

# Report 127

## **Treaties tabled on 20 March and 8 May 2012**

Fifth Agreement to Extend the 1987 Regional Cooperative Agreement for Research, Development and Training related to Nuclear Science and Technology done at Bali on 15 April 2011

Exchange of Notes, done at Canberra on 9 December 2011, constituting an Agreement between Australia and the United States of America to Amend and Extend the Agreement on Cooperation in Defense Logistics Support, done at Sydney on 4 November 1989

Convention on Mutual Administrative Assistance in Tax Matters, done at Strasbourg on 25 January 1988 (Text amended by the provisions of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, which entered into force on 1 June 2011)

© Commonwealth of Australia 2012

ISBN 978-0-642-79778-0 (Printed version)

ISBN 978-0-642-79779-7 (HTML version)

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia License.



The details of this licence are available on the Creative Commons website: <http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.



# Contents

Membership of the Committee .....	v
Resolution of Appointment .....	vii
List of recommendations .....	viii
<b>1 Introduction</b>	
Purpose of the report.....	1
Conduct of the Committee's review .....	2
<b>2 Fifth Agreement to Extend the 1987 Regional Cooperative Agreement for Research, Development and Training related to Nuclear Science and Technology done at Bali on 15 April 2011</b>	
Introduction .....	5
Background .....	5
National interest summary .....	7
Reasons for Australia to take the proposed treaty action .....	8
Obligations .....	10
Implementation.....	11
Costs.....	12
Further issues .....	12
The Fukushima disaster.....	12
Conclusion .....	13

---

<b>3</b>	<b>Exchange of Notes, done at Canberra on 9 December 2011, constituting an Agreement between Australia and the United States of America to Amend and Extend the Agreement on Cooperation in Defense Logistics Support, done at Sydney on 4 November 1989</b>	
	Introduction .....	15
	Background .....	15
	National interest summary .....	16
	Reasons for Australia to take the proposed treaty action .....	17
	Obligations .....	17
	Implementation.....	20
	Costs .....	21
	Conclusion .....	21
<b>4</b>	<b>Convention on Mutual Administrative Assistance in Tax Matters, done at Strasbourg on 25 January 1988 (Text amended by the provisions of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, which entered into force on 1 June 2011)</b>	
	Introduction .....	23
	Background .....	23
	National interest summary .....	24
	Reasons for Australia to take the proposed treaty action .....	25
	Obligations .....	26
	Implementation.....	29
	Costs .....	30
	Conclusion .....	31
	Dissenting Report—Australian Greens .....	33
	Appendix A – Submissions .....	39
	Appendix B – Witnesses.....	41



## Membership of the Committee

Chair            Mr Kelvin Thomson MP

Deputy Chair   Senator Simon Birmingham

Members        Mr Jamie Briggs MP

Senator David Fawcett

Mr Laurie Ferguson MP

Senator Scott Ludlam

Mr John Forrest MP

Senator the Hon Lisa Singh

Ms Sharon Grierson MP

Senator Dean Smith  
*(from 9/5/12)*

Mr Harry Jenkins MP

Senator Matthew Thistlethwaite

Ms Kirsten Livermore MP

Senator the Hon Lin Thorp  
*(from 21/6/12)*

Ms Melissa Parke MP

Senator Anne Urquhart  
*(until 21/6/12)*

The Hon Dr Sharman Stone MP

## Committee Secretariat

Secretary	Russell Chafer <i>(from 9/7/12)</i> James Catchpole <i>(until 9/7/12)</i>
Inquiry Secretary	Kevin Bodel
Senior Researcher	Dr Andrew Gaczol
Administrative Officers	Heidi Lushtinetz Michaela Whyte



## 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
- 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 recommendations

- 2 Fifth Agreement to Extend the 1987 Regional Cooperative Agreement for Research, Development and Training related to Nuclear Science and Technology done at Bali on 15 April 2011**

### Recommendation 1

The Committee supports the *Fifth Agreement to Extend the 1987 Regional Cooperative Agreement for Research, Development and Training related to Nuclear Science and Technology done at Bali on 15 April 2011* and recommends that binding treaty action be taken.

- 3 Exchange of Notes, done at Canberra on 9 December 2011, constituting an Agreement between Australia and the United States of America to Amend and Extend the Agreement on Cooperation in Defense Logistics Support, done at Sydney on 4 November 1989**

### Recommendation 2

The Committee supports the *Exchange of Notes, done at Canberra on 9 December 2011, constituting an Agreement between Australia and the United States of America to Amend and Extend the Agreement on Cooperation in Defense Logistics Support, done at Sydney on 4 November 1989* and recommends that binding treaty action be taken.



- 4 Convention on Mutual Administrative Assistance in Tax Matters, done at Strasbourg on 25 January 1988 (Text amended by the provisions of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, which entered into force on 1 June 2011)

Recommendation 3

The Committee supports the *Convention on Mutual Administrative Assistance in Tax Matters, done at Strasbourg on 25 January 1988 (Text amended by the provisions of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, which entered into force on 1 June 2011)* and recommends that binding treaty action be taken.



## Introduction

### Purpose of the report

- 1.1 This report contains the Joint Standing Committee on Treaties' review of treaty actions tabled on 20 March and 8 May 2012.
- 1.2 These treaty actions are proposed for ratification and are examined in the order of tabling:
  - **Tabled 20 March 2012**
    - ⇒ *Fifth Agreement to Extend the 1987 Regional Cooperative Agreement for Research, Development and Training related to Nuclear Science and Technology done at Bali on 15 April 2011*
  - **Tabled 8 May 2012**
    - ⇒ *Exchange of Notes, done at Canberra on 9 December 2011, constituting an Agreement between Australia and the United States of America to Amend and Extend the Agreement on Cooperation in Defense Logistics Support, done at Sydney on 4 November 1989*
    - ⇒ *Convention on Mutual Administrative Assistance in Tax Matters, done at Strasbourg on 25 January 1988 (Text amended by the provisions of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, which entered into force on 1 June 2011)*
- 1.3 The Committee's resolution of appointment empowers it to inquire into any treaty to which Australia has become signatory, on the treaty being tabled in Parliament.

- 1.4 The treaties, and matters arising from them, are evaluated to ensure that ratification is in the national interest, and that unintended or negative effects on Australians will not arise.
- 1.5 Prior to tabling, major treaty actions are subject to a *National Interest Analysis* (NIA), prepared by Government. This document considers arguments for and against the treaty, outlines the treaty obligations and any regulatory or financial implications, and reports the results of consultations undertaken with State and Territory Governments, Federal and State and Territory agencies, and with industry or non-government organisations.
- 1.6 A Regulation Impact Statement (RIS) may accompany the NIA. The RIS provides an account of the regulatory impact of the treaty action where adoption of the treaty will involve a change in the regulatory environment for Australian business. The treaties examined in this report do not require an RIS.
- 1.7 The Committee takes account of these documents in its examination of the treaty text, in addition to other evidence taken during the inquiry program.
- 1.8 Copies of each treaty and its associated documentation may be obtained from the Committee Secretariat or accessed through the Committee's website at:  
[http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=jsct/under\\_review.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/under_review.htm)

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

- 1.9 The treaty actions reviewed in this report were advertised on the Committee's website from the date of tabling. Submissions for the treaties were requested by Friday, 27 April 2012 for the treaty tabled 20 March 2012 and Friday, 15 June 2012 for those treaties tabled on 8 May 2012 with extensions available on request.
- 1.10 Invitations were made to all State Premiers, Chief Ministers and to the Presiding Officers of each Parliament to lodge submissions. The Committee also invited submissions from individuals and organisations with an interest in the particular treaty under review.
- 1.11 Submissions received and their authors are listed at Appendix A.

- 
- 1.12 The Committee examined the witnesses on each treaty at public hearings held in Canberra on 7 May and 1 June 2012.
- 1.13 Transcripts of evidence from the public hearings may be obtained from the Committee Secretariat or accessed through the Committee's website under the treaty's tabling date, being:
- **20 March 2012**  
[http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=jsct/20march2012/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/20march2012/index.htm)
  - **8 May 2012**  
[http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=jsct/8may2012/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/8may2012/index.htm)
- 1.14 A list of witnesses who appeared at the public hearings is at Appendix B.



# Fifth Agreement to Extend the 1987 Regional Cooperative Agreement for Research, Development and Training related to Nuclear Science and Technology done at Bali on 15 April 2011

## Introduction

- 2.1 On 20 March 2012, the *Fifth Agreement to Extend the 1987 Regional Cooperative Agreement for Research, Development and Training related to Nuclear Science and Technology done at Bali on 15 April 2011* was tabled in the Commonwealth Parliament.

## Background

- 2.2 *The Regional Cooperative Agreement for Research, Development and Training related to Nuclear Science and Technology for Asia and the Pacific (RCA)* is forty years old this year. This makes it the oldest regional cooperative agreement within the International Atomic Energy Agency's (IAEA) framework. The RCA was revised in 1987 and is now a regionally significant intergovernmental agreement which incorporates seventeen countries in the Asia-Pacific.<sup>1</sup>

---

<sup>1</sup> Mr Steve McIntosh, Manager, International Relations, Government Affairs and Policy, Division of Government, International and External Relations, Australian Nuclear Science and Technology Organisation, *Committee Hansard*, 25 June 2012. p. 1.

- 2.3 The Fifth Extension Agreement extends the RCA for a further five-year period. The Agreement entered into force generally on 31 August 2011, and will enter into force for Australia on the date of receipt by the Director General of the IAEA of Australia's instrument of acceptance.<sup>2</sup>
- 2.4 Australia became a Party to the 1972 RCA in 1977 and became a Party to the 1987 RCA upon its entry into force in that year.<sup>3</sup> As of 5 June 2012, six member states had accepted the extension of the RCA agreement.<sup>4</sup> The 1987 RCA will continue in force from 12 June 2012.<sup>5</sup>
- 2.5 The 1987 RCA is based on a previous agreement of the same name negotiated in 1977. The basic principle behind the RCA is for the signatory parties to cooperate with each other to promote research, development and training projects in nuclear science and technology.<sup>6</sup>
- 2.6 The purpose of the 1987 update was to enhance overall coordination and supervision of cooperative projects carried out under RCA arrangements. The 1987 RCA was extended in 1992, 1997, 2002 and 2007. RCA projects are implemented under the auspices of the Technical Cooperation Programme administered by the IAEA.<sup>7</sup>
- 2.7 The RCA contains a process for developing cooperative projects between parties. Briefly, the process is as follows:
- a party wishing to undertake a cooperative project initiates the project by submitting a proposal to the IAEA, which will then notify all the other parties to the RCA;
  - the other parties respond if they are interested in participating in the cooperative project; and

---

2 National Interest Analysis [2012] ATNIA 9 with attachment on consultation, *Fifth Agreement to Extend the 1987 Regional Cooperative Agreement for Research, Development and Training related to Nuclear Science and Technology* done at Bali on 15 April 2011, [2011] ATNIF 35, (Hereafter referred to as 'NIA'), paras 1 - 2.

3 The other Parties to the 1987 RCA are: Bangladesh, the People's Republic of China, India, Indonesia, Japan, the Republic of Korea, Malaysia, Mongolia, Myanmar, New Zealand, Pakistan, the Philippines, Singapore, Sri Lanka, Thailand and Vietnam.

4 Mr Steve McIntosh, Manager, International Relations, Government Affairs and Policy, Division of Government, International and External Relations, Australian Nuclear Science and Technology Organisation, *Committee Hansard*, 25 June 2012. p. 1.

5 NIA, para 7.

6 International Atomic Energy Agency, *1987 Regional Cooperative Agreement for Research, Development and Training relating to Nuclear Science and Technology*, Article i.

7 NIA, para 6.



- the project is approved, provided two parties to the RCA in addition to the initiating party agree to the project.<sup>8</sup>
- 2.8 Once a project has been agreed, the IAEA prepares an agreement which:
- defines the participating parties, the project, and how it will be implemented;
  - provides for adequate health and safety measures;
  - prevents military use of any assistance provided to a party as part of the project; and
  - includes a dispute settling mechanism and a description of the liabilities of the parties.<sup>9</sup>
- 2.9 The Australian Nuclear Science and Technology Organisation (ANSTO) is Australia's designated point of contact for participation in the 1987 RCA.<sup>10</sup>

## National interest summary

- 2.10 The 1987 RCA has been continually extended due to its usefulness in providing a regional framework for initiating cooperative projects and coordinated research programming between IAEA Member States in the Asia-Pacific region.<sup>11</sup>
- 2.11 Extension of the 1987 RCA for a further five years will have important benefits for Australia from a security, economic and political perspective. As a regional agreement under the aegis of the IAEA, the 1987 RCA is an important mechanism in fulfilling the technical cooperation provisions of the *Treaty on the Non-Proliferation of Nuclear Weapons* (NPT). Australia's participation helps contribute to a non-proliferation regime which has kept our immediate neighbourhood free of nuclear weapons proliferation for the past forty years. The 1987 RCA also allows Australia to participate in international collaborative projects and to maintain and extend a national capacity in cutting-edge nuclear technologies. Finally, the 1987 RCA facilitates Australian technical and political cooperation with sixteen
- 

8 International Atomic Energy Agency, *1987 Regional Cooperative Agreement for Research, Development and Training relating to Nuclear Science and Technology*, Article ii.

9 International Atomic Energy Agency, *1987 Regional Cooperative Agreement for Research, Development and Training relating to Nuclear Science and Technology*, Article ii.

10 NIA, para 10.

11 NIA, para 4.

regional countries in nuclear science and technology, which in turn contributes to maintaining and improving bilateral and multilateral relationships in the Asia-Pacific region.<sup>12</sup>

## Reasons for Australia to take the proposed treaty action

- 2.12 Australia has important national interests in maintaining its participation in the 1987 RCA.<sup>13</sup> Australia is a designated member of the IAEA Board of Governors, the only such Board member without a civil nuclear power program. Cooperation through the RCA is an important means for Australia to share its recognised leading expertise on civil nuclear research and technology.<sup>14</sup>

## Nuclear Non-Proliferation Treaty

- 2.13 Agreements such as the 1987 RCA provide an important means of fulfilling the technical cooperation provisions of the NPT. Under the NPT, non-nuclear-weapon States Parties have forsworn nuclear weapons and must accept IAEA safeguards for the purpose of verifying their fulfilment of NPT obligations. Continued membership of the 1987 RCA is one way for Australia to fulfil its undertaking to cooperate with other Parties in the peaceful uses of nuclear energy as it establishes a framework for Parties to cooperate with each other in respect of research, development and training projects in nuclear science and technology.<sup>15</sup>
- 2.14 The Department of Foreign Affairs and Trade (DFAT) and Australian Safeguards and Non-Proliferation Office (ASNO) expanded on the Agreement's relationship with the NPT:

The [RCA] helps us fulfil the technical cooperation provisions within the nuclear non-proliferation treaty. There are three pillars to the treaty. One is about non-proliferation. The second is a commitment by countries that have nuclear weapons to disarm. The third is about the peaceful use of nuclear energy and the cooperative aspect of that. This particular agreement is part of that third commitment, and that is why it is really important.

Article IV of the nuclear non-proliferation treaty provides that all parties to that treaty have the right to develop research,

---

12 NIA, para 5.

13 NIA, para 8.

14 NIA, para 7.

15 NIA, para 8.

production and use of nuclear energy for peaceful purposes and are obliged to facilitate the fullest possible exchange of equipment, material and scientific and technological information for the peaceful use of nuclear energy. The mechanisms for the implementation of that obligation are primarily through the [IAEA] and instruments such as the [RCA].<sup>16</sup>

[The RCA] contributes to one of the three pillars that were part of that [NPT] grand deal... One of the critical aspects of that grand deal was to assure those who did not have nuclear weapons that they would not be disadvantaged in the peaceful application of nuclear technologies for purposes of – I am adding this now – radiopharmaceuticals, agriculture or environment et cetera. So it is a part of fulfilling the grand deal, rather than specifically that the projects and the activities under this would be targeting issues of disarmament or non-proliferation per se.<sup>17</sup>

- 2.15 On a practical level, DFAT and ASNO explained how Australian Government agencies assessed the various projects that might be conducted under the RCA's auspices, but which might contribute directly or indirectly to nuclear proliferation:

If there was to be a project which could be of relevance to a weapons program then we would look very seriously at whether we could participate. If, under a project we had assessed as a whole to be of no relevance, there was a particular activity we thought could be relevant, we would again decline to take part in that activity.<sup>18</sup>

We take those issues very seriously. The safeguards act in Australia covers issues of nuclear material transfers of a special group of technologies called 'associated technologies', which are the most sensitive technologies to reactor function as well as enrichment reprocessing. There are laws and regulations around whether we are allowed to exchange those materials or technologies or not, and they would apply. There are other

---

16 Dr Robert Floyd, Director General, Australian Safeguards and Non-Proliferation Office, Department of Foreign Affairs and Trade, *Committee Hansard*, 25 June 2012, p. 2.

17 Mr Steve McIntosh, Manager, International Relations, Government Affairs and Policy, Division of Government, International and External Relations, Australian Nuclear Science and Technology Organisation, *Committee Hansard*, 25 June 2012. p. 3.

18 Mr Steve McIntosh, Manager, International Relations, Government Affairs and Policy, Division of Government, International and External Relations, Australian Nuclear Science and Technology Organisation, *Committee Hansard*, 25 June 2012. p. 6.

mechanisms that would deal with those specific issues to ensure that Australia's cooperation is restricted to peaceful uses only.<sup>19</sup>

If there is an issue where we might have the slightest concern we talk to ASNO [Australian Safeguards and Non-Proliferation Office] about it before we proceed.<sup>20</sup>

- 2.16 Finally, through projects which strengthen regional regimes governing the safety and security of radioactive materials, the 1987 RCA also assists in preventing potentially dangerous material and technical know-how from being utilised by terrorist organisations.<sup>21</sup>

### Nuclear science and technology

- 2.17 Over the past 40 years, the successive RCAs have evolved to become an important vehicle for Australia's cooperation with regional countries in nuclear science and technology.<sup>22</sup> The 1987 RCA also helps Australia maintain and extend its national capacity in leading-edge nuclear technologies. Examples include medical, industrial, environmental and agricultural technologies.<sup>23</sup> They have enabled Australia to participate in mutually beneficial research and training related to nuclear science and technology with sixteen countries in the Asia-Pacific region. Such cooperation has had a positive flow-on effect on our bilateral and multilateral relationships in the region, with significant political benefits.<sup>24</sup>

## Obligations

- 2.18 Australia's obligations under the Fifth Extension Agreement derive from the 1987 RCA. The 1987 RCA places a number of obligations on the Parties, which are to be implemented within the framework of their national laws. In particular, the 1987 RCA requires that the Parties:

---

19 Dr Robert Floyd, Director General, Australian Safeguards and Non-Proliferation Office, Department of Foreign Affairs and Trade, *Committee Hansard*, 25 June 2012, pp. 6-7.

20 Mr Steve McIntosh, Manager, International Relations, Government Affairs and Policy, Division of Government, International and External Relations, Australian Nuclear Science and Technology Organisation, *Committee Hansard*, 25 June 2012. p. 7.

21 NIA, para 9.

22 NIA, para 11.

23 NIA, para 10.

24 NIA, para 11.

- promote and coordinate cooperative research, development and training projects in nuclear science and technology through their appropriate national institutions;
- attend meetings to consider, approve and evaluate cooperative projects and conduct other business relating to the 1987 RCA;
- make available the necessary scientific and technical facilities and personnel for the implementation of cooperative projects in which the Party is participating;
- take reasonable and appropriate steps for the acceptance of scientists, engineers or technical experts designated by other participating governments or by the IAEA to work at designated installations for the purpose of implementing cooperative projects in which the Party is participating;
- submit to the IAEA an annual report on the implementation of the portion of cooperative projects assigned to it;
- contribute, financially or otherwise, to the implementation of cooperative projects and notify the IAEA annually of any such contributions;
- ensure that the IAEA's safety standards and measures are applied to relevant cooperative projects; and
- ensure that any assistance provided to the Party under the 1987 RCA is used only for peaceful purposes, in accordance with IAEA's statute.<sup>25</sup>

2.19 The Fifth Extension Agreement simply serves to extend the 1987 RCA by a further five years to 11 June 2017 and thus there are no new obligations imposed on Australia by the Agreement.<sup>26</sup>

## Implementation

2.20 No legislation is required to give effect to the Fifth Extension Agreement,<sup>27</sup> and no changes to the existing roles of the Commonwealth or the States and Territories will arise as a consequence of implementing the Fifth Extension Agreement.<sup>28</sup>

---

25 NIA, para 13.

26 NIA, para 14.

27 NIA, para 15.

28 NIA, para 16.

## Costs

- 2.21 Australia has the option of contributing financially and 'in-kind' to facilitate the effective implementation of cooperative projects. Financial contributions to project costs will be assessed on a case-by-case basis and provided for through normal budgetary processes.<sup>29</sup>
- 2.22 Australia's contributions 'in-kind' are given through: the placement of RCA and IAEA fellowship and scientific visitor awardees for study and training in Australia; the provision of courses and experts to provide assistance to the IAEA or to individual RCA Member States on behalf of the IAEA; and the hosting of RCA meetings sponsored by the IAEA. These costs are met by relevant agencies from their existing resources.<sup>30</sup>

## Further issues

### The Fukushima disaster

- 2.23 The Committee was interested in hearing how the on-going Fukushima nuclear disaster that began following the earthquake and tsunami of March 2011 had affected this treaty and its re-negotiation.
- 2.24 DFAT and ANSTO explained that the Fifth Agreement was simply 'rolled over' and that there were no changes within the treaty text as a result of the accident.<sup>31</sup> However, this did not mean that there was no change to the international regulatory architecture. Changes in the safety standards in the IAEA would effectively change and update the RCA. DFAT explained:

Article IX, paragraph 1 in the agreement states: 'In accordance with its applicable laws and regulations, each Government Party shall ensure that the Agency's safety standards and measures relevant to a co-operative project are applied to its implementation.'

---

29 NIA, para 17.

30 NIA, para 18.

31 Mr Steve McIntosh, Manager, International Relations, Government Affairs and Policy, Division of Government, International and External Relations, Australian Nuclear Science and Technology Organisation, *Committee Hansard*, 25 June 2012. p. 3.

If there were changes in those safety standards of the agency – and you are aware of various activities that have gone on since Fukushima looking at that – that would be gathered up in that particular paragraph. So we would not need to change the RCA because it is referencing agency safety standards, 'agency' meaning the IAEA.<sup>32</sup>

- 2.25 Despite this explanation, the Committee notes that there may have been an opportunity missed to upgrade the agreement rather than simply 'rolling it over'. The Australian Conservation Foundation (ACF) argued that Australia, as a major supplier of nuclear fuel, should have taken the opportunity to strengthen the safety and non-proliferation aspects of the agreement following the Fukushima accident. They stated:

I do not expect this treaty to be everything, but it should be something more than: 'This is what we arranged last time pre-Fukushima and we'll just roll it over.' Let us not 'just roll it over'. Let us have a genuine look at how it can be strengthened, tightened and improved. Let us, as a country with deep responsibilities for fuelling this industry, step up to being a country that takes seriously our responsibility for policing and making safer this sector.<sup>33</sup>

## Conclusion

- 2.26 The RCA is a useful mechanism in providing a regional framework for initiating cooperative projects and coordinated research between IAEA Member States in the Asia-Pacific. Its continued operation over a forty year period provides tangible evidence of its usefulness.
- 2.27 The Committee notes that the majority of the twenty projects conducted under the RCA are medical and agricultural projects dealing with such issues as improving cancer management with hybrid nuclear medicine imaging and implementing best practices of food irradiation for sanitary and phytosanitary purposes.<sup>34</sup>

---

32 Dr Robert Floyd, Director General, Australian Safeguards and Non-Proliferation Office, Department of Foreign Affairs and Trade, *Committee Hansard*, 25 June 2012, pp. 3-4.

33 Mr Dave Sweeney, Nuclear Free Campaigner, Australian Conservation Foundation, *Committee Hansard*, 25 June 2012, p. 10.

34 Australian Nuclear Science and Technology Organisation, *Submission 6*, pp. 6-8.

- 2.28 Although the RCA's role in the non-proliferation architecture is limited, it does perform a role in promoting the NPT's objectives. Furthermore, as part of a broader regulatory architecture for nuclear activities, it also plays a role in implementing improved standards following events such as those that occurred at Fukushima.
- 2.29 Notwithstanding the concerns of the ACF, the Committee is satisfied that the agreement should be renewed. However, on the next iteration of the agreement some of the non-proliferation and safety issues canvassed by the ACF could be reviewed by the agreement's parties.

### **Recommendation 1**

**The Committee supports the *Fifth Agreement to Extend the 1987 Regional Cooperative Agreement for Research, Development and Training related to Nuclear Science and Technology done at Bali on 15 April 2011* and recommends that binding treaty action be taken.**



Exchange of Notes, done at Canberra on 9 December 2011, constituting an Agreement between Australia and the United States of America to Amend and Extend the Agreement on Cooperation in Defense Logistics Support, done at Sydney on 4 November 1989

## Introduction

- 3.1 On 20 March 2012, the *Exchange of Notes, done at Canberra on 9 December 2011, constituting an Agreement between Australia and the United States of America to Amend and Extend the Agreement on Cooperation in Defense Logistics Support, done at Sydney on 4 November 1989* was tabled in the Commonwealth Parliament.

## Background

- 3.2 The proposed treaty action is to amend and extend, through an exchange of notes, the *Agreement between Australia and the United States Concerning Cooperation in Defense Logistics Support*, (CDLSA) done at Sydney on 4 November 1989. The proposed Agreement will enter into force with retrospective effect, which is permitted by the Executive Power of the Commonwealth, from 4 November 2009 once the Parties have notified

each other in writing that all domestic procedures necessary to give effect to the proposed Agreement have been satisfied.<sup>1</sup>

- 3.3 The purpose of the Agreement is to extend the operation of the CDLSA until 4 November 2020, with some minor amendments. The CDLSA underpins the Australia/United States (US) defence logistics relationship. It provides the legal basis and broad policy guidance for the provision of reciprocal logistics support between Australia and the US; including the provision of military support (both supplies and services) from within the respective military systems, the establishment of maintenance programs which enhance industrial capability and the expeditious provision of equipment in relevant circumstances. The CDLSA complements the *Agreement between the Government of Australia and the Government of the United States of America Concerning Acquisition and Cross-Servicing* done at Canberra on 27 April 2010 (ACSA) which, among other things, facilitates the provision of US supply, support and services to Australian forces deployed in Afghanistan.<sup>2</sup>

## National interest summary

- 3.4 Given the importance of both the CDLSA and ACSA in providing logistics support to Australian Forces when deployed with the US forces, it is important that the CDLSA be further extended. The CDLSA entered into force on 4 November 1989 for an initial period of ten years. In 2001 the Parties agreed (with retrospective effect from 4 November 1999) to extend the CDLSA until 4 November 2009. In May 2008, the Minister for Foreign Affairs approved the commencement of formal treaty negotiations with the US to amend and extend the CDLSA to ensure the continued cooperation in defence logistics support between Australia and the US.<sup>3</sup>
- 3.5 At the same time, the Parties have agreed to take the opportunity provided by this treaty action to amend four other provisions of the CDLSA as discussed below. These proposed amendments do not raise any new international legal policy issues. The proposed Agreement will also insert a new provision dealing with liability and claims. This
- 

1 National Interest Analysis [2012] ATNIA 10 with attachment on consultation *Exchange of Notes, done at Canberra on 9 December 2011, constituting an Agreement between Australia and the United States of America to Amend and Extend the Agreement on Cooperation in Defense Logistics Support, done at Sydney on 4 November 1989* [2011] ATNIF 27, (Hereafter referred to as 'NIA'), paras 1 – 2.

2 NIA, para 3.

3 NIA, para 4.

provision is substantially similar to comparable provisions in Australia's existing bilateral defence cooperation agreements.<sup>4</sup>

## Reasons for Australia to take the proposed treaty action

3.6 The proposed Agreement will extend the CDLSA for a period of eleven years, and ensure that our bilateral defence logistics cooperation with the US remains on a sound footing. Except as discussed below, all provisions of the CDLSA remain as previously in force. The continued operation of the CDLSA is important to the Australia/US military relationship because it enables the reciprocal provision of military support (both supplies and services) from within respective military systems for the conduct and sustainment of operations. It also provides for the establishment of maintenance programs which enhance industry capability and contribute to Australia's military preparedness and interoperability with the US through expeditious provision of equipment in relevant circumstances.<sup>5</sup>

## Obligations

- 3.7 The key obligations of the CDLSA are to:
- provide or facilitate the provision of logistic support to the other Party on a cooperative basis, as far as possible within its defence policies and the exigencies of war;
  - approve the commercial export of defence articles and services purchased or to be purchased by the other Party;
  - provide, arrange or facilitate the provision of logistic support to operate and maintain acquired defence articles and services throughout their service life;
  - provide assistance, when mutually arranged, in the activation and expansion of their respective defence industrial bases as necessary to produce selected items of equipment, spare parts and munitions of the other Party's origin during periods of international tension or circumstances of armed conflict involving either or both Parties;

---

4 NIA, para 5.

5 NIA, para 6.

- endeavour to continue, and when requested to expedite, the delivery of all defence articles and services during periods of international tension or in circumstances of armed conflict involving either or both Parties;
- provide, or assist with, transportation of defence articles during periods of international tension or circumstances of armed conflict involving either or both Parties;
- as appropriate, exchange releasable information concerning equipment plans, programs and logistic requirements;
- approve the export of technology which each Party sells to effectively and efficiently support defence articles and services purchased from each other;
- assist in negotiations, where appropriate, with private sector firms to transfer releasable technologies;
- on a case-by-case basis, secure the waiver or reduction of license and royalty fees associated with the manufacture of defence articles; and
- work together in the planning of cooperative logistic support that may be required during periods of international tension or in circumstances of armed conflict involving either or both Parties.<sup>6</sup>

3.8 Within the CDLSA, the Agreement amends:

- Article V so as to require any exports and transfers of Defense Articles and Defense Services to be undertaken in accordance with the laws, regulations and policies of the Parties, including provisions of any relevant agreements between the Parties.<sup>7</sup>
- Article XI relating to the protection of classified information. The extant reference to the “United States/ Australia General Security of Information Agreement” of 2 May 1962 is replaced with a reference to the more recent *Agreement between the Government of Australia and the Government of the United States of America concerning Security Measures for the Protection of Classified Information*, done at Canberra on 25 June 2002.<sup>8</sup>
- Article XIII relating to cooperative military airlifts. The extant references to airlifts being undertaken in accordance with the “Cooperative Military Airlift Arrangement Between the US Air Force and the Royal Australian Air Force” dated 10 September 1984, and the

---

6 NIA, para 7.

7 NIA, para 8.

8 NIA, para 9.

“Detailed Working Procedures for the Implementation of Cooperative Military Airlift Arrangement Between the US Air Force and the Royal Australian Air Force” dated 17 October 1984 are replaced with a new reference to the more recent “Implementing Arrangement between the US Department of Defense and the Australian Department of Defence concerning Airlift Support”, which came into effect on 4 January 2006.<sup>9</sup>

- Article XIV relating to the provision of quality assurance. The extant reference to the provision of quality assurance in accordance with the “United States/ Australia Details of Agreement on Mutual Acceptance of Government Quality Assurance” of October 1984 is replaced with a reference to the more recent “Details of Agreement between the Defense Authorities of the United States of America and the Commonwealth of Australia for Mutual Acceptance of Government Quality Assurance” dated 29 November 1994.<sup>10</sup>
- Article XX, which sets out the process for entry into force of the amended CDLSA and its duration. The proposed amendments to Article XX provide that the amended CDLSA shall enter into force with retrospective effect from 4 November 2009 once the Parties have notified each other that their domestic procedures for entry into force of the proposed Agreement have been satisfied. The proposed amendments to Article XX provide that the amended CDLSA will remain in force until 4 November 2020 unless terminated earlier in accordance with existing Article XIX of the CDLSA.<sup>11</sup>

3.9 The Agreement also inserts a new Article XXI into the CDLSA. This concerns the Parties’ liability for claims arising under the proposed Agreement. Subparagraph 1(a) of the proposed Article provides that the provisions of the *Agreement concerning the Status of United States Forces in Australia, and Protocol*, done at Canberra on 9 May 1963 (SOFA) or any other agreement between Australia and the US concerning the status of forces of one country when in the other will apply to claims that fall within the scope of these agreements.<sup>12</sup>

3.10 Where the SOFA or any other agreements between Australia and the US related to the status of forces *do not* apply, subparagraph (1)(b)(i) of proposed Article XXI requires each Party to waive all claims against the

---

9 NIA, para 10.

10 NIA, para 11.

11 NIA, para 12.

12 NIA, para 13.

other for injury or death to its personnel or for damage to or loss of its property arising out of the performance of official duties. Liability for claims by third parties for injury or death to third persons or damage to or loss of property arising from the performance of official duties will be shared, in accordance with the proportions stated in relevant arrangements (subparagraph 1(b)(ii)). However, where the Parties agree that the damage, injury or death was caused by recklessness, wilful misconduct or gross negligence, the liability is to be borne by the Party of the culpable person (subparagraph 1(b)(iii)). Subparagraph 1(b)(iv) of proposed Article XXI provides that any claims arising out of a contract shall be resolved in accordance with the terms of the contract.<sup>13</sup>

## Implementation

- 3.11 No changes to national laws, regulations or policies are required to implement the proposed Agreement. The proposed Agreement will not effect any change to the existing roles of the Australian Government or the State and Territory governments. The proposed Agreement is to operate retrospectively as both Parties have continued to observe the terms of the CDLSA since it ceased to be in force.<sup>14</sup>

### Is the agreement's potential being fulfilled?

- 3.12 Although the agreement has potential for greater access to US equipment and industry, it appears that this potential has not been explored as thoroughly as it could be. Indeed, the agreement is 'being infrequently used'.<sup>15</sup> When asked if the agreement gave Australia influence in gaining access to US technology - particularly with regard to International Traffic in Arms Regulations (ITARs) - the Department of Defence replied:

Potentially, yes. I would ask you to note that the key word of this agreement is cooperative. It is not binding on both parties but we would certainly create an opportunity for those discussions to take place. If your question was: have we tested that? Not as yet. That is not to say that we could not use it. This is very much the broad spectrum. It does allow those sorts of discussions to occur. In answer to your question, yes it could. It would not allow us to step around if it was a significant military equipment issue or

---

13 NIA, para 14.

14 NIA, para 15.

15 Commodore Mark James Sackley, Director General Strategic Logistics, Joint Logistics Command, Department of Defence, *Committee Hansard*, 25 June 2012, p. 14.

perhaps a specific ITARs requirement does not necessarily allow us to step around a requirement. However, it does open the door for negotiation.<sup>16</sup>

- 3.13 Similarly, some of the provisions are intended to stimulate and encourage the industrial base in both countries. In response to a question regarding the US marine deployment in the Northern Territory engaging with Australian companies for the provision of maintenance as opposed to US forces doing all their own maintenance in house, Defence replied:

Again, potentially, yes. You will be aware that those discussions are quite preliminary. In fact, I am engaged in some of those discussions with our US Force Posture Review team. We do have a very close relationship with [the US] marines on the ground and we are discussing where we could potentially use this agreement right now. You will be aware that it is only an incremental approach so far. But, as we do build up then, yes, this agreement really does give us the potential, on both sides, to leverage. While we have not specifically discussed industry engagement as yet, that does give us a potential, as you have highlighted, whereas other agreements do not necessarily afford us that.<sup>17</sup>

## Costs

- 3.14 The CDLSA provides that the cost of all Defence Articles and Defence Services provided by both Parties to each other shall be priced on a full cost basis with neither Party realizing a financial gain or loss. The proposed Agreement does not alter this provision.<sup>18</sup>

## Conclusion

- 3.15 Australia's relationship with the United States is our most important defence relationship. The ANZUS alliance – now in effect for over 60
- 

16 Commodore Mark James Sackley, Director General Strategic Logistics, Joint Logistics Command, Department of Defence, *Committee Hansard*, 25 June 2012, p. 13.

17 Commodore Mark James Sackley, Director General Strategic Logistics, Joint Logistics Command, Department of Defence, *Committee Hansard*, 25 June 2012, p. 13.

18 NIA, para 16.

years – is the cornerstone of that relationship and subsequent agreements such as the one being reviewed here help facilitate that defence relationship.

- 3.16 Given the increased cooperation between the US and Australian defence force over the past decade, this exchange of notes is both logical and practical. It will help facilitate ongoing operation in Afghanistan as well as the deployment of US marines to the Northern Territory. The Committee agrees that binding treaty action be taken.
- 3.17 Nonetheless the Committee notes that the agreement is currently ‘infrequently used’ and could perhaps better serve Australia’s interests if some of its provisions were more fully utilised.

## **Recommendation 2**

**The Committee supports the *Exchange of Notes, done at Canberra on 9 December 2011, constituting an Agreement between Australia and the United States of America to Amend and Extend the Agreement on Cooperation in Defense Logistics Support, done at Sydney on 4 November 1989* and recommends that binding treaty action be taken.**



# Convention on Mutual Administrative Assistance in Tax Matters, done at Strasbourg on 25 January 1988 (Text amended by the provisions of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, which entered into force on 1 June 2011)

## Introduction

- 4.1 On 20 March 2012, the *Convention on Mutual Administrative Assistance in Tax Matters, done at Strasbourg on 25 January 1988 (Text amended by the provisions of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, which entered into force on 1 June 2011)* was tabled in the Commonwealth Parliament.

## Background

- 4.2 The proposed treaty action is to ratify the *Convention on Mutual Administrative Assistance in Tax Matters, done at Strasbourg on 25 January 1988* ('the Convention').<sup>1</sup>

---

1 National Interest Analysis [2012] ATNIA 2 with attachment on consultation *Convention on Mutual Administrative Assistance in Tax Matters done at Strasbourg on 25 January 1988 (Text amended by the provisions of the Protocol amending the Convention on Mutual Administrative*

- 4.3 The 1988 *Convention on Mutual Administrative Assistance in Tax Matters* ('the Original Convention') entered into force on 1 April 1995. It was amended by the 2010 *Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters* ('the Protocol'), which entered into force on 1 June 2011. The amendments brought the Convention into line with current international standards on transparency and exchange of tax information.<sup>2</sup>
- 4.4 The Convention is open for signature and ratification by the member States of the Council of Europe and member countries of the Organisation for Economic Cooperation and Development (OECD). In addition, other States (not being members of the Council of Europe or the OECD) may request to be invited to sign and ratify the Convention. All G-20 member countries have agreed to sign the Convention and, to date, thirty five countries have signed or ratified either the Original Convention or the Convention.<sup>3</sup>

## National interest summary

- 4.5 The key objective of the Convention is to promote international cooperation for a better operation of national tax laws, while respecting the fundamental rights of taxpayers. The Convention provides for the provision of administrative assistance in three areas:
- the exchange of taxpayer information;
  - assistance in the recovery of tax debts; and
  - assistance in the service of documents.<sup>4</sup>
- 4.6 The Convention will help Australia protect its revenue base by providing a legal framework through which the Commissioner of Taxation can seek such administrative assistance from the revenue authorities of the other Parties. This will help improve the integrity of the tax system by

---

*Assistance in Tax Matters, which entered into force on 1 June 2011*) [2011] ATNIF 28, (Hereafter referred to as 'NIA'), para 1.

2 NIA, para 2.

3 NIA, para 5. Argentina, Australia, Azerbaijan, Belgium, Brazil, Canada, Costa Rica, Denmark, Finland, France, Georgia, Germany, Greece, Iceland, India, Indonesia, Ireland, Italy, Japan, Korea (Republic of), Mexico, Moldova, the Netherlands, Norway, Poland, Portugal, Russia, Slovenia, South Africa, Spain, Sweden, Turkey, Ukraine, the United Kingdom and the United States.

4 NIA, para 7.

discouraging tax avoidance and evasion by individuals and other entities. Conversely, the Convention will also provide reciprocal benefits to the other Parties.<sup>5</sup>

- 4.7 This agreement does not override any domestic Australian law regarding confidentiality of information. Australian domestic secrecy laws continue to apply and the convention superimposes an additional layer of secrecy above the domestic laws.<sup>6</sup>

## Reasons for Australia to take the proposed treaty action

- 4.8 The Convention will complement Australia's network of comprehensive tax treaties and tax information exchange agreements by providing an additional tool for detecting and preventing tax evasion and recovering outstanding tax debts.<sup>7</sup>
- 4.9 The 'exchange of information' rules contained in the Convention meet the internationally agreed standard developed by the OECD and endorsed by the G-20 and the United Nations Committee of Experts on International Cooperation in Tax Matters. This framework will support global action on improving information exchange and transparency. Australia, as Chair of the Global Forum on Transparency and Exchange of Information for Tax Purposes ('Global Forum'), is a strong proponent of improved global transparency and exchange of taxation information as a means of preventing tax avoidance and evasion.<sup>8</sup>
- 4.10 While Australia has concluded bilateral tax treaties with several Parties to the Convention, the Convention will enhance the ability of the Commissioner of Taxation to seek assistance in respect of a broader range of taxes, namely all federal taxes administered by the Commissioner. In contrast, the scope of the 'exchange of information' provisions in Australia's bilateral tax treaties signed or amended before 2006 is generally limited to income tax. It will now be possible for the Commissioner to use the Convention to obtain information or seek

---

5 NIA, para 8.

6 Mr Neil Cossins, Director, Transparency Practice, Large Business and International, Australian Taxation Office, *Committee Hansard*, 25 June 2012, p. 19.

7 NIA, para 9.

8 NIA, para 10.

assistance from a Party that he would be unable to obtain under Australia's bilateral tax treaty with that Party.<sup>9</sup>

- 4.11 Furthermore, the Convention will explicitly enable the Australian Taxation Office (ATO) to conduct simultaneous tax examinations of taxpayers' affairs with tax officials from the other Parties.<sup>10</sup>
- 4.12 The cross-border recovery of tax debts has become progressively more common internationally. The 'assistance in recovery' rules contained in the Convention are consistent with similar rules contained in Australia's recent tax treaties with Finland, France, New Zealand, Norway and South Africa and will discourage taxpayers from concealing assets in foreign jurisdictions in order to avoid settling their Australian tax debts. This mechanism for cross-border assistance in recovery of tax debts will:
- support taxation principles of integrity and fairness;
  - help meet the tax collection challenges presented by globalisation; and
  - complement the framework of existing international tax legislation, which deals with international transactions and taxation issues of non-residents.<sup>11</sup>

## Obligations

- 4.13 Article 1 of the Convention sets out the general obligation of Parties to provide administrative assistance to each other in tax matters (comprising exchange of information, assistance in recovery and service of documents). Article 1 also prescribes that such assistance is required regardless of the country of residence of the taxpayer. Article 2 prescribes, in general terms, the taxes covered by the Convention.<sup>12</sup>
- 4.14 Articles 4-17 of the Convention provide details of the Parties' obligations in respect of the three broad forms of assistance identified in Article 1.<sup>13</sup>

---

9 NIA, para 11.

10 NIA, para 12.

11 NIA, para 13.

12 NIA, para 14.

13 NIA, para 15.

## Exchange of information

- 4.15 Article 4 of the Convention obliges the Parties to exchange information that is foreseeably relevant to the administration or enforcement of the taxes covered by the Convention. Information exchange can take three forms: on-request (Article 5); automatic (Article 6) and spontaneous (Article 7). This is consistent with Australia's exchange of information practice under its bilateral tax treaties.<sup>14</sup>
- 4.16 Article 8 authorises the Parties to consult to determine cases and procedures for simultaneous tax examinations (joint investigations) in relation to the tax affairs of persons or entities in which they have a common or related interest.<sup>15</sup>
- 4.17 Article 9 authorises tax examinations abroad, whereby tax officials from one Party may visit another Party for the purpose of participating in an investigation of mutual interest.<sup>16</sup>
- 4.18 Article 10 requires Parties to notify each other when information received under the Convention conflicts with information in their possession.<sup>17</sup>

## Assistance in recovery of tax debts

- 4.19 The broad obligation to provide assistance in the recovery of cross-border tax debts, and the terms under which Parties are required to do so, are set out in Articles 11 to 16.<sup>18</sup>
- 4.20 Article 11 requires each Party to assist other Parties in the recovery of unpaid tax claims upon request. A Party providing assistance should take the necessary steps to recover debts as if the debts were its own outstanding tax claims. In providing such assistance, Article 12 requires the Parties to take measures of conservancy (for example, the seizure or freezing of a taxpayer's assets before final judgement) in relation to other Parties' tax claims if requested, even if the claim is contested or not yet the subject of an instrument permitting enforcement. Article 13 requires the

---

14 NIA, para 16.

15 NIA, para 17.

16 NIA, para 18.

17 NIA, para 19.

18 NIA, para 20.

applicant State to provide appropriate documentation supporting the existence of the relevant tax claim.<sup>19</sup>

- 4.21 Article 14 sets out the rules concerning the time limits that apply to the provision of assistance in the recovery of tax debts. The laws of the applicant State apply with regard to the period beyond which a tax claim cannot be enforced. This period can be interrupted or suspended in the applicant State if any acts of recovery carried out by the requested State would interrupt or suspend such periods in the requested State. In any case, assistance is not obligatory in cases where the debt is outstanding for fifteen years or more (from the date of the original instrument permitting its enforcement).<sup>20</sup>
- 4.22 Article 15 ensures that requests for assistance in debt recovery do not take priority over domestic debt recovery actions in the requested State. The requested State may also allow deferral of payment or accept payment by instalments if its own laws and administrative practices would permit such actions in relation to its own debts (Article 16).<sup>21</sup>

### Service of documents

- 4.23 Article 17 obliges a Party to provide assistance in the service of tax-related documents, including those relating to judicial decisions, to taxpayers residing in the requested jurisdiction at the request of another Party. Service shall be effected either by a method prescribed by the laws of the requested State or, to the extent possible, by a particular method stipulated by the applicant State.<sup>22</sup>
- 4.24 Article 18 stipulates the information to be provided by an applicant State in relation to all forms of assistance. This information includes details of: the initiating authority or agency; the identity and address of the person(s) who are the subject of the request; the form in which the applicant State requires the information (in the case of exchange of information); the tax claim and the assets from which the claim may be recovered (in the case of recovery of tax claims); the nature and the subject of the document to be served (in the case of service of documents); and whether the request is in conformity with the laws and administrative practices of the applicant State.<sup>23</sup>

---

19 NIA, para 21.

20 NIA, para 22.

21 NIA, para 23.

22 NIA, para 24.

23 NIA, para 25.

- 4.25 Articles 20-23 provide other rules relating to all forms of assistance, including rules limiting obligations set out elsewhere in the Convention.<sup>24</sup>
- 4.26 Article 21 allows a Party to decline to provide requested assistance on limited grounds, including where to do so would be contrary to the laws or administrative practices of either Party or public policy, or would involve the disclosure of trade or commercial secrets. The provision of assistance may also be declined where:
- the request relates to taxation contrary to generally accepted taxation principles or provisions contained in bilateral tax treaties;
  - the underlying taxation law discriminates on the basis of nationality;
  - the applicant State has not exhausted all reasonable measures under its own laws and administrative practices; and
  - the provision of assistance by the requested State would be clearly disproportionate to the benefit derived by the applicant State.<sup>25</sup>
- 4.27 Article 22 obliges Parties to treat information obtained under the Convention as secret and protected in the same manner as information obtained under its domestic laws. Such information may only be disclosed to persons involved in tax administration or enforcement, including courts and administrative or supervisory bodies. Parties may, however, agree that information may be disclosed to other law enforcement agencies in appropriate circumstances.<sup>26</sup>

## Implementation

- 4.28 No new legislation is required to implement the obligations that will be imposed on Australia by the proposed treaty action. Australia is able to fulfil its obligations under the Convention under existing legislation, specifically, section 23 of the *International Tax Agreements Act 1953* in respect of exchange of tax information. Similarly, Division 263 of Schedule 1 to the *Taxation Administration Act 1953* applies to any agreement in force between Australia and a foreign country that contains an article relating to assistance in collection of foreign tax debts.<sup>27</sup>

---

24 NIA, para 26.

25 NIA, para 27.

26 NIA, para 28.

27 NIA, para 29.

- 4.29 No action is required by the States or Territories. There will be no change to the existing roles of the Commonwealth, or the States and Territories, in tax matters as a consequence of implementing the Convention.<sup>28</sup>

### Relationship with TIEAs

- 4.30 As part of its efforts to combat tax evasion and encourage international transparency on taxation issues, Australia has signed thirty-three tax information exchange agreements (TIEAs).<sup>29</sup>
- 4.31 Although this Convention is open to all countries to sign,<sup>30</sup> most of the countries who have signed the TIEAs are not party to this Convention.<sup>31</sup> However, the exchange-of-information standards in both the TIEAs and the Convention are very similar. In practical terms, it makes very little difference which agreement is utilised. Both are used and they can operate in parallel.<sup>32</sup>
- 4.32 Along with the TIEAs, this Convention represents an additional legal basis for exchanging taxpayer information and for providing other forms of assistance. The most suitable is chosen depending on the circumstances.<sup>33</sup>

### Costs

- 4.33 As the Convention is intended to reduce international fiscal evasion by Australian taxpayers, the proposal is expected to increase taxpayer compliance and therefore tax revenue.<sup>34</sup>
- 4.34 There would be a small, unquantifiable cost in dealing with incoming requests for assistance from other countries. However, these costs are

---

28 NIA, para 30.

29 Mr Gregory Wood, Manager, International Tax Treaties Unit, International Tax and Treaties Division, Department of the Treasury, *Committee Hansard*, 25 June 2012, p. 18.

30 Mr Gregory Wood, Manager, International Tax Treaties Unit, International Tax and Treaties Division, Department of the Treasury, *Committee Hansard*, 25 June 2012, p. 18.

31 Mr Neil Cossins, Director, Transparency Practice, Large Business and International, Australian Taxation Office, *Committee Hansard*, 25 June 2012, p. 18.

32 Mr Gregory Wood, Manager, International Tax Treaties Unit, International Tax and Treaties Division, Department of the Treasury, *Committee Hansard*, 25 June 2012, p. 18.

33 Mr Neil Cossins, Director, Transparency Practice, Large Business and International, Australian Taxation Office, *Committee Hansard*, 25 June 2012, p. 18.

34 NIA, para 31.



expected to be minimal and will continue to be managed within existing agency resources.<sup>35</sup>

- 4.35 Article 26 of the Convention sets out that, unless otherwise agreed bilaterally by the Parties concerned, ordinary costs incurred in providing assistance will be borne by the requested Party. Extraordinary costs incurred in providing assistance will be borne by the applicant Party.<sup>36</sup> There are no other foreseeable financial costs to Australia for compliance with the proposed treaty action.<sup>37</sup>

## Conclusion

- 4.36 The Committee agrees that the Convention will complement Australia's network of comprehensive tax treaties and TIEAs by providing an additional tool for detecting and preventing tax evasion as well as recovering outstanding tax debts.
- 4.37 The Committee supports agreements such as this one as it helps Australia protect its revenue base by providing a legal framework through which the Australian authorities can seek such administrative assistance from the revenue authorities of other countries. Improving the integrity of the tax system by discouraging tax avoidance by individuals and other entities is a desirable goal and the Committee supports binding action on this agreement.

---

35 NIA, para 32.

36 NIA, para 33.

37 NIA, para 34.

**Recommendation 3**

**The Committee supports the *Convention on Mutual Administrative Assistance in Tax Matters, done at Strasbourg on 25 January 1988 (Text amended by the provisions of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, which entered into force on 1 June 2011)* and recommends that binding treaty action be taken.**

**Kelvin Thomson MP**

**Chair**



## Dissenting Report—Australian Greens

The Australian Greens do not believe the Fifth Agreement to Extend the 1987 Regional Cooperative Agreement for Research, Development and Training related to Nuclear Science and Technology done at Bali on 15 April 2011 should be simply rolled over for a further five year period, particularly in the wake of Fukushima.

The Committee's report perfunctorily dismisses the concerns and arguments provided in submissions and contrasts poorly with its past considered and detailed engagement on nuclear issues.

The Committee notes that there, "may have been an opportunity missed to upgrade the agreement rather than simply 'rolling it over'" and then goes on then to facilitate *precisely* that occurring by recommending that the agreement be simply rolled over.

The vague suggestion that next time the Agreement comes up for another rolling over some of the issues canvassed could be reviewed begs the question as to who is rolling over and for whom?

While the Committee and ANSTO may wax lyrical about the "important benefits for Australia" arising from this agreement, or the "important national interests in maintaining its participation" or the "important vehicle for Australia's cooperation with regional countries", it is equally *important* for Australia's government, parliament and uranium industry to face some facts.

While the nuclear industry's optimism may have a therapeutic function, it is not grounded in reality.

This is an industry deeply shaken by the global financial crisis, the ongoing Fukushima disaster with its regular revelations of more cover ups and duplicity, as well as fierce competition from renewable technologies which continue to outpace nuclear because they are more affordable and faster to install. Installed worldwide nuclear capacity decreased in the years 1998, 2006, 2009 and again in 2011, while the annual installed wind power capacity increased by 41 GW in 2011 alone. A total of 19 reactors were shut down in 2011 while only seven were started up that year, and only 2 more in 2012.

Since the Fukushima disaster three countries – Germany, Belgium and Switzerland– have announced nuclear phase out. Taiwan's government presented a new energy strategy in November 2011 to “steadily reduce nuclear dependency, create a low-carbon green energy environment and gradually move towards a nuclear-free homeland”. At least five countries – Egypt, Italy, Jordan, Kuwait and Thailand – have decided to not engage or reengage their programs. New build projects were officially cancelled in Brazil, France, India and the USA. Japan has restarted only two of its 54 reactors, and in both Bulgaria and Japan two reactors under construction were abandoned.

The rating agency Moodys explains that nuclear investment is risky and "a nuclear project could be the thing that pushes [the utility] over the edge – it's just another negative factor." The rating agency welcomed the decision by German utilities RWE and E.ON to abandon their U.K. new build plans as they “can instead focus on investment in less risky projects”.

Large and successful companies are making serious losses. TEPCO has lost 96 per cent of its share value since 2007. In the same period the French state utility EDF has lost 82 per cent of its value, the share price of the French state company Areva has fallen by 88 per cent. Siemens announced it would entirely withdraw from nuclear because it, "frees up funds that Siemens can redeploy in businesses with better visibility."

These and other cold hard facts and citations are provided in the recently released World Nuclear Industry Status Report available at [www.worldnuclearreport.org](http://www.worldnuclearreport.org).

Here in Australia BHP Billiton has put off the decision about the expansion of the Olympic Dam uranium mine for 2 years. The proponents of the Kintyre uranium mine in the Western Desert have also postponed any decision on mining after their pre feasibility study indicated the project would be making a loss with current uranium price.

Rather than the "cutting edge nuclear technologies" described in the report, nuclear technology is a dangerous and increasingly bankrupt 20<sup>th</sup> century technology. Technology and techniques for generating isotopes for medical diagnosis and treatment are well underway. In March 2010, the Canadian government Response to the Report of the Expert Review Panel on Medical Isotope Production committed to 100 per cent non-reactor production of radioisotopes from 2016.

The "grand bargain" established last century in the NPT that bestows the "inalienable right" to nuclear energy amounts this century to the inalienable right of an expensive industry to massive subsidies provided by taxpayers, the inalienable right to expose citizens to routine hazardous releases of radiation and the inalienable right to produce a riddle science cannot yet solve: large quantities of radioactive waste.

---

As ICAN noted in its submission, "...the challenging but achievable goal of a world free of nuclear weapons will be more readily achieved and sustained in a world in which nuclear power generation is being or has been phased out. This is because the material and capacity to produce nuclear power intrinsically involves the capacity to produce fissile material usable for nuclear weapons. "

The submission from the Gundjeihmi Aboriginal Corporation representing the Mirarr people from whose land half of Australia's uranium exports are sourced, also expressed deep concern "about the fate of uranium sourced from their land with relation to this Agreement" due to the fact that "three of the signatories to the Agreement are Nuclear Weapon States (NWS): China, India and Pakistan,' and cited the authors of the UN system wide study into the implications of the accident at the Fukushima Daiichi nuclear power plant who stated the irrefutable fact that, "Nuclear science and technology can also be used to develop nuclear weapons. "

The Committee's report fails entirely to note the rather *important* fact that this agreement facilitates Australian nuclear cooperation with Pakistan and India – two states that developed clandestine nuclear weapons programs and which continue to defy the international community by standing outside the NPT without nuclear safeguards.

Pakistan, with which Australia has one cooperation agreement underway, is currently increasing its arsenal faster than any other state. India, with which Australia has two cooperation agreements underway, is modernising its nuclear forces while continuing protests against nuclear power are brutally repressed by the State.

Australia's credentials as a champion of the NPT and nuclear disarmament lack credibility while cooperation mandated under this agreement would undermine the NPT as a cornerstone of the non-proliferation regime by facilitating advancement of the domestic nuclear industries and expertise of non-NPT states.

The Mirarr state that, "The prospect of uranium from Mirarr land making its way to the poorly regulated nuclear industry of a Nuclear Weapon State is of grave concern to Mirrar," and add that in addition to concerns about nuclear proliferation, "Mirrar are worried about nuclear material originated from their lands causing injury, distress or illness as a result of a nuclear accident...particularly given the horrific impacts of just such a nuclear accident currently being experienced in Japan. The risk of further accidents at nuclear reactors elsewhere in the world continues to grow as reactors age and extreme weather events and other impacts of climate change heighten."

The Australian Conservation Foundation stated that any move to amend this Agreement should be coupled with explicit mechanisms that seek to assess and address the reality of the nuclear industry in 2012, noting that the ongoing Fukushima disaster has led to widespread reappraisal and review of the role of

safety of nuclear energy, "the lessons of which are not adequately reflected in the 'business as usual' approach that underpins this treaty and the accompanying National Interest Analysis."

The Australian Greens entirely agree that the government and Committee have failed to grasp the gravity of the lessons that must be learned from Fukushima. I sought clarification from ANSTO as to what mechanisms the Australian government or agencies have used to address unresolved concerns related to uranium, (as noted by the 2003 Senate Inquiry which found the sector characterised by a pattern of underperformance and non-compliance, an absence of reliable data, an operational culture that gives greater weight to short term considerations than long term environmental protection) and the wider nuclear industry in order to provide clear and contemporary evidence to help inform the Committee's consideration.

The response provided by ANSTO to my questions on notice as to actions taken on nuclear safety was a long list of meetings. While certainly some of these meetings at the IAEA, as well as Ministerial Conferences, and technical conferences and regulatory cooperation forums and international meetings of experts might be evolving the discussion, I do not glean any increased rigour in decisions being taken by Australia as a result of Fukushima.

ARPANSA the lead agency for our government indicates to me in Senate Estimates that it is participating in meetings, monitoring public domain documents, while stressing that its statutory role is as a national regulator with roles limited within the borders of Australia. When I ask questions of the Australian Safeguards and Non-Proliferation Office about reactor safety overseas I am referred to ARPANSA.

ASNO at least answers questions on notice truthfully; when I asked whether there has been any material change in the legal, regulatory or operational framework of the uranium sector in Australia since the Fukushima nuclear disaster, I was answered with a word of one syllable: no.

Given Australian uranium was in each of the reactors at Fukushima, this business as usual approach is unacceptable, especially when the report of Independent Commission established by the Japanese parliament found that the independence of the Japanese regulators, "was a mockery" because TEPCO had been able to, "manipulate its cosy relationship with regulators to take the teeth out of regulations." The report documents errors, wilful negligence and concludes that the accident was the result of "collusion between the government, the regulators and [Fukushima plant operator] TEPCO," and concludes that this "profoundly man-made disaster that could and should have been foreseen and prevented".

That is, the 36% of children found to have abnormal growths, cysts or nodules on their thyroids a year after the Fukushima disaster (as documented by the Fukushima Radioactive Contamination Symptoms Research after testing 38,000

children in the Fukushima Prefecture) could have been prevented. Likewise, the evacuation of 150,000 people, many of which are still dislocated, could have been prevented.

In the face of such damning report, it is irresponsible for the Committee to postpone examination of Australia's nuclear cooperation agreement in the light of evidence that Australia's bilateral safeguards agreements do not live up to the absolutist statements about them being the best in the world. The Prime Minister should rethink her statement that Fukushima, "doesn't have any impact on my thinking about uranium exports," a grossly irresponsible statement given the years of documented gross mismanagement of nuclear power in one of Australia's uranium customer countries.

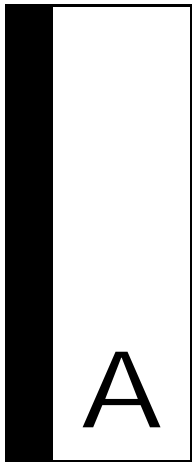
Delusions held by industry and government about the safeguards system stopping nuclear material from entering weapons programs are also not grounded in reality. The Australian government's 1977 Fox Inquiry correctly noted that safeguards offer only an "illusion of protection." That's as true today as it was then.

With a similar clarity to the Fox Inquiry, the Independent Panel appointed by Japan's Parliament has exposed nuclear safety as a myth. The anzen shinwa "safety myth" has seen governments and industry stifle honest and open discussion of the risks, which this Committee has continued through failing to question the wisdom of Australia continuing nuclear cooperation when the lessons of Fukushima have simply not been learned.

Senator Scott Ludlam







## Appendix A – Submissions

### Treaty tabled on 20 March 2012

- 1 Gundjeihmi Aboriginal Corporations (GAC)
- 2 Mr Justin Tutty
- 3 Australian Conservation Foundation
- 4 International Campaign to Abolish Nuclear Weapons
- 5 Medical Association for Prevention of War, Australia
- 6 Australian Nuclear Science and Technology Organisation

### Treaties tabled on 8 May 2012

- 1 Mr Greg Chapman
- 2 BaseWatch
- 3 Tax Justice Network Australia





## Appendix B – Witnesses

**Monday, 18 June 2012 - Canberra**

**Australian Conservation Foundation**

Mr Dave Sweeney, Nuclear Free Campaigner

**Australian Nuclear Science and Technology Organisation**

Mr Steven McIntosh, Senior Policy Adviser

**Australian Safeguards and Non-Proliferation Office**

Dr Robert Floyd, Director General

**Australian Taxation Office**

Mr Neil Cossins, Director, Transparency Practice, Large Business and International

Miss Anna Cyran, Transparency Practice, Internationals, Large Business and International

**Department of Defence**

Mr Kerry Hempenstall, Senior Legal Officer, Directorate of International Government Agreements and Arrangements, Defence Legal

Mr Andrew Hodgkinson, Director, Americas, International Policy Division

Mr Anthony Rumball, Director International Logistics, Joint Logistics Command, Strategic Logistics Branch, Directorate of International Logistics

Commodore Mark Sackley, Director General, Strategic Logistics, Joint Logistics Command

**Department of Foreign Affairs and Trade**

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

**Department of Treasury**

Mr Aaron Bennett, Analyst, International Tax Treaties Unit, International  
Tax and Treaties Division

Mr Gregory Wood, Manager, International Tax Treaties Unit, International  
Tax & Treaties Division