The National OHS Strategy will be periodically reviewed and evaluated, in accordance with the Convention.

5.7 Annexure 1 of the NIA states that at the meeting of the Workplace Relations Ministers' Council in March 2003, all governments agreed to support ratification of the Convention, subject to the International Labour Conference in June 2003 reconfirming the Convention in substantially the same terms. The Conference Committee on Occupational Safety and Health subsequently endorsed the up-to-date status of the Convention.

5.8 The Committee was advised that Australia is one of the leaders in occupational health and safety performance compared to the 40 countries that have ratified the Convention, notwithstanding that Australia has not ratified as yet. Mr Hoy observed, however, that ratification would serve:

to underline Australia's determination to improve occupational health and safety outcomes and to achieve the targets set with the agreement of the states and territories, business and unions in the National Occupational Health and Safety Strategy 2002-12.<sup>9</sup>

## Features of the Convention

5.9 The Convention:

- moves from prescriptive, industry-specific regulation, to a legislative framework covering all employers, employees and workplaces
- imposes general duties on employers, employees and others to ensure workplace safety
- establishes workplace arrangements for employee participation in safety issues.<sup>10</sup>

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8 <http://www.nohsc.gov.au/nationalstrategy/>

9 Mr Rex Hoy, *Transcript of Evidence*, 15 September 2003, p. 17.

10 NIA, para. 8.

- 5.10 The NIA states that Articles 4 to 7 define the main areas of action in the national policy, identifying detailed provisions concerning action at the national level and that of the workplace. Article 11 of the Convention requires the progressive implementation of certain functions as part of the national policy, namely:
- the determination of conditions governing the design, construction, layout and safety of workplaces
  - the determination of prohibited work processes and substances
  - the establishment of procedures for the notification of industrial accidents and diseases by employers and insurers and the production of annual statistics
  - the holding of inquiries into serious occupational accidents
  - the annual publication of information on measures taken in pursuance of the national policy.<sup>11</sup>

## Costs

- 5.11 The NIA states that there are no additional costs associated with the ratification of the Convention, as Australian law and practice already complies with the provisions of the Convention.<sup>12</sup>

## Consultations

- 5.12 The NIA states that all State and Territory governments have been consulted and support the proposed treaty action. Further, Mr Hoy advised the Committee that the ACCI and ACTU, which are Australia's most representative organisations of employers and workers for the ILO's purposes, have been consulted and support the Convention.<sup>13</sup>

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11 NIA, para. 11.

12 NIA, para. 19.

13 Mr Rex Hoy, *Transcript of Evidence*, 15 September 2003, p. 18.

## Entry into force

- 5.13 Implementation of obligations under the Convention in Australia lies partly with the Commonwealth, and primarily with the State and Territory governments, as the latter are responsible for regulating and enforcing workplace health and safety.
- 5.14 The NIA states that law and practice at Commonwealth, State and Territory levels of government are consistent with Australia's obligations under the Convention.<sup>14</sup> Therefore there are no additional legislative requirements that would result following ratification of the proposed treaty action.
- 5.15 ILO Convention No. 155 would enter into force 12 months after the date on which Australia's instrument of ratification is registered with the Director-General of the International Labour Office.<sup>15</sup>

## Conclusions and Recommendation

- 5.16 The Committee notes that ILO Convention No. 155 is supported by Commonwealth, State and Territory governments and representative organisations of employers and workers, and that ratification would demonstrate Australian government's commitment to the occupational health and safety of Australians.

### Recommendation 5

**The Committee supports the *International Labour Organization Convention No. 155: Occupational Safety and Health, 1981*, and recommends that binding treaty action be taken.**

14 NIA, para. 16 and Annexure 1 - Consultations.

15 NIA, para. 4.

## Stockholm Convention on Persistent Organic Pollutants (POPs)

### Introduction

- 6.1 Persistent Organic Pollutants (POPs) are chemicals that are toxic, persist in the environment and animals, bioaccumulate through the food chain, and pose a risk of causing adverse effects to human health and the environment even at low concentrations.<sup>1</sup>
- 6.2 According to the Regulation Impact Statement (RIS), the objective of the *Stockholm Convention on Persistent Organic Pollutants (POPs)*, done at Stockholm on 22 May 2001, is to protect human health and the environment from the effects of POPs. The Convention sets out a range of control measures to reduce and, where feasible, eliminate POPs releases. It focuses on three broad areas: intentionally produced and used POPs, unintentionally produced or by-product POPs, and POPs in stockpiles and wastes.<sup>2</sup>
- 6.3 The Treaty is one of three conventions developed under the auspices of the United Nations Environment Program, which together form an international framework to manage hazardous chemicals through

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1 National Interest Analysis (NIA), para. 9.

2 NIA, para. 6; Regulation Impact Statement (RIS), p. 1.

their life cycles.<sup>3</sup> The Committee was advised that these treaties are all related to each other.

- 6.4 The Committee was advised that the adoption of the Stockholm Convention was significant in developing an international approach to manage hazardous chemicals. The Committee understands that while this Convention was not the first to contain obligations aimed at eliminating or restricting certain chemicals or the release of chemicals as by-products, it was the first that did so for reasons associated with their conventional use as chemicals.<sup>4</sup>

## Objectives of the Convention

- 6.5 The Stockholm Convention will cover control measures on 12 POPs, which were identified for international action because of their persistence, bioaccumulation, long-range dispersion and toxicity.
- 6.6 The Committee was advised that ratification of this treaty would 'augment and complement existing domestic controls of POPs'.<sup>5</sup> The Committee heard that 'the development of a legally binding agreement was seen as the most effective way of reducing the impact of these chemicals on remote areas well away from their source of origin.'<sup>6</sup>
- 6.7 Further to paragraph 6.1 above, the Committee understands that POPs have been linked to adverse effects on human health such as cancer, damage to the nervous system, reproductive disorders and disruption of the immune system. Australia has ceased to produce, import or use nine of the ten *intentionally* produced POPs covered by the treaty. The Treaty will initially cover control measures on 12 POPs listed in Annexes A, B and C. Under Article 8, further chemicals may be added to the Treaty.

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3 Mr Mark Hyman, *Transcript of Evidence*, 15 September 2003, p. 24. The other two conventions are the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their disposal*, and the Convention discussed in the next chapter: the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*.

4 Mr Mark Hyman, *Transcript of Evidence*, 15 September 2003, p. 24.

5 NIA, para. 12.

6 Mr Mark Hyman, *Transcript of Evidence*, 15 September 2003, p. 24.

## Australian initiatives to reduce POPs

- 6.8 The NIA outlines several initiatives taken by Australia and other countries to reduce and eliminate POPs, including:
- banning the production, importation and use of POPs
  - cancelling registration approval of eight pesticide POPs listed in the Convention thereby preventing use and controlling imports of seven of the listed POPs
  - establishing national plans to remove and destroy POPs
  - implementing a national program to address dioxin and furan by-product POPs.

## Chemicals covered under the treaty and the 'precautionary principle'

- 6.9 Scientific information and chemical names were provided in the written material presented to Parliament, and also at the public hearing on 15 September 2003. The Committee was advised that specific criteria (relating to persistence, bio-accumulation, potential for long-range environment transport) for selection of chemicals to be included in the Convention is at Annex D.
- 6.10 The Committee had continuing concerns which have arisen in relation to similar treaties; namely the use of the precautionary principle to govern behaviour, rather than, for example: 'best scientific practice'. Mr Mark Hyman, from the Department of the Environment and Heritage, advised that the decision whether to reference the precautionary principle, and if so, how, was one of the more controversial issues during the negotiation of the treaty. Although the Committee has some concerns that the continuing use of the 'precautionary principle' in treaties similar to this one potentially clouds the legal issues involved in scientific determination, Mr Hyman's assurances about the 'multiplicity of steps' before a chemical can be brought forward and included under the treaty's terms will be a sufficient safeguard in this case.<sup>7</sup>
- 6.11 The Committee accepts the chemicals identified to date and will be pleased to be advised of any amendments to the Convention under Article 8 in due course.

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<sup>7</sup> Mr Mark Hyman, *Transcript of Evidence*, 15 September 2003, p. 30.



## Australia's registration of mirex as an exemption

- 6.12 The NIA and RIS state that the tenth intentionally produced POP covered by the convention is mirex, which is currently the only pesticide effective in controlling the giant termite, endemic to tropical areas in Northern Australia. The RIS states that the pesticide is used in small quantities as bait and that no waste is generated by its use. The Committee understands that on these grounds, Australia has registered an exemption for the continued use of mirex, while research is underway to find an alternative to this product. The Committee understands that it is envisaged that once a suitable substance has been identified, the exemption would be withdrawn.
- 6.13 The consultations annex also states that ratification was supported by the NT Government, subject to the registration for the continued use of mirex as a termiticide. The Committee understands that the NT Government noted the five-year expiration and advised that research into an alternative to mirex is underway, noting its confidence that a suitable outcome would be achieved in the timeframe.<sup>8</sup>

## Costs

- 6.14 The Committee sought clarification on the level of costs associated with the proposed treaty action, as it was advised that while Australia has a strong commitment to implementing the scope of the treaty in a domestic sense already, additional costs are advised to be approximately \$540 000 in the first year and \$450 000 in following years. The RIS explains these costs at paragraph 3.2.2:
- Australian ratification of the Convention would involve additional domestic costs incurred through annual assessed contributions, preparation for meetings and Conference of the Parties, development of plans and information activities, administration, salaries and amendments to legislation.<sup>9</sup>
- 6.15 Mr Hyman explained that the Department of the Environment and Heritage has been conducting the National Dioxins Program, which will work on the development of a national plan on by-products.<sup>10</sup> Mr Hyman also explained that while the costs could be misleading (given

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8 NIA Annexure – Consultations.

9 RIS, paragraph 3.2.2.

10 Mr Mark Hyman, *Transcript of Evidence*, 15 September 2003, p. 26.

that Australia already has banned manufacture of some chemicals), it was also important to remember for POPs that 'you may need to monitor their presence in the environment for an extended period'.<sup>11</sup>

## Consultation

- 6.16 The Committee understands that views were sought from interested and affected parties, including State and Territory governments, industry, non-government environmental organisations and the general public.

## Implementation by states and territories

- 6.17 The Queensland Government in its submission raised concerns about the adequacy of existing regulatory measures and the possible cost impacts for its government. Queensland suggests that costs can be anticipated for States in relation to the development of the national action plan, risk assessment activity and potentially expensive dioxin emission measurement as well as any new regulatory measures.
- 6.18 The Committee suggests that in this instance the option of the establishment of a negotiating forum be explored, in order to clarify concerns of State and Territory bodies. Such a body may serve to enhance the existing Standing Committee on Treaties Arrangements as may be required in the particular case of this treaty.

## Concluding observations and recommendations

- 6.19 The Committee commends the work of the Department of the Environment and Heritage for the thorough documentation it provided, especially on issues of consultation. The RIS and Consultations Annex provides a list of the parties consulted and also a summary of these comments. The Committee was pleased by the range of organisations contacted in the negotiation process for this treaty and the manner in which the information was presented. It hopes that other departments will follow the fine example set by the Department of the Environment and Heritage in this case.

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11 Mr Mark Hyman, *Transcript of Evidence*, 15 September 2003, p. 27.

- 6.20 The Committee concurs with the view expressed in the NIA that the treaty will assist in protecting the health and environment of Australians from the adverse effects of POPs, as well as enhance Australia's capacity to influence international efforts and assist other countries to adopt and maintain sound chemicals management programs. The Committee also supports the view expressed in the NIA and in the submission from the Queensland Government that ratification of the treaty would help maintain Australia's reputation as a supplier of products which are 'clean and green'.<sup>12</sup>

#### **Recommendation 6**

**The Committee recommends that the Government, in consultation with relevant parties, consider the formation of a negotiating forum, of a size and management as may be appropriate, to include State and Territory governments, in order to address concerns raised by the Queensland Government in its submission.**

#### **Recommendation 7**

**The Committee supports the *Stockholm Convention on Persistent Organic Pollutants, done at Stockholm on 22 May 2001*, and recommends that binding treaty action be taken.**

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<sup>12</sup> NIA, para. 13; Queensland Government, *Submission*, p. 4.

## Rotterdam Convention — Notification of Certain Hazardous Chemicals and Pesticides

### Introduction

7.1 The purpose of the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, done at Rotterdam on 10 September 1998* is to promote shared responsibility and cooperative efforts among parties in the international trade of certain hazardous chemicals in order to protect human health and the environment. As stated in the introduction to the previous chapter of this report, the Treaty is one of three conventions developed under the auspices of the United Nations Environment Program, forming an international framework to manage hazardous chemicals through their life cycles.<sup>1</sup>

7.2 According to the National Interest Analysis (NIA), the Rotterdam Convention aims to:

facilitate information exchange between Parties on hazardous industrial chemicals and pesticides.<sup>2</sup>

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1 Mr Mark Hyman, *Transcript of Evidence*, 15 September 2003, p. 24. The other two conventions are the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their disposal*, and the Convention discussed in the previous chapter: the *Stockholm Convention on Persistent Organic Pollutants (POPs)*.

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

- 7.3 A *voluntary* Prior Informed Consent (PIC) procedure has operated since 1989, through the UN Food and Agricultural Organization and the UN Environment Program. This treaty was adopted by a diplomatic conference in September 1998 and it was agreed that a revised voluntary PIC procedure should continue until the treaty entered into force. Australia signed the treaty in 1999, and has participated in the interim PIC procedure to date.<sup>3</sup>
- 7.4 The Committee heard that, as an information-sharing forum, the interim procedure was regarded as successful, 'but as a system that would benefit from carrying with it the force of international law in terms of encouraging wider compliance and a greater degree of participation.'<sup>4</sup>

## Functions and coverage of the treaty

- 7.5 According to the terms of the treaty, information is exchanged on the Parties' import and export decisions and health and safety data on the hazardous industrial chemicals and pesticides listed in Annex III of the treaty. The NIA states that it is also expected that chemicals added under the interim procedure will be listed on Annex III at the first Conference of the Parties.
- 7.6 The Committee understands that the Convention applies to banned or severely restricted chemicals, and severely hazardous pesticide formulations. It does not apply to narcotic drugs, psychotropic substances, radioactive materials, wastes, chemical weapons, pharmaceuticals (including human and veterinary drugs), chemicals used as food additives, food, or small quantities of chemicals (not likely to affect human health or the environment) which are imported for research, analysis or personal use.<sup>5</sup>
- 7.7 The Committee understands from the NIA that some benefits of ratification would be:
- to increase Australia's access to information on hazardous chemicals

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3 NIA, para. 8.

4 Mr Mark Hyman, *Transcript of Evidence*, 15 September 2003, p. 33.

5 Article 3: 'Scope of the Convention'

- to provide a mechanism to help countries, particularly developing Pacific Island states to adopt and maintain sound chemical management
- to demonstrate Australia's commitment to supporting effective and balanced approaches to global cooperation on the environment.<sup>6</sup>

## Implementation of the treaty

- 7.8 The Committee was advised that implementation of the Convention requires the cooperation of several agencies.<sup>7</sup> Australia has separate schemes for the regulation of pesticides and industrial chemicals. According to the NIA, pesticides are regulated by legislation through the National Registration Scheme for Agricultural and Veterinary Chemicals (NRS). Industrial chemicals are regulated through the National Industrial Chemicals Notification and Assessment Scheme (NICNAS, an agency within the Department of Health and Ageing) under separate legislation. Australia currently implements the interim PIC procedure which does not include the obligation under the treaty relating to export controls.<sup>8</sup>
- 7.9 The Committee understands that responsibility for implementation of the treaty will belong particularly to the Department of the Environment and Heritage (as the designated national authority – DNA – for industrial chemicals) and the Department of Agriculture, Fisheries and Forestry (as the DNA for pesticides). Coverage for export obligations under the treaty would require changes to regulations under the *Customs (Prohibited Exports) Regulations 1958*, and the *Industrial Chemicals (Notification and Assessment) Act 1989*.<sup>9</sup>

## Costs

- 7.10 Costs are specified in the RIS at paragraph 4.2.2. The Committee understands that the cost to Australia will be approximately \$500 000

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6 NIA, para. 7.

7 Mr Mark Hyman, *Transcript of Evidence*, 15 September 2003, p. 32.

8 NIA, para. 23.

9 RIS, para. 4.3 and NIA, paras 23-26.

per annum. As many of the chemicals covered by the treaty are no longer used in Australia, there are no additional costs foreseen for importers of chemicals and few companies are expected to export chemicals covered by the Convention.

## Consultation

- 7.11 The NIA and RIS for this proposed treaty action was prepared by the Department of Environment and Heritage. As noted in the previous chapter of this report, the Committee appreciates the detailed comments provided on the results of their consultation process. The Committee is satisfied with the range of consultations conducted.
- 7.12 The Committee heard that ‘the Convention is widely supported both within Australia and by overseas countries, including our major trading partners.’<sup>10</sup>
- 7.13 The Queensland Government, in its submission to the Committee, recognised that the proposed ratification of this Convention does not change the existing roles and responsibilities between the State and the Commonwealth on the management of hazardous chemicals:

The costs associated with implementing the Convention’s obligations are not considered to be significant as importers and exporters of hazardous chemicals are already operating under an interim procedure consistent with the Convention.<sup>11</sup>

## Concluding observations and recommendation

- 7.14 The Committee concurs with the view expressed by Mr Hyman at the public hearing on 15 September 2003:

that ratification would strengthen (our) existing domestic systems which protect the environment and human health of Australia and Australians and enhance our capacity to influence international efforts to address chemical issues.<sup>12</sup>

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10 Mr Mark Hyman, *Transcript of Evidence*, 15 September 2003, p. 33.

11 Queensland Government, *Submission*, p. 1.

12 Mr Mark Hyman, *Transcript of Evidence*, 15 September 2003, p. 33.

### **Recommendation 8**

**The Committee supports the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, done at Rotterdam on 10 September 1998*, and recommends that binding treaty action be taken.**



# Amendments to the International Convention for Regulation of Whaling

## Introduction

- 8.1 The purpose of the *Amendments, done at Berlin, Germany on 19 June 2003, to the Schedule to the International Convention for Regulation of Whaling, done at Washington on 2 December 1946* is to maintain the moratorium on commercial whaling that came into force from the 1986 coastal and 1985/86 pelagic seasons.
- 8.2 The Schedule is an integral part of the Convention, and is amended from time to time in accordance with Article V to take account of decisions of the International Whaling Commission (IWC).<sup>1</sup>
- 8.3 The amendments done at the 55<sup>th</sup> annual meeting of the IWC held in Berlin from 16 to 19 June 2003, substitute the dates for the coming year on commercial whale catch limits, which are set at zero in accordance with sub-paragraph 10(e) of the Schedule.<sup>2</sup> The amendments substitute the dates '2003/2004' in place of '2002/2003', and '2004' in place of '2003' in paragraphs 11 and 12, and Tables 1, 2 and 3 of the Schedule. Dr Conall O'Connell, Australian Commissioner, International Whaling Commission and Acting Deputy Secretary, Department of the Environment and Heritage, advised the Committee that these are annual technical amendments

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1 National Interest Analysis (NIA), para. 2.

2 NIA, para. 8.

which maintain the moratorium on commercial whaling<sup>3</sup> as well as the currency of the Schedule.<sup>4</sup>

## Background

- 8.4 The *International Convention for the Regulation of Whaling, 1946* is a multilateral treaty that regulates the conservation and utilisation of whale stocks. The initial focus of the Convention was to ensure international control of post-war development of the commercial whaling industry. More recently the IWC, established under the Convention, has been a more effective vehicle for some major conservation measures, such as the 1982 decision to implement a moratorium on commercial whaling.<sup>5</sup> The IWC currently has 51 member countries.<sup>6</sup>
- 8.5 Australia has been a Contracting Government to the Convention since it came into force in 1948 and a strong opponent of commercial whaling since it accepted the recommendations of the Independent Inquiry into Whales and Whaling in 1979.<sup>7</sup> The NIA states that the amendments correspond with Australia's position to pursue a permanent international ban on commercial whaling.
- 8.6 The *Environment Protection and Biodiversity Conservation Act 1999* prohibits the killing, injuring or interfering with whales in Australian waters (including to the outer limits of the Exclusive Economic Zone), and provides a higher level of protection to whales than under the Convention.<sup>8</sup>

## Consultation

- 8.7 The Committee noted that the Department of Environment and Heritage convenes a number of consultative meetings with NGOs and other government departments prior to each annual meeting of the

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3 Dr Conall O'Connell, *Transcript of Evidence*, 15 September 2003, p. 37.

4 NIA, para. 8.

5 NIA, para. 9.

6 <http://www.iwcoffice.org/iwc.htm#Members>

7 NIA, para. 7.

8 NIA, para. 11.

IWC to canvass views on Commission issues.<sup>9</sup> The three meetings held in October 2002, February 2003 and May 2003 were attended by representatives from Environment Australia (now known as the Department of Environment and Heritage), Department of Foreign Affairs and Trade, Australian Conservation Foundation, Greenpeace, Human Society International, International Fund for Animal Welfare, Project Jonah, Royal Society for the Prevention of Cruelty to Animals, Whale and Dolphin Conservation Society and Whale and Dolphin Watch Australian Inc.<sup>10</sup>

- 8.8 Annexure 1 of the NIA noted that the consultative meetings forum elected representatives of two NGOs to participate as members of the Australia delegation in 2003. A report from the delegation is made available to NGOs, government departments, scientists and institutions following the annual meetings.<sup>11</sup>

## Automatic entry into force

- 8.9 Under the Convention, amendments enter into force on the expiration of 90 days following formal notification of the changes by the IWC, unless a Contracting Government lodges an objection. In the event that an objection is lodged during the 90 day period (in this instance before 30 September 2003), the amendments would not come into force for any Contracting Governments for an additional ninety days (29 December 2003).<sup>12</sup> Subsequently the amendments become binding for Contracting Governments that did not lodge objections.
- 8.10 Australia did not lodge an objection concerning the Amendments to the Schedule to the Convention. However, Norway lodged objections and has exercised its right to set its national catch limit for its coastal whaling operations for minke whales. Dr O'Connell advised that the Norwegians:

claim that it is traditional, but it is not simply on the basis of tradition. They have a reservation to the moratorium, so they continue to pursue it on the basis that they believe their take is sustainable.<sup>13</sup>

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9 NIA Annexure 1 - Consultations.

10 NIA Annexure 1 - Consultations.

11 NIA, para. 14.

12 NIA, para. 5.

13 Dr Conall O'Connell, *Transcript of Evidence*, 15 September 2003, p. 39.

- 8.11 This means that the amendments would enter into force for Contracting Governments on 29 December 2003.

## Costs

- 8.12 The proposed amendments to the Schedule will not add to Australia's obligation under the Convention, require any additional measures or impose any additional costs to Australia.<sup>14</sup>

## Conclusion and recommendation

- 8.13 The Committee acknowledges that the amendments are routine and do not impose any additional costs or obligations on Australia. Furthermore, the Committee continues to support the maintenance of the moratorium on commercial whaling under the *International Convention for Regulation on Whaling, 1946*.

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### Recommendation 9

**The Committee supports the *Amendments, done at Berlin, Germany on 19 June 2003, to the Schedule to the International Convention for Regulation of Whaling, done at Washington on 2 December 1946.***

Hon Julie Bishop MP  
Chair

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<sup>14</sup> NIA, paras 11-13.



## **Appendix A – Submissions**

- 1 Australian Patriot Movement
- 1.1 Australian Patriot Movement (Supplementary)
- 1.2 Australian Patriot Movement (Supplementary)
- 1.3 Australian Patriot Movement (Supplementary)
- 1.4 Australian Patriot Movement (Supplementary)
- 1.5 Australian Patriot Movement (Supplementary)
- 1.6 Australian Patriot Movement (Supplementary)
- 1.7 Australian Patriot Movement (Supplementary)
- 2 Business Council of Australia
- 3 Queensland Government



## **Appendix B – Witnesses**

**Monday, 8 September 2003 – Canberra**

**Attorney-General's Department**

Mr Greg Manning, Principal Legal Officer, Public International Law Branch, Office of International Law

**Department of Foreign Affairs and Trade**

Ms Margaret Adamson, Assistant Secretary, European Union and Western Europe Branch

Mr Alan Fewster, Executive Director, Treaties Secretariat, Legal Branch

Mr Michael Kourteff, Executive Officer, Americas Branch

Mr Russell Wild, Executive Officer, International Law and Transnational Crime Section, Legal Branch

**Department of the Treasury**

Mr Paul McBride, Unit Manager, Tax Treaties Unit, International Tax and Treaties Division, Revenue Group

Mr David Parker, General Manager, International Tax and Treaties Division, Revenue Group

Mr Allan Partington, Senior Adviser, Costings and Quantitative Analysis Unit, Tax Analysis Division

Mrs Ariane Pickering, Specialist Adviser, Tax Treaties, International Tax and Treaties Division, Revenue Group

## **Monday, 15 September 2003 – Canberra**

### **Attorney-General's Department**

Dr Marie Wynter, Acting Principal Legal Officer, Office of International Law

Mr William Campbell, General Counsel (International Law)

### **Australian Federal Police**

Mr Mark Walters, Director International Operations and Acting General Manager International

### **Department of Agriculture Fisheries and Forestry**

Mr Michael Alder, Manager, Wine Policy, Food and Agriculture

Mr André Mayne, Senior Manager, Agricultural and Veterinary Chemicals, Product Safety and Integrity Branch, Product Integrity Plant and Animal Health

### **Department of Employment and Workplace Relations**

Mr Rex Hoy, Group Manager, Workplace Relations Policy Group

Mr John Rowling, Assistant Secretary, Safety, Compensation and International Branch

### **Department of the Environment and Heritage**

Dr Conall O'Connell, Acting Deputy Secretary, Department of Environment and Heritage; and Commissioner, International Whaling Commission

Mr Mark Hyman, Assistant Secretary, Environment Protection Branch

### **Department of Foreign Affairs and Trade**

Mr Alan Fewster, Executive Director, Treaties Secretariat, Legal Branch

Mr Graham Fletcher, Assistant Secretary, Solomon Islands Task Force

Mr Peter Heyward, Assistant Secretary, Environment Branch,  
International Organisations and Legal Division

Ms Sarah Kenney, Environmental Strategies Section, Environment  
Branch, International Organisations and Legal Division

Mr Arthur Spyrou, Executive Officer, Environment Strategies Section,  
Environment Branch

Mr Damian White, Executive Officer, Legal Branch

Mr Russell Wild, Executive Officer, International Law and  
Transnational Crime Section, Legal Branch

**Department of Health and Ageing**

Dr Sneha Satya, Senior Manager, Existing Chemicals, National  
Industrial Chemicals Notification and Assessment Scheme, Office of  
Chemical Safety, TGA Group of Regulators