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The Parliament of the Commonwealth of Australia

# **Report 28**

**Fourteen Treaties Tabled on 12 October 1999**

Joint Standing Committee on Treaties

December 1999

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ISBN



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## **Membership of the Committee**

**Chair**            The Hon Andrew Thomson MP

**Deputy Chair**   Senator Barney Cooney

<b>Members</b>	The Hon Dick Adams MP	Senator Vicki Bourne*
	The Hon Bruce Baird MP	Senator Helen Coonan
	Kerry Bartlett MP	Senator Joe Ludwig
	The Hon Janice Crosio MP	Senator Brett Mason
	Kay Elson MP	Senator the Hon Chris Schacht
	Gary Hardgrave MP	Senator Natasha Stott Despoja**
	De-Anne Kelly MP	Senator Tsebin Tchen
	Kim Wilkie MP	

\*            Until October 1999

\*\*           From October 1999

## **Committee Secretariat**

**Secretary**            Grant Harrison

**Inquiry Secretaries**   Cheryl Scarlett

Patrick Regan

**Senior Research Officer**   Robert Morris

**Research Officer**        Robert Horne

**Executive Assistants**    Jason Vickery

Elizabeth Halliday





## **Recommendations**

### **United Nations' Convention on the Law of the Sea relating to the Conservation and Management of Fish Stocks**

The Committee supports the proposed *Agreement for the Implementation of the Provisions of the United Nations' Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, and recommends that binding treaty action be taken (paragraph 2.44).

### **Treaty on Judicial Assistance with the Republic of Korea**

The Committee supports the proposed *Treaty on Judicial Assistance in Civil and Commercial Matters with the Republic of Korea*, and recommends that binding treaty action be taken (paragraph 3.27).

### **Multinational Force and Observers in the Sinai**

The Committee supports the proposed *Exchange of Notes constituting an Agreement concerning Australia's Participation in the Multilateral Force and Observers*, and recommends that binding treaty action be taken (paragraph 4.28).

## **Two double taxation agreements**

The Committee supports the proposed *Agreement with Argentina for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*, and recommends that binding treaty action be taken (paragraph 5.52).

The Committee supports the proposed *Agreement with the Slovak Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*, and recommends that binding treaty action be taken (paragraph 5.53).

## **Mutual Assistance in Criminal Matters with Monaco**

The Committee supports the proposed *Treaty with the Government of His Serene Highness the Prince of Monaco on Mutual Assistance in Criminal Matters*, and recommends that binding treaty action be taken (paragraph 6.30).

## **Two bilateral safeguards agreements**

The Committee supports the proposed *Amendment to the 1982 Agreement with Japan for Cooperation in the Peaceful Uses of Nuclear Energy*, and recommends that binding treaty action be taken (paragraph 7.35).

The Committee supports the proposed *Agreement with New Zealand concerning the Transfer of Uranium*, and recommends that binding treaty action be taken (paragraph 7.58).

## **Two telecommunications agreements**

The Committee supports the proposed *Amendments to the Constitution and the Convention of the International Telecommunication Union*, and recommends that binding treaty action be taken (paragraph 8.30).

The Committee supports the proposed *Partial Revision of the Radio Regulations and Final Protocol as incorporated in the Final Acts of the World Radio Conference, 1997*,

noting that provisional application has already begun, and recommends that binding treaty action be taken (paragraph 8.79).

### **Amendment of the Inmarsat Convention and the Operating Agreement**

The Committee supports the proposed amendments to the *Convention and Operating Agreement for the International Mobile Satellite Organization*, noting that implementation is already under way, and recommends that binding treaty action be taken (paragraph 9.47).

### **Cultural cooperation agreement with Germany**

The Committee supports the proposed *Agreement with Germany on Cultural Cooperation*, and recommends that binding treaty action be taken (paragraph 10.27).

### **Two consular agreements**

The Committee supports the proposed *Agreement on Consular Relations with the People's Republic of China*, and recommends that binding treaty action be taken (paragraph 11.40).

The Committee supports the proposed *Agreement concerning the Continuation of the Consular Functions in the Macau Special Administrative Region of the People's Republic of China*, and recommends that binding treaty action be taken (paragraph 11.59).



## Introduction

### Purpose of the Report

- 1.1 This Report contains advice to the Parliament on the review by the Joint Standing Committee on Treaties (the Committee) of the following, proposed treaty actions, tabled in both Houses of the Parliament on 12 October 1999:<sup>1</sup>
- the Agreement for the Implementation of the Provisions of the United Nations' Convention on the Law of the Sea (UNCLOS) relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, in Chapter 2;
  - the Treaty on Judicial Assistance in Civil and Commercial Matters with the Republic of Korea, in Chapter 3;
  - the Agreement with the Multinational Force and Observers in the Sinai, in Chapter 4;
  - the Agreement with the Government of the Slovak Republic on Double Taxation, in Chapter 5;
  - the Agreement with the Government of the Argentine Republic on Double Taxation, also in Chapter 5;
  - the Treaty with the Government of Monaco on Mutual Assistance in Criminal Matters, in Chapter 6;

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<sup>1</sup> Senate, *Hansard*, 12 October 1999, p. P9144; House of Representatives, *Votes and Proceedings*, No 74, 12 October 1999, pp. P922, *Hansard*, p. P8495

- the Agreement with the Government of Japan for Co-operation in the Peaceful Uses of Nuclear Energy, in Chapter 7;
- the Agreement with the Government of New Zealand concerning the Transfer of Uranium, also in Chapter 7;
- the Amendments to the Constitution and the Convention of the International Telecommunication Union, in Chapter 8;
- the Partial Revision of the Radio Regulations incorporated in the International Telecommunications Union Final Acts of the World Radiocommunications Conference, 1997, also in Chapter 8;
- the Amendments to the Convention on the International Maritime Satellite Organization, in Chapter 9;
- the Agreement with the Government of the Federal Republic of Germany on Cultural Cooperation, in Chapter 10;
- the Agreement on Consular Relations with the People's Republic of China, in Chapter 11; and
- the Agreement with the Government of the People's Republic of China on the continuation of the Australian Consular Function in the Macau Special Administrative Region, also in Chapter 11.

1.2 Three other proposed treaty actions were also tabled on 12 October 1999:

- the Treaty on Development Cooperation with the Government of Papua New Guinea;
- the Agreement with the Republic of Singapore on the use of the Shoalwater Bay Training Area and the Associated use of Storage Facilities, and
- the International Convention for the Protection of New Varieties of Plants.

1.3 We have decided to examine these matters in more detail, and will report on them as soon as practicable. The relevant Ministers were informed of our decision.

## **Availability of documents**

1.4 The advice in this Report refers to, and should be read in conjunction with, the National Interest Analyses (NIAs) prepared for these proposed treaty actions. These analyses were prepared by for each proposed treaty action



by the Government agency responsible for the administration of Australia's responsibilities under each treaty. The NIAs were tabled in Parliament as aids to Parliamentarians when considering these proposed treaty actions.

- 1.5 Copies of each of the treaties, and the NIA prepared for each proposed treaty action, can be obtained from the Treaties Library maintained on the Internet by the Department of Foreign Affairs and Trade (DFAT) ([www.austlii.edu.au/au/other/dfat/](http://www.austlii.edu.au/au/other/dfat/)), or from the Committee Secretariat.

## Conduct of the Committee's review

- 1.6 Our review of each of the proposed treaty actions considered in this Report was advertised in the national press, and on our web site at: [www.aph.gov.au/house/committee/jsct/](http://www.aph.gov.au/house/committee/jsct/). A number of submissions were received in response to the invitation to comment in the advertisement. A list of those submissions is at Appendix B.<sup>2</sup>
- 1.7 For the proposed treaty actions reviewed in this Report, we gathered evidence at public hearings on either 18 or 22 October 1999. Appendix C lists the witnesses who gave evidence at those hearings.
- 1.8 A transcript of the evidence taken at these hearings can be obtained from the database maintained on the Internet by the Department of the Parliamentary Reporting Staff at: [www.aph.gov.au/hansard/joint/committee/comjoint.htm](http://www.aph.gov.au/hansard/joint/committee/comjoint.htm), or from the Committee Secretariat.
- 1.9 We always seek to consider and report on each proposed treaty action within 15 sitting days of it being tabled in Parliament. In the case of these proposed treaty actions tabled on 12 October 1999, the 15 sitting day period expires on 9 December 1999.

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<sup>2</sup> Our review of these proposed treaty actions was advertised in *The Weekend Australian* on 16/17 October 1999, p. 8.

## Fish stocks Agreement

### Introduction

- 2.1 The *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* aims to ensure the long-term conservation and sustainable use of straddling and highly migratory fish stocks.<sup>1</sup>
- 2.2 All countries have the freedom to fish the high seas and therefore regulation and control to ensure sustainable fish stocks is beyond the capacity of individual countries. This Agreement addresses problems associated with unregulated high seas fishing through the application of rights, obligations and fisheries management practices. In particular, it will strengthen the legal regime for the conservation of fish stocks implemented through global, regional and sub-regional fisheries management organisations (RFMOs).<sup>2</sup>
- 2.3 For the purposes of this Agreement, highly migratory species may be defined as fish stocks that are distributed beyond areas of national jurisdiction, eg. southern bluefin tuna (SBT), while straddling stocks are those which occur both within an Exclusive Economic Zone (EEZ) of one or more States, and in an adjacent area of the high seas (eg. orange roughy or Patagonian toothfish).<sup>3</sup>

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1 This Agreement will be referred to as the UN Fish Stocks Agreement.

2 National Interest Analysis (NIA) for the UN Fish Stocks Agreement, p. 2

3 NIA for the UN Fish Stocks Agreement, p. 2

- 2.4 Ratification of this Agreement would bring into being the provisions of the United Nations Law of the Sea (UNCLOS) It would address unregulated and unsustainable fishing of these fish stocks which have been highlighted recently with orange roughy off Tasmania and the Patagonian toothfish in Antarctic waters. Ratification represents a natural progression from the prominent activities undertaken by Australia in global fisheries issues. Australia is currently is a member of several regional fisheries management organisations, including:
- the Commission for the Conservation of Southern Bluefin Tuna (CCSBT);
  - the Indian Ocean Tuna Commission (IOTC); and
  - the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).

### Previous Committee considerations

- 2.5 In its 3<sup>rd</sup> Report, the previous Committee reviewed in detail a fishing agreement with Japan. Amongst other issues, it looked at the operation of CCSBT and recommended that Australia deposit the Instrument of Acceptance for the Agreement to establish the IOTC. Australia takes an active role in both organisations.<sup>4</sup>
- 2.6 That Committee also examined the long line tuna fishing Agreement with Japan in less detail in its **First Report**, its **Eighth Report** and, in its **Fifteenth Report**, reviewed the Headquarters Agreement for the CCSBT. In its 9<sup>th</sup> Report, it reviewed amendments proposed to the Bonn Convention on the conservation of migratory wild animals, such as cetaceans and albatrosses. There are implications for these creatures in the activities of some international fishing practices.<sup>5</sup>

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4 Joint Standing Committee on Treaties, **Two International Agreements on Tuna: 3rd Report**, (November 1996). The review was of the *Subsidiary Agreement Between the Government of Australia and the Government of Japan Concerning Japanese Tuna Long-Line Fishing*. The Committee also reviewed the *Agreement for the Establishment of the Indian Ocean Tuna Commission* in that Report.

5 See: **First Report** (September 1996), p. 14-15; **Eighth Report** (June 1997), pp. 6-12; **Fifteenth Report** (June 1998), pp. 59-62; **Amendments to the Bonn Convention: 9<sup>th</sup> Report** (August 1997).

## Proposed treaty action

- 2.7 This Agreement was developed in response to growing international concerns over the rapid increase of unregulated fishing on the high seas, and the damaging effect that overfishing is having on fish stocks and the economic interests of coastal states such as Australia. It emphasised the importance of regional cooperation and consultation in the design of effective regional measures for the conservation and management of fish stocks through RFMOs.
- 2.8 The NIA suggested that participation in a strengthened RFMO regime would:
- help achieve sustainable levels of target fish stocks;
  - help secure access to those resources through cooperation and participation in RFMOs;
  - reduce problems of illegal, unregulated and unreported foreign fishing;
  - promote widespread adoption of contemporary fisheries management principles;
  - through enhanced monitoring, data collection, sharing of international data and compliance arrangements, provide transparency in regional arrangements;
  - assist in encouraging non-parties to regional arrangements to join those arrangements; and
  - help to provide employment, food and income for current and future generations.<sup>6</sup>

## Consultation

- 2.9 The NIA gave a detailed account of the consultations undertaken for the proposed Agreement. The text was developed in consultation with State authorities, industry and conservation groups. Those consulted included;
- the Ministerial Council on Agriculture, Fisheries, and Forestry; and
  - a Consultative Committee, to provide advice to the Government on implementation, including four fishing industry representatives, Commonwealth agencies and the World Wide Fund for Nature Australia (WWF).

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6 NIA for UN Fish Stocks Agreement, p. 3

- 2.10 A public consultation brochure was developed and distributed to over 2000 stakeholders. It generated no objections to the proposed Agreement, and few requests for further information. The NIA stated that there was 'substantial positive feedback' on its usefulness, particularly from conservation organisations.
- 2.11 The relevant Management Advisory Committee (MAC) of the fisheries to be affected by the proposed Agreement were identified. Papers were presented at MAC meetings and the NIA noted that there was 'general support' for the Agreement, as well as acknowledgment of the potential benefits to industry.
- 2.12 The NIA also noted that a key issue for the industry was implementation costs. The general view was that, until there was some level of security of access to high seas stocks, the substantive implementation costs of implementing the Agreement should fall to the Australian Government. There were also concerns about the potential for placing Australian operators at a disadvantage, compared to other fishing nations, through imposing costs and stringent environmental and fisheries management constraints.
- 2.13 Finally, the NIA stated that Agriculture, Fisheries and Forestry-Australia (AFFA) had received letters of support for ratifying the proposed Agreement from the relevant industry interests, conservation groups and the general public.<sup>7</sup>
- 2.14 As part of our review, we sought comments from State/Territory Premiers/Chief Ministers and also from the Presiding Officers of State/Territory Parliaments or, where appropriate, specific Committees of those Parliaments. No adverse comments were received on this proposed Agreement.

## Withdrawal

- 2.15 Any Party may denounce this Agreement by written notification to the Secretary-General of the United Nations. Denunciation takes effect one year after the receipt of that notification, unless it specifies a later date.<sup>8</sup>

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7 Material in this section was drawn from NIA for UN Fish Stocks Agreement, p. 11

8 NIA for UN Fish Stocks Agreement, p. 11

## Obligations imposed by the proposed treaty action

- 2.16 The UN Fish Stocks Agreement puts responsibilities on flag states to make sure that they properly control their national boats both in the EEZ of coastal states like Australia and on the high seas. The wider application of contemporary fisheries management principles like those already adopted in Australia will assist in improved monitoring and management of highly migratory and straddling fish stocks and avoid the economic and environmental effects associated with overfishing and unregulated fishing.
- 2.17 The Agreement will oblige Parties:
- to adopt measures to ensure sustainability of the designated fish stocks;
  - through their involvement in RFMOs, to develop mechanisms for international conservation management processes;
  - to ensure that Australian vessels comply with regional and subregional management measures including monitoring vessel access, collecting fish data and marking vessels and gear in accordance with international standards;
  - to cooperate in enforcement of regional Agreements and to take action against vessels believed to be illegally fishing in waters under national jurisdiction;
  - to provide information on the progress of investigations and to establish a regime for boarding and inspection of fishing vessels in any high sea covered by an RFMO;
  - to give due consideration of the capacity of developing states to implement the regional management regime which may involve financial assistance, technology transfer or consultancy services; and
  - to declare its acceptance of one or more means of dispute resolution in accordance with those options designated in Annexes VII and VIII to UNCLOS.
- 2.18 In reviewing the long-line fishing agreement with Japan, the Committee has seen the impact on SBT stocks of overfishing in the 1980s and a number of related environmental effects associated with seabird populations. The creation of the CCSBT and tightening of Australia's regulations in relation to its EEZ which flowed from Committee recommendations have improved Australia's management of its fish stocks. This Agreement will further develop effective management principles.

- 2.19 Responsibilities of flag states are highlighted in the Agreement including obligations to permit only authorised vessels to fish on the high seas covered by regional fisheries agreements and to ensure that unauthorised vessels do not conduct unauthorised fishing in areas of national jurisdiction. Additionally, it incorporates flag state responsibilities for the marking of fishing vessels and their gear in accordance with international standards, as well as the collection of information relating to vessels including location and the catch taken. It obliges nations to put in place more effective monitoring, compliance, control and surveillance measures.<sup>9</sup>

### Date of binding treaty action

- 2.20 The Agreement was signed for Australia on 4 December 1995, subject to ratification. It is proposed that Australia's instrument of ratification be deposited with the Secretary-General of the United Nations as soon as practicable after 9 December 1999, if possible in time for Australia to become an original party to the Agreement.<sup>10</sup>
- 2.21 Twenty-four countries have already ratified the Agreement. Over 30 other countries have signed the Agreement but not yet ratified it, including Argentina, China, Indonesia, Japan, New Zealand and the Republic of Korea. The Agreement will come into force 30 days after the deposit of the thirtieth instrument of ratification.<sup>11</sup>
- 2.22 WWF expressed the view that it was important that Australia was among the first 30 ratifying nations required to allow the treaty to enter into force:

By taking this action Australia had\`s the opportunity to signal to the world that it is prepared to lead in its commitment to the better management of marine resources, particularly straddling stocks such as Orange Roughy and Patagonian toothfish.<sup>12</sup>

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9 NIA for the UN Fish Stocks Agreement, p. 5

10 NIA for the UN Fish Stocks Agreement, p. 1

11 The following countries have ratified the agreement: Bahamas, Canada, Cook Islands, Fiji, Iceland, Iran, Maldives, Mauritius, Micronesia, Monaco, Namibia, Nauru, Norway, Papua New Guinea, Russian Federation, Saint Lucia, Samoa, Solomon Islands, Sri Lanka, Tonga, USA and Uruguay.

12 WWF, *Submission No 6*, p. 1

## Evidence presented

2.23 AFFA provided a comprehensive coverage of the issues arising from this Agreement. A number of important issues arose from submissions to the inquiry, and from the hearing.

## Costs and resources

2.24 The estimated total value of the Australian fisheries exploiting highly migratory and straddling fish stocks is over \$A260 million in sales of fish and employs more than 3000 people. Estimated costs of implementing this agreement would be in the range of \$A3.5 to A\$5 million per year and would help to ensure sustainable future expansion of the domestic industry on the high seas. Table 1 provides an indication of estimated annual costs.

Table 1 Estimated annual operating costs of the UN Fish Stocks Agreement

	Government	Industry	Total Cost	Comments
One-off costs		\$34,560	\$34,560	Establishment of statutory fishing rights register
Ongoing per annum costs	\$186,600	\$51,950	\$238,550	Operating and compliance costs
	\$3,075,152		\$3,075,152	Participation in RFMOs, incl. Membership fees
<b>Total essential costs</b>	<b>\$3,261,752</b>	<b>\$86,510</b>	<b>\$3,348,262</b>	
Optional costs	\$1,180,000	\$648,000	\$1,828,000	Charter boat patrols and observers
<b>Total essential plus optional</b>	<b>\$4,441,752</b>	<b>\$734,510</b>	<b>\$5,176,262</b>	

Source NIA for UN Fish Stocks Agreement, p. 8



2.25 The NIA noted that:

there are key differences between the AFZ [Australian Fishing Zone] and the high seas which impact on what may be recovered from industry .... whilst initially many costs fall to government, this may change over time as management arrangements are developed and access rights are negotiated. It is envisaged that industry members will continue to participate in the deliberations of RFMOs. It is important to note that most RFMOs are in formative stages of development, and new organisations will also be formed, making it more difficult to predict what costs will arise.<sup>13</sup>

2.26 The Tasmanian Fishing Industry Council supported the objectives of the Agreement, but commented that its success would depend on adequate government funding if it was to improve international management of fish stocks. The Council was concerned that the commercial fishing industry was already overburdened financially with domestic fishing compliance costs to assist in financing aspects of this Agreement. The attribution of costs between the Commonwealth Government and industry is based on the extension of principles of the 1992 Commonwealth policy for cost recovery in fisheries management. As the new regime may be expensive, the Council is concerned that Australian industry is not adversely affected by the implementation of the provisions of this Agreement.<sup>14</sup>

2.27 To this end, while acknowledging the level of industry consultation already in place for fisheries management in Australia, we encourage all government agencies involved in planning the implementation strategies for this Agreement to ensure full participation of fishing industry groups in decision making, particularly where decisions on the financial impacts of implementation are under consideration we consider it important to keep the fishing industry fully informed and involved in decisions which will have a direct impact on them. In this context, we endorse the creation of the remote area fisheries consultative group which should assist in the consultation process.<sup>15</sup>

2.28 Australia's participation in RFMOs has cost considerations that will have to be addressed in relation to membership fees, for scientific and policy support and in conservation and management issues. These costs are

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13 Glenn Hurry (AFFA), *Transcript of Evidence*, 18 October 1999, p. TR41; NIA for UN Fish Stocks Agreement, p. 8

14 Tasmanian Fishing Industry Council, *Submission No 4*, p. 1; NIA for UN Fish Stocks Agreement, p. 8

15 Glenn Hurry (AFFA), *Transcript of Evidence*, 18 October 1999, p. TR43

currently shared by the Department of Foreign Affairs and Trade (DFAT) and AFFA. The impact of the new arrangements remains to be assessed.

- 2.29 The Australian Fisheries Management Authority (AFMA) will have a range of new responsibilities under the Agreement including a greater role in the regulation of Australian fishing vessels. Consultations with both AFMA and the Fisheries Management Advisory Committee included financial impacts. There will also be a range of implementation costs as a result of ratifying the Agreement. The Government should be encouraged to explore all options to ensure adequate funding is provided for the its agencies to implement their parts of the Agreement effectively. It should also ensure that ways are found to minimise any negative financial impacts on the Australian fishing industry as a result of implementation.<sup>16</sup>
- 2.30 The Tuna Boat Owners' Association (TBA) saw this Agreement as an important step forward in conserving tuna stocks. In particular, it was seen as a means of strengthening the position of RFMOs such as CCSBT, as well as providing an enforcement avenue for these organisations. Just as importantly, it will provide the external trigger often required for countries such as Japan to persuade their governments to take trade action against countries not cooperating with RFMOs. The TBA also expressed concern that, if the Australian Government did not provide the resources necessary to fulfil its responsibilities under the Agreement, Australia would be weakened in the RFMOs. They would also be weakened.<sup>17</sup>

## Legislative implications

- 2.31 Two pieces of legislation are required for the implementation of this treaty. The *Fisheries Legislation Amendment Act (No. 1) 1999* was recently passed by the Parliament. It will provide a combination of enforcement measures within the Australian fishing zone against illegal foreign fishers and set in place the legislative framework to support Australia's ratification of this Agreement. It puts in place new management operational requirements and changes the objectives of AFMA, to enable its operations effectively to support Australia's involvement in this Agreement.<sup>18</sup>
- 2.32 The *Border Protection Legislation Amendment Bill 1999* is currently before the House of Representatives. It has a much broader focus beyond fisheries, including a set of provisions, amending the relevant Acts, extend the

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16 NIA of UN Fish Stocks Agreement. p. 8

17 Brian Jeffriess, TBA, *Submission No 2*, p. 1

18 Andrew Pearson (AFFA), *Transcript of Evidence*, 18 October 1999, p. TR45

circumstances in which Migration and Customs officers will be able to board ships. These provisions were designed to utilise to the fullest extent the jurisdiction conferred on Australia in relation to such matters by UNCLOS.<sup>19</sup>

- 2.33 The TBA considered that the legislation will force Australia to look beyond the narrow domestic political perspective, sometimes prevailing in this country, to counter what it saw as a lack of basic respect in some key groups in Australia for our mutual international obligations.<sup>20</sup>
- 2.34 WWF commended the Government for taking the necessary legislative steps to ensure that, when Australia ratified the Agreement, it would be well placed to meet its international obligations.<sup>21</sup>

## Regulatory implications

- 2.35 Authorisation for Australian vessels and licence conditions will need to be set up as part of implementation of this Agreement which will involve operating and ongoing monitoring and compliance responsibilities. Development of statutory fishing rights registers of vessels from Australia fishing on the high seas will also have to be undertaken.<sup>22</sup>
- 2.36 Ratification of the Agreement would mean that AFMA would have a greater administrative responsibility for its implementation and operation.

## Other issues

- 2.37 All the submissions received indicated their support for the proposed Agreement, each highlighting different aspects.
- 2.38 Dr Michael White QC, Executive Director of the Centre for Maritime Law at the University of Queensland, considered that any support which could be given to the conservation and controlled exploitation of fish stocks should be given.<sup>23</sup>
- 2.39 The proposed Agreement was seen by the Australian Institute of Marine Science as an opportunity for Australian scientists to enhance and maintain their networks with those countries with which Australia

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19 *Border Protection Legislation Amendment Bill 1999, Explanatory Memorandum*, p. 5

20 Brian Jeffriess, TBA, *Submission No 2*, p. 1

21 WWF, *Submission No. 6*, p. 2

22 Glenn Hurry (AFFA), *Transcript of Evidence*, 18 October 1999, p. TR44

23 Centre for Maritime Law, University of Queensland, *Submission No 1*, p. 1

becomes a party to a regional fisheries agreement, as well as enhancing expertise and international standing in RFMO forums.<sup>24</sup>

- 2.40 The Southern Oceans Seabird Study Association considered that all their major concerns were met, in particular the ecological implications of fisheries, and the decline in the albatross population over the last two decades because of declining food stocks and by-catch issues associated with unregulated long-line fishing.<sup>25</sup>
- 2.41 We agree with WWF's comments about the educational pamphlet *Sustainable fishing for international stocks*, when it suggested that this was well set out, written in accessible language. This document described the Agreement in the global context, while relating it back to the regional and national context. Its contents had been widely accepted by its recipients.<sup>26</sup>

## Conclusions and recommendation

- 2.42 Australia has one of the largest fishing zones in the world and is already actively pursuing many of the provisions of the proposed Agreement, both legislatively and administratively. It is involved on the international scene in several important RFMOs, and ratification of this Agreement represents a natural progression of these activities.
- 2.43 We applaud the introduction of new legislative, regulatory and administrative aspects related to the conservation of fish stocks and of those already set in place, particularly those educative measures such as the pamphlet *Sustainable fishing for international stocks*.

### Recommendation 1

- 2.44 **The Committee supports the proposed *Agreement for the Implementation of the Provisions of the United Nations' Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, and recommends that binding treaty action be taken.**

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24 Australian Institute of Marine Science, *Submission No 3*, p. 1

25 Southern Oceans Seabird Study Association, *Submission No 5*, p. 1

26 Exhibit No 3; WWF, *Submission No 6*, p. 2

## Agreement on Judicial Assistance with the Republic of Korea

### Background

- 3.1 In broad terms, judicial assistance treaties are designed to enhance cooperation between courts in different countries, with the way of reducing the costs of litigation and making the conduct of litigation more efficient.
- 3.2 This treaty is intended to facilitate the service of legal documents and the taking of evidence in civil and commercial legal proceedings in Australia and the Republic of Korea (ROK).
- 3.3 This will be Australia's second such treaty with an Asia-Pacific country, as a similar agreement was concluded with the Kingdom of Thailand in 1998. Australia already has 30 of these treaties, mainly with European countries. The proposed Treaty is similar to those others, but also covers the taking of evidence by video link and the provision of notices, relating to the service of legal documents, between government authorities by electronic means.<sup>1</sup>
- 3.4 The negotiation of this Treaty was initiated by the ROK, as part of a proposed network of treaties in the region. The Treaty with Australia will provide a precedent for future negotiations.<sup>2</sup>

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1 The previous Committee considered the *Agreement on Judicial Assistance in Civil and Commercial Matters and Cooperation in Arbitration with the Kingdom of Thailand* in its **Thirteenth Report** (March 1998), pp. 43-46

2 John McGinness (Attorney-General's Department (AGs)), *Transcript of Evidence*, 18 October 1999, p.TR13

## Date of effect of proposed binding treaty action

- 3.5 The Treaty will enter into force 30 days after both countries have given written notification that all domestic requirements are completed. It is proposed that Australia give notification as soon as practicable after 9 December 1999.

## Benefits of proposed treaty action

- 3.6 The Treaty helps to overcome some the difficulties that can exist when a party in our country attempts to pursue civil legal action against a party in the other country. By establishing a framework for direct cooperation between Central Authorities in each country the treaty will reduce the delays that can occur in processing requests through diplomatic channels.
- 3.7 The provisions in this Treaty allowing for evidence to be taken by video link, and for judicial commissioners to be appointed to travel to the other country to hear evidence, were described as useful variations to the standard form of judicial assistance treaty.<sup>3</sup>

## Obligations

- 3.8 The proposed Treaty requires Australia to consider requests for assistance by the courts and other authorities in identifying and locating persons, serving documents, examining witnesses, obtaining documents, inspecting properties and the provision of other necessary information.
- 3.9 It sets out requirements for the execution of requests, including:
- the appropriate actions in relation to compelling the giving of evidence;
  - the establishment of Central Authorities; and
  - the exchange of information on laws and regulations relating to legal proceedings and requests for extracts from publicly available judicial records relevant to legal proceedings.
- 3.10 Requests for assistance must be executed, unless:
- the request is contrary to public policy or prejudicial to the sovereignty or security of the requested country; or
  - on the costs of requests for taking evidence, the request does not fall within the functions of the judiciary if the requested country.

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3 John McGinness (AGs), *Transcript of Evidence*, 18 October 1999, p.TR14

## Costs

- 3.11 There will be no costs to government authorities in Australia in complying with this treaty. Many lawyers' fees and expenses resulting from the execution of requests will be met by litigants.
- 3.12 The additional workload and costs of the Central Authorities will be absorbed within the existing resources of AGs and the relevant State and Territory departments.

## Implementation

- 3.13 The Treaty will be implemented under existing Commonwealth, State and Territory legislation on service and evidence.
- 3.14 There will be no change to the existing roles of the Commonwealth, the States and Territories, apart from requests for assistance being transmitted through Central Authorities rather than through diplomatic channels.

## Consultation

- 3.15 The State and Territory Governments were notified through the Commonwealth-State Standing Committee on Treaties Schedule of Treaty Action and the Standing Committee of Attorneys-General. The Western Australian Government expressed concern in relation to the potential cost to Australian courts in taking evidence for the Korean courts. This was taken into consideration in the final drafting and the Treaty addresses the reimbursement of costs by the requesting country.<sup>4</sup>
- 3.16 The Chief Justices of the High Court, the Federal Court and the Family Court were also proved with copies of the draft Treaty.
- 3.17 As part of our review, we sought comments from State/Territory Premiers/Chief Ministers and also from the Presiding Officers of State/Territory Parliaments or, where appropriate, specific Committees of those Parliaments. No adverse comments were received about this proposed treaty action.

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4 NIA for the *Treaty on Judicial Assistance in Civil and Commercial Matters between Australian and the Republic of Korea*, p. 4

## Withdrawal

- 3.18 The Treaty will remain in force for five years after the date of entry into force, after which either country may terminate the agreement on six month's written notice.

## Evidence presented

- 3.19 The Treaty facilitates judicial assistance between two different legal systems: the civil law system in the ROK and the common law system in Australia. In a civil law country, the courts play a greater role in the collection of evidence and the judge plays an investigative role. In a common law country such as Australia, the parties have a greater role in progressing the litigation.<sup>5</sup>
- 3.20 In relation to the appointment of a commissioner to collect evidence in Korea, AGs commented that Australian courts prefer the judge hear the witness in forming their own assessment as to credibility. Judges can act as commissioners to hear evidence in a foreign country. The treaty confirms this option in relation to Korea.<sup>6</sup>
- 3.21 In relation to enforcement, AGs advised that Australia and Korea prefer to proceed on a non-treaty basis. Korean judgements could be enforced under Australia's *Foreign Judgements Act 1991*. Korean authorities have also given assurances that Australian judgements will be recognised in Korea.<sup>7</sup>
- 3.22 Where a witness is voluntarily prepared to give evidence the treaty allows this to be done by way of video link or a commissioner taking evidence. An Australian court does not, however, have the power to compel someone to give evidence in another country. In a civil law country, Australia would have to rely on the courts in that country accepting a request to compel the taking of evidence.<sup>8</sup>
- 3.23 We were also advised by AGs that the treaty covers judicial assistance only, not actions being pursued by way of arbitration between parties in the two countries. Anecdotal evidence quoted by AGs indicated that

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5 John McGinness (AGs), *Transcript of Evidence*, 18 October 1999, p.TR14

6 John McGinness (AGs), *Transcript of Evidence*, 18 October 1999, p.TR15

7 John McGinness (AGs), *Transcript of Evidence*, 18 October 1999, p.TR16

8 John McGinness (AGs), *Transcript of Evidence*, 18 October 1999, p.TR17



disputes between parties in the two countries were settled more frequently by way of arbitration, rather than by litigation.<sup>9</sup>

## Conclusion and recommendation

- 3.24 It can reasonably be expected that the proposed Treaty will facilitate the service of legal documents and the taking of evidence in proceedings involving parties in both countries. It will do so by reducing the scope for delays, thereby leading to the more efficient conduct of litigation and a reducing in litigation costs.
- 3.25 We note that the Treaty does not:
- cover matters being resolved by way of arbitration, as these matters are covered in separate multilateral treaties to which both countries subscribe; and
  - provide for the mutual enforcement of court judgements, which is expected to be covered by way of separate arrangements currently being negotiated.
- 3.26 Nevertheless, the Treaty represents a considerable improvement in the legal relationship between the two countries and allows for a sensible use of new communications technologies.

### Recommendation 2

- 3.27 **The Committee supports the proposed *Treaty on Judicial Assistance in Civil and Commercial Matters with the Republic of Korea*, and recommends that binding treaty action be taken.**

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<sup>9</sup> John McGinness (AGs), *Transcript of Evidence*, 18 October 1999, p.TR15

## The Multinational Force and Observers in the Sinai

### The Multinational Force

- 4.1 The Multinational Force and Observers (MFO) is an international organisation established in 1981 to oversee the Camp David Accords of September 1978 and the March 1979 Israel-Egypt peace treaty. It is designed as a confidence-building measure in the relationship between those nations that allows them to pursue other aspects of the peace process, without being concerned over their common border. Under the Accords, Israel withdrew from Egyptian territory in the Sinai it had occupied since the 1967 Arab-Israeli War.<sup>1</sup>
- 4.2 The MFO is funded by Egypt, Israel and the United States, with contributions from Germany, Japan and Switzerland.<sup>2</sup>
- 4.3 The proposed *Exchange of Notes Constituting an Agreement between the Government of Australia and the Multinational Force and Observers concerning Australia's participation in the Multinational Force and Observers* (the MFO Agreement) is an extension to an Exchange of Notes which entered into force on 18 February 1997.
- 4.4 The proposed Agreement will continue Australia's commitment and support for the MFO for the period from January 1998 until the withdrawal of the Australian contingent, in accordance with its terms. Australia's participation provides practical support to the achievement of

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1 National Interest Analysis (NIA) for the MFO Agreement, p. 1; COL Don Higgins, (Defence), *Transcript of Evidence*, 18 October 1999, p. TR35

2 COL Don Higgins (Defence), *Transcript of Evidence*, 18 October 1999, p. TR31

enduring peace and security in the Middle East. Australia participated in the original MFO from 1982 to 1986.<sup>3</sup>

- 4.5 The Agreement laying out the terms and conditions for the Australian participation entered into force on 17 March 1982. Australia participated with Colombia, Fiji, France, Italy, the Netherlands, New Zealand, Norway, the United Kingdom, Uruguay and the United States (US). The first Australian contingent to the MFO comprised 96 personnel, with eight helicopters.
- 4.6 In January 1993, Australia made another commitment, with a contribution of approximately 26 people to the headquarters of the MFO. This level of commitment has continued through various extensions and amendments, and is due for revision in January 2000. The MFO was not established, and does not operate, under the auspices of the United Nations (UN).<sup>4</sup>

### Previous Committee consideration

- 4.7 In its 4th Report, the previous Committee reviewed an earlier Agreement which had proposed participation in the MFO for the three year period from 4 January 1995.<sup>5</sup>

### The Role of the Multinational Force

- 4.8 The MFO is a relatively small formation, based on three light infantry battalions, deployed along the length of the Israeli border and along the Gulf of Aqaba. It has played an integral part in the moves for a comprehensive peace in the Middle East, in a role that is very strictly limited to peace monitoring.
- 4.9 Its mandate is to supervise the provisions of the peace treaty in accordance with the Camp David Accords. Its mission is to observe, verify and report, and it operates a series of checkpoints, reconnaissance patrols and observation posts along the international boundary. Periodic verifications are carried out automatically, at least twice a month or after receipt of a request from either party.

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3 COL Don Higgins (Defence), *Transcript of Evidence*, 18 October 1999, p. TR31

4 Unless otherwise specified, material in this section was drawn from the NIA for the MFO Agreement, pp. 1-2

5 See **Treaties Tabled on 15 & 29 October 1996, 4th Report**, pp. 20-21

## The Australian contingent and its role

- 4.10 The Australian contingent is based in north-eastern Sinai and is limited in its movements to the buffer area, known as 'Zone Charlie', between Israel and Egypt. In addition to the main force, there is a small peace monitoring group of up to 12 civilians, generally former American servicemen, who are allowed to move through the entire area. Australia is also represented by an officer who is the Computer Information Systems Officer, located in the MFO's headquarters in Rome.<sup>6</sup>
- 4.11 The Australian contingent plays a key role in the administration of the MFO, with its officers filling positions including that of the Assistant Chief of Staff. The responsibilities of other officers include security, accommodation and the Force duty centre.
- 4.12 Although living conditions for the Australian contingent are good, the Sinai is a harsh environment. A full range of facilities is available for personnel, whose tour of duty is a six months' unaccompanied posting.
- 4.13 The Australian Defence Force (ADF) considers that personnel who have served with the MFO come back to Australia better able to contribute their professional experience and expertise, wherever they serve subsequently. Australia's role in the MFO promotes this country's professional image in the international community and may provide leverage in diplomatic relations in the Middle East.
- 4.14 Participation in the MFO offers benefits not readily available in the normal Australian training environment, and promotes the professional image of the ADF in the international community. It exposes personnel to the workings of a multinational operational headquarters; and provides them with experience in the operational and logistic systems of other nations that are partners in the MFO. Knowledge gained with the MFO has been applied to the current commitment in East Timor.<sup>7</sup>

## Proposed treaty action

- 4.15 The proposed Agreement will confirm Australia's commitment to and support for the MFO for the period from January 1998 until the withdrawal of the Australian contingent, in accordance with its terms. Unlike most of the other treaties that we have reviewed, this proposed

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6 Unless specified otherwise, material in this section was drawn from *Transcript of Evidence*, 18 October 1999, LTCOL Greg Molyneux (Defence), pp. TR32-33, 34

7 NIA for the MFO Agreement, p. 2

Agreement will have retrospective application to 4 January 1998. Negotiations were required to improve the financial terms and conditions for the Australian contingent from that date. The cost of the Australian contingent per financial year is 'something less' than \$A750,000. The retrospective application of the terms of the Agreement to 1998 means that Australia stands to recover approximately \$A2.5 million of the costs of participation by its contingent.<sup>8</sup>

### Obligations imposed by the treaty

- 4.16 Australia's participation in the MFO will be governed by the terms of the Agreement and its Annexes, which set out the composition and mission of the Australian contingent, the financial arrangements and the administrative and management arrangements respectively. The NIA for the proposed Agreement provided details of these Annexes.
- 4.17 Annex I deals with the composition and mission of the Australian contingent, and:
- defines the type of ADF staff who will participate;
  - determines the number in the Australian contingent (nominally 26) and the positions they will occupy in the MFO organisation;
  - details the length of service of the members of the Australian contingent; and
  - provides for the ADF to allocate a Chief Information Systems Officer to the MFO's headquarters in Rome.
- 4.18 Annex II deals with financial arrangements, including:
- responsibility for the payment salaries and allowances of the Australian contingent;
  - payments for which the MFO is responsible to the Australian Government;
  - reimbursement by the MFO of the cost of shipping and transport incurred in the deployment of the Australian contingents, their equipment and ammunition;
  - the provision of food, lodging and base support for the personnel of the Australian contingent; and

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8 COL Don Higgins (Defence), *Transcript of Evidence*, 18 October 1999, p. TR35

- Australia's responsibility for providing its personnel with their weapons, ammunition, uniforms and other personal equipment.

4.19 Appendix III provides for administrative and management arrangements which:

- require Australian personnel to comply with the terms of the MFO protocols, and also to MFO directives, regulations and orders;
- provide for medical and dental care and other medical services;
- set out procedures relating to the travel and to the repatriation of Australian personnel;
- set out procedures concerning radio and other types of communications and postal services; and
- set out procedures relating to investigations into personnel or property injury, loss or damage.<sup>9</sup>

## Consultation

4.20 The States and Territories were notified about this proposed Agreement through the SCOT process. No comments were received. Implementation does not require any action by the States/Territories.<sup>10</sup>

4.21 As part of our review, we sought comments from State/Territory Premiers/Chief Ministers and also from the Presiding Officers of State/Territory Parliaments or, where appropriate, specific Committees of those Parliaments. No adverse comments were received on this proposed treaty action.

## Date of binding treaty action

4.22 The Agreement will enter into force on the date Australia notifies the MFO that all necessary legal and constitutional processes necessary to give effect to the Agreement in Australia have been satisfied. This notification will occur as soon as practicable after 9 December 1999.<sup>11</sup>

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9 NIA for the MFO Agreement, pp. 3-4

10 NIA for the MFO Agreement, p. 5

11 NIA for the MFO Agreement, p. 1

## Withdrawal

- 4.23 The Agreement will be in force from 4 January 1998 to 4 January 2000 and will remain in force thereafter, whilst the Australian contingent is deployed, unless:
- it is withdrawn earlier as a result of the Government of Egypt and the Government of Israel agreeing to terminate the mandate of the MFO; or
  - Australia provides 12 months' prior written notice of its intention to withdraw from the agreed mission or from the MFO; or
  - circumstances develop which mean that the security of the Australian contingent cannot be assured.
- 4.24 Withdrawal will not be undertaken without prior consultation between Australia and the MFO.<sup>12</sup>

## Other evidence presented

- 4.25 Defence also advised that the length of Australian involvement in the MFO was largely contingent upon the need for the force. When Israel and Egypt are confident that the MFO is longer required, it will be disbanded.<sup>13</sup>

## Conclusion and recommendation

- 4.26 Australia has gained much from its participation in the MFO. It has demonstrated a commitment to peace in the Middle East, and to international peacekeeping generally. The operational experience afforded to ADF personnel has proved to be valuable. The performance of Australia's contingents has not only enhanced the ADF's professional reputation, but helped to strengthen Australia's standing in the Middle East.
- 4.27 The proposed treaty action will continue Australia's successful involvement in the MFO.

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12 NIA for the MFO Agreement, p. 5

13 COL Don Higgins (Defence), *Transcript of Evidence*, 18 October 1999, p. TR37

**Recommendation 3**

- 4.28 **The Committee supports the proposed *Exchange of Notes constituting an Agreement concerning Australia's Participation in the Multilateral Force and Observers*, and recommends that binding treaty action be taken.**



## Two double taxation agreements

### Introduction

- 5.1 This Chapter addresses two proposed treaty actions relating to proposed double taxation agreements (DTAs):
- with the Government of Argentina;<sup>1</sup> and
  - with the Government of the Slovak Republic.<sup>2</sup>

### Double taxation agreements

- 5.2 The reduction or elimination of double taxation caused by overlapping tax jurisdictions is a key aim for Australia in the development of a network of bilateral income tax treaties. By separating the parties' taxing powers and, in certain circumstances, by giving credits for the payment of tax in the other country, these arrangements seek to prevent the double taxation of income received by a resident in one country from activities conducted in the other.
- 5.3 DTAs have several other purposes, including the combating of international tax avoidance and fiscal evasion through the exchange of information and cooperation between tax administrations. They assist in the elimination of possible barriers to trade and investment by promoting closer economic cooperation with major trading partners and providing legal and fiscal certainty in which to conduct cross-border trade and investment.

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1 This Agreement will be referred to as the Double Tax Agreement with Argentina

2 This Agreement will be referred to as the Double Tax Agreement with the Slovak Republic

- 5.4 Australia already has DTAs with 37 other countries<sup>3</sup>.

## Previous committee considerations

- 5.5 The previous Committee reported on DTAs with Vietnam, in its 7<sup>th</sup> Report (March 1997), and Finland in its **Thirteenth Report** (March 1998). We reported on similar agreements with South Africa and Malaysia in **Report 25, Eight Treaties Tabled on 11 August 1999** (September 1999). In all cases, the proposed treaty actions were supported and the potential advantages of double tax agreements were acknowledged.
- 5.6 In the first of those reports, the previous Committee expressed concern about the quality of the NIA, the lack of information on the costs/benefits of DTAs and the lack of consultation with the professional accounting bodies. In Report 25, we recommended that the Australian Taxation Office (ATO) extend its consultation program by including representatives of country-specific business organisations to participate in meetings of the Treaties Advisory Panel (TAP) when relevant proposals are considered.
- 5.7 The ATO has since addressed these matters, with the exception of the costs/benefits of DTAs.

## Proposed Agreement with Argentina

### Background

- 5.8 This is the first such Agreement between Australia and a country in South America. In 1998, Australia exported some \$A167 million worth of merchandise to Argentina, including motor vehicles, coal and electric power machinery. In the same year, imports from Argentina totalled \$A77 million, including leather, medicaments, including veterinary and 'soft' fixed vegetable fats and oils. While trade between the two countries remains modest, Australian investment in Argentina is significant and is growing 'almost exponentially'.<sup>4</sup>
- 5.9 The ATO advised that Australian investors have specifically targeted the mining sector, so that this country is among the largest investors in the Argentine industry. Numerous Australian companies are working under exploration leases and evaluating projects, with one operation being a \$US1 billion MIM/North joint venture project to develop the Bajo de la Alumbrera copper and gold deposit. Australian companies are investing in

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3 The countries with which Australia has DTAs and similar treaties are listed in the NIAs for each of these proposed treaty actions, p. 1

4 Michael Lennard (ATO), *Transcript of Evidence*, 18 October 1999, p. 2

Argentine cinemas, agriculture, foodstuffs and insurance. There are also now direct QANTAS flights to Buenos Aires.<sup>5</sup>

## Proposed treaty action

- 5.10 The NIA noted that the allocation of taxing rights under the proposed Agreement is similar to the Organization for Economic Cooperation and Development *Model Taxation Convention on Income and on Capital* (the OECD model). There are also some influences from the more source-country biased United Nations' model. It is consistent with Australian practice, as there are a number of instances where the provisions are wider than the model.
- 5.11 Both countries proposed some variations to the OECD model to reflect their domestic tax rules, economic interests and legal circumstances. The NIA stated that the proposed Agreement is 'substantially similar' to recent Australian tax treaties but variations were made to a number of provisions, some of which are set out below.
- 5.12 This Agreement applies to residents of either country, and to the following taxes:
- Australian Federal income tax; and
  - Argentine income tax.<sup>6</sup>

## Obligations imposed by the treaty

- 5.13 The proposed Agreement does not impose any greater obligations on Australian residents than are imposed by existing domestic tax laws.
- 5.14 Although the proposed Agreement is similar to other DTAs we have reviewed, there are a number of differences, including:
- in the case of technical, engineering and consultancy services Argentina taxes all such services if they are performed for greater than 183 days in a 12 month period. Under the Agreement, there is a maximum tax rate of 10 per cent: the same as the rate where services are performed for less than 183 days in a year. The normal provision is that these services are only taxable in the country where they are rendered, when there is a fixed presence in that country;

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5 NIA for the Double Taxation Agreement with Argentina, p. 2, Michael Lennard (ATO), *Transcript of Evidence*, 18 October 1999, p. 2

6 Material in this section was drawn from NIA for the Double Taxation Agreement with Argentina, pp. 2-3, 4 (*passim*)

- the interest on withholding tax rate, the tax which is payable on interest being paid out of Argentina and out of Australia to Argentina, is capped at a maximum of 12 per cent. Normally Australia seeks to negotiate a 10 per cent tax rate but, in this case, Argentina was concerned to avoid a flow-on effect to its other agreements;
- provision is made for tax sparing arrangements in the future. This means that one country gives reduced tax rates to those people who are participating in a certain type of enterprise. Under tax sparing, such people are treated as though they have paid the full amount of tax in the other country. The ATO advised that, since 1997, Australia has been against such provisions, but there is at present no need to consider any such Argentinian incentives;
- there is a limited force of attraction rule which means that, in certain circumstances, sales can be attributed to a permanent establishment thereby being liable to be taxed; and
- in Australia's favour, there is a 'most favoured nation' provision which states that, if Argentina gives better treatment on withholding taxes to other OECD countries in the future, the treatment would also apply to Australian residents.<sup>7</sup>

## Likely impact of the Agreement

5.15 The proposed Agreement is likely to have an impact on:

- Australians and Argentines investing in and trading with the other country;
- Australians and Argentines working in or supplying services to the other country;
- the Governments of both countries; and
- people receiving pensions or annuities from the other country.<sup>8</sup>

## Date of binding treaty action

5.16 The proposed Agreement will enter into force on written notification that both Parties have completed their respective statutory and constitutional requirements. Enabling legislation will be enacted to incorporate the

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<sup>7</sup> Material in this section was drawn from *Transcript of Evidence*, 18 October 1999, Michael Lennard (ATO), pp 2-4 (*passim*). For more detail, see the NIA for the Double Taxation Agreement with Argentina, pp. 7-10 (*passim*)

<sup>8</sup> NIA for the Double Taxation Agreement with Argentina, p. 3; Michael Lennard (ATO), *Transcript of Evidence*, 18 October 1999, p. 10

Agreement as a schedule in the *International Tax Agreements Act 1953*. It is proposed that Australia provide such advice to Argentina by the end of 1999.<sup>9</sup>

## Consultation

- 5.17 The NIA detailed the ATO's consultation process in the development of this proposed treaty. It sought the views of:
- major Australian investors operating in Argentina;
  - members of its TAP;
  - other relevant government agencies; and
  - State and Territory Governments.<sup>10</sup>
- 5.18 The ATO also advised that, consistent with our recommendation in **Report 25**, it had sought comments from the relevant inter-country business association. There are no Australia-Argentina business groups.<sup>11</sup>
- 5.19 Because it seeks to further Australian business and investment links with Argentina, the Department of Foreign Affairs and Trade (DFAT) was involved in the finalisation of this Agreement.<sup>12</sup>
- 5.20 As part of our review, we sought comments from State/Territory Premiers/Chief Ministers and also from the Presiding Officers of State/Territory Parliaments or, where appropriate, specific Committees of those Parliaments. No adverse comments were received on this proposed treaty action.

## Withdrawal

- 5.21 This proposed Agreement may be terminated by either Party by written advice through diplomatic channels on or before 30 June in any year, five years after entry into force.<sup>13</sup>

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9 NIA for the Double Taxation Agreement with Argentina, pp. 1, 10

10 Michael Lennard (ATO), *Transcript of Evidence*, 18 October 1999, p. 5

11 Michael Lennard (ATO), *Transcript of Evidence*, 18 October 1999, p. 6. See **Report 25: Eight Treaties Tabled on 11 August 1999**, p.51 for our recommendation on this matter.

12 NIA for the Double Taxation Agreement with Argentina, p.11

13 NIA for the Double Taxation Agreement with Argentina, pp.11-12

## Proposed Agreement with the Slovak Republic

### Background

- 5.22 Negotiation of this Agreement began in 1993 when Czechoslovakia divided into two separate successor states: the Czech Republic and the Slovak Republic. At that time, Australia had already commenced negotiations with Czechoslovakia for a DTA. Negotiations with the Czech and Slovak Republics continued, and the Agreement with the Czech Republic came into force in 1995.
- 5.23 The Slovak Agreement, although very similar, took much longer to negotiate because of some difficulties with the translation of the text into the Slovak language. The Slovak Republic was also very concerned to get the same treatment as the Czech Republic. In addition, the *Lamesa Holdings* decision had implications for all of Australia's DTAs in relation to the alienation of property. Some of the Agreement's provisions had to be revised.<sup>14</sup>
- 5.24 The main aim of the proposed Agreement is to provide a framework for bilateral investment and trade. The trading relationship with the Slovak Republic is small, ranking 117<sup>th</sup> in Australia's international trading and investment partnerships.<sup>15</sup>
- 5.25 In 1998/99, Australia exported products totalling \$A4.2million, including wool, bovine meat and computers, to the Slovak Republic. Australia's imports from the Republic totalled \$A8.2million, including computer parts, nitrogen-function compounds and plastics. Although this is not a substantial investment and trade relationship, the Agreement is seen as assisting in developing a bilateral framework to develop further that relationship with the Slovak Republic.<sup>16</sup>

### Proposed treaty action

- 5.26 The proposed treaty action generally follows the OECD model but, like the Agreement with Argentina, there are influences from the UN model, which is more biased towards the revenue systems of the source countries.

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14 NIA for the Double Taxation Agreement with the Slovak Republic, pp. 2, 5, Michael Lennard (ATO), *Transcript of Evidence*, 18 October 1999, pp. 4, 5

15 Michael Lennard (ATO), *Transcript of Evidence*, 18 October 1999, p. 4

16 Michael Lennard (ATO), *Transcript of Evidence*, 18 October 1999, p. 4, NIA for the Double Taxation Agreement with the Slovak Republic, p. 1

There are also variations reflecting domestic tax rules, economic interests and legal circumstances. Subject to those variations, the NIA stated that it is 'substantially similar' to recent Australian tax treaties.

- 5.27 In general, it will not impose any greater obligations on Australian residents than this country's domestic tax laws would otherwise require. Subject to secrecy and privacy safeguards, information may be supplied to Slovak authorities about the tax affairs of Australian residents. Similarly, the ATO may obtain information from those authorities.<sup>17</sup>

### Obligations imposed by the treaty

- 5.28 The proposed DTA with the Slovak Republic contains only two departures from Australia's preferred tax treaty practice. Services performed by an enterprise of one country in the other country for a period aggregating 6 months in any 12 month period are deemed to be permanent establishments. Thus, the host country can fully tax those services and the resident country will give credit for those services. The DTA with Argentina contains a similar provision.
- 5.29 Dividends withholding tax rates will generally be subject to a source country tax rate limit of 15 per cent. Normal Australian practice is to seek lower rates in certain circumstances. The Slovak Government wanted to receive the 15 per cent rate provided in the DTA with the Czech Republic.<sup>18</sup>

### Date of binding treaty action

- 5.30 The proposed Agreement will enter into force once both Parties have notified each other in writing that their respective statutory and constitutional procedures for entry into force are complete. Enabling legislation will be enacted to incorporate the Agreement as a schedule to the *International Tax Agreements Act 1953*. It is proposed that Australia provides such advice to the Slovak Republic by the end of 1999.<sup>19</sup>

### Likely impact of the Agreement

- 5.31 The proposed Agreement is likely to have an impact on:
- Australians and Slovaks investing in and trading with the other country;

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17 Material in this section was drawn from NIA for the Double Taxation Agreement with the Slovak Republic, pp. 3-4

18 Michael Lennard (ATO), *Transcript of Evidence*, 18 October 1999, p. 5

19 NIA for the Double Taxation Agreement with the Slovak Republic, pp. 1, 7

- Australians and Slovaks working in or supplying services to the other country;
- the Governments of both countries; and
- people receiving pensions or annuities from the other country.<sup>20</sup>

## Consultation

- 5.32 The NIA gave details of the ATO's consultation process in connection with this proposed Agreement. The TAP considered the text in February 1998 and supported signature, subject to further work on areas affected by the *Lamesa Holdings* case.
- 5.33 Because it seeks to further Australian business and investment links with the Slovak Republic, DFAT was involved in the finalisation of this Agreement.<sup>21</sup>
- 5.34 Information on this proposed Agreement was provided to the States and Territories through the SCOT process. The NIA stated that there had been no requests for additional information.<sup>22</sup>
- 5.35 As part of our review, we sought comments from State/Territory Premiers/Chief Ministers and also from the Presiding Officers of State/Territory Parliaments or, where appropriate, specific Committees of those Parliaments. No adverse comments were received on this proposed Agreement.

## Withdrawal

- 5.36 The proposed Agreement provides for termination by either Party, by written advice through diplomatic channels on or before 30 June in any calendar year, after it has been in force for five years.<sup>23</sup>

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20 NIA for the Double Taxation Agreement with the Slovak Republic, p. 3

21 NIA for the Double Taxation Agreement with the Slovak Republic, p. 8

22 NIA for the Double Taxation Agreement with the Slovak Republic, p. 8

23 NIA for the Double Taxation Agreement with the Slovak Republic, pp. 8-9



## Other evidence presented

### Measuring the impact of DTAs on revenue

- 5.37 As the previous Committee noted in relation to the DTA with Vietnam, assessing the costs and benefits of these agreements is a vexed issue.<sup>24</sup>
- 5.38 The ATO noted that the purpose of tax agreements is to harmonise the tax rules of different countries and that, in general terms, they are not expected to have any significant effect on tax revenues.<sup>25</sup>
- 5.39 It indicated that a search of the literature on the development of modelling processes which could more accurately measure the success of DTAs had not been rewarding. It was not aware of any authority being able to give a really good estimate of the costs and benefits of DTA Agreements. It also noted that an OECD working party had concluded that very little empirical work had been done on the impact of DTAs on investment flows between countries because of the difficulty of obtaining adequate data.<sup>26</sup>
- 5.40 One of the aspects that made measurement difficult was the fact that DTAs are 'future documents'. It is difficult to assess the extent to which tax payers will modify their behaviour to take advantage of the provisions, or whether they will take up the incentives and benefits offered under the Agreement.<sup>27</sup>
- 5.41 The ATO further noted that such treaties facilitate the return of revenue in the future, in the form of repatriated profits. It also suggested some more specific reasons why it was not possible to forecast the costs and benefits which included:<sup>28</sup>
- the range of income covered by the DTA;
  - the time period for which the DTA will operate, usually 15 or more years;
  - the difficulty of obtaining adequate data;
  - the fact that domestic tax rules may already provide relief for foreign taxes;

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24 See *Australia's Withdrawal from UNIDO & Treaties Tabled on 11 February 1997*, 7<sup>th</sup> Report (March 1997), p. 25

25 Michael Nugent (ATO), *Transcript of Evidence*, 18 October 1999, p. 9

26 Michael Lennard (ATO), *Transcript of Evidence*, 18 October 1999, p. 10, ATO, *Submission No. 1* p. 4

27 Michael Lennard (ATO), *Transcript of Evidence*, 18 October 1999, p. 10

28 Michael Nugent (ATO), *Transcript of Evidence*, 18 October 1999, p. 11

- the relationship with increased trade and investment flows; and
  - the prospective nature of such flows and the time lag which will be involved in 'growing' trade and investment.<sup>29</sup>
- 5.42 The ATO argued that there are more than 1000 DTAs operating globally, and their absence can dampen investment relationships. It contended that there is a strong consensus that DTAs were positive, even where there was a short term reduction in revenue.<sup>30</sup>
- 5.43 The difficulties associated with being precise in this area are highlighted by the fact that, when Mexico joined the OECD, it sought to conduct a cost-benefit analysis on DTAs. This study concluded that effective modelling of revenue impacts was not possible.<sup>31</sup>
- 5.44 The ATO further clarified this outcome, quoting from an OECD Report which had concluded that:

It is possible to be relatively positive about the effect of the current network of [OECD based] double tax treaties, since they both lower the average required return and they reduce the variance in required returns between alternative locations.<sup>32</sup>

## Other Issues

- 5.45 We also asked about the flexibility of DTAs to accommodate major changes to the taxation system of one of the treaty parties. With the imminent introduction of the Goods and Services Tax (GST) and tax changes such as the deferred company tax regime in this country, we were concerned about their impact on these Agreements.
- 5.46 The ATO indicated that these treaties do pick up similar taxes to the ones that they cover, and that there are provisions for notification of different taxes. It also commented that if, there was a tax which was not covered by these treaties, Australia would seek consultations based on provisions within the Agreements.<sup>33</sup>
- 5.47 A related issue was whether problems could arise for companies if different accounting standards were used by Parties to a DTA. The ATO noted that one of the important considerations in the negotiation of DTAs

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29 ATO, *Submission No. 1*, p. 2

30 Michael Lennard (ATO), *Transcript of Evidence*, 18 October 1999, p. 10

31 Michael Lennard (ATO), *Transcript of Evidence*, 18 October 1999, p. 10

32 ATO, *Submission No. 1*, p.3

33 Michael Lennard (ATO), *Transcript of Evidence*, 18 October 1999, p. 6

was whether the tax system of the other party was reputable and whether the tax authorities were willing to exchange information with the ATO. It further suggested that Australia was not required to give foreign tax credits for taxes which were imposed contrary to Agreements. Importantly, DTAs seek to stop artificial schemes between related parties to try to get around the rules for unwarranted advantages. If Australia had such problems, an Agreement could be terminated.<sup>34</sup>

## Conclusions and recommendations

- 5.48 As noted in previous Reports, we support the negotiation of DTAs with our trading partners. They can help support commercial opportunities for Australian companies and facilitate two-way trade. They are also valuable to the extent that they help combat international fiscal evasion.
- 5.49 While we accept the difficulties highlighted by the ATO in developing accurate methods of forecasting the costs and benefits of DTAs, we would encourage exploration of all avenues to develop methods which can more effectively measure the impact of these Agreements.
- 5.50 Australian trade with Argentina is expanding and shows great potential. The negotiation of a DTA with Argentina is timely and may help develop the trading relationship further. It may also open opportunities for DTAs to be negotiated with other countries in South America.
- 5.51 Australia's trade with the Slovak Republic is of a different scale and the potential for growth in the trading relationship is probably in the longer term. Nevertheless, the negotiation of a DTA provides a framework to support such growth, as well as establishing a more secure environment for businesses currently involved in such trade.

### Recommendation 4

- 5.52 **The Committee supports the proposed *Agreement with Argentina for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*, and recommends that binding treaty action be taken.**

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34 Michael Lennard, p. 8, and Michael Nugent, p. 7 (ATO), *Transcript of Evidence*, 18 October 1999

**Recommendation 5**

- 5.53 **The Committee supports the proposed *Agreement with the Slovak Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*, and recommends that binding treaty action be taken.**

## Mutual Assistance in Criminal Matters with Monaco

### Background

- 6.1 The proposed *Treaty between the Government of Australia and the Government of His Serene Highness the Prince of Monaco on Mutual Assistance in Criminal Matters, done at Paris on 13 September 1999* will add to Australia's network of treaties providing bilateral mutual assistance in criminal matters. There are now 20 such agreements, with another three awaiting entry into force. Negotiations are continuing with several other countries.<sup>1</sup>
- 6.2 It is by far the smallest country with which Australia has entered into such a treaty. This does not diminish its significance because Monaco is a tax haven and also operates a substantial offshore financial sector.<sup>2</sup>
- 6.3 Treaties on mutual assistance in criminal matters allow law enforcement agencies to seek assistance in locating, restraining and forfeiting proceeds of crimes that occurred in Australia and help combat serious crimes which traverse international boundaries. They enable treaty partners to assist each other in the investigation and prosecution of crimes such as drug trafficking and money laundering.<sup>3</sup>
- 6.4 These treaties provide a reliable and effective basis for cooperation by establishing a legal obligation to provide mutual assistance, as well as

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1 This treaty will be referred to as the Mutual Assistance Agreement with Monaco. Michael Manning (Attorney-Generals Department (AGs), *Transcript of Evidence*, 18 October 1999, p. 18

2 Michael Manning (AGs), *Transcript of Evidence*, 18 October 1999, p. 19

3 National Interest Analysis (NIA) for the Mutual Assistance Agreement with Monaco, p. 1

enabling common procedures and administrative requirements to be established between the Parties.

- 6.5 The *Mutual Assistance in Criminal Matters Act 1987* enables the Government to give effect to its bilateral mutual assistance treaties. Wherever possible, the Government seeks to negotiate mutual assistance arrangements in a form consistent with an internationally recognised 'model' text.<sup>4</sup>

### Previous Committee considerations

- 6.6 The previous Committee reviewed similar treaties with Indonesia, Hungary, Ecuador, Hong Kong, the USA and Thailand. In this Parliament, this Committee reviewed such an agreement with Sweden.<sup>5</sup>

### Proposed treaty action

- 6.7 The proposed Agreement will set up a mutual assistance regime to allow law enforcement agencies in Australia and Monaco to assist each other in the investigation and prosecution of criminal matters, including revenue, foreign exchange and customs offences.
- 6.8 The treaty will enable Commonwealth, State and Territory law enforcement agencies to seek assistance in locating, restraining and forfeiting in Monaco's jurisdiction, the fruits of criminal activity that took place in Australia.<sup>6</sup>

### Obligations imposed by the treaty

- 6.9 The proposed Agreement obliges Australia and Monaco to provide assistance in criminal matters that is consistent with the objects of the Treaty, and is not inconsistent with the law of the either State.
- 6.10 This Agreement expressly provides for:
- service of documents;
  - taking evidence from witnesses and experts;
  - providing publicly available and official documents, including criminal records;

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4 NIA for Mutual Assistance Agreement with Monaco, p. 3

5 See **Report 21, Five Treaties Tabled on 16 February 1999** (June 1999), pp. 8-12

6 NIA for Mutual Assistance Agreement with Monaco, p. 1

- executing requests for search and seizure;
  - locating and restraining proceeds of crime and enforcing orders in relation to such proceeds; and
  - making persons including prisoners available to give evidence.
- 6.11 As with other treaties of this type, the assistance to be provided does not include extradition, execution of criminal judgements imposed by the courts of the treaty partner or transfer of prisoners to serve sentences. Assistance may be requested in relation to conduct which occurred before entry into force of the Treaty.<sup>7</sup>
- 6.12 This Agreement is based on the Australian model. The NIA stated that there were ‘numerous minor technical variations’ between the proposed text and that of the Australian model. The most significant differences are:
- because there is no basis in Monaco's law for such an undertaking, there is no prohibition on derivative use, for a purpose other than that for which the request was made, of information contained in documents or materials provided under the Treaty; and
  - the absence of a provision for the compulsory production of documents or other articles as part of the obligation to take evidence, because Monaco's law does not compel a witness to produce documents or articles.
- 6.13 At Monaco's request, articles relating to communication of criminal records and to notification of sentences passed on nationals of the treaty partner were also included. This was subject to the understanding that Australia would have a limited capacity to provide this information.<sup>8</sup>
- 6.14 Of these differences, AGs commented particularly that the absence of a provision for the production of documents to obtain evidence was a difficulty. It was possible that this problem could be solved by the use of search warrants but, equally, Monaco's law did not require a person to produce a document in court.<sup>9</sup>
- 6.15 The Agreement also includes provisions for confidentiality and allocation of costs.<sup>10</sup>

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7 NIA for Mutual Assistance Agreement with Monaco, p. 2

8 NIA for Mutual Assistance Agreement with Monaco, p. 3

9 Michael Manning (AGs), *Transcript of Evidence*, 18 October 1999, p. 20

10 NIA for Mutual Assistance Agreement with Monaco, p. 2

## Date of proposed treaty action

- 6.16 The Treaty will enter into force 30 days after each Party has notified the other in writing that its constitutional requirements for entry into force of the Treaty have been complied with. It is anticipated that this will occur as soon as practicable after 9 December 1999.<sup>11</sup>

## Implementation

- 6.17 The formal requesting or granting of assistance in criminal matters is governed by the *Mutual Assistance in Criminal Matters Act 1987*. Under that Act, Australia is able to make this category of bilateral treaties, and regulations will be made to provide that it applies to Monaco. These regulations will include the text of the proposed Agreement.<sup>12</sup>

## Consultation

- 6.18 Information on this proposed treaty action was provided to the States and Territories via the SCOT process. The NIA stated that no requests were received for additional information.<sup>13</sup>
- 6.19 As part of our review, we sought comments from State/Territory Premiers/Chief Ministers and also from the Presiding Officers of State/Territory Parliaments or, where appropriate, specific Committees of those Parliaments. No adverse comments were received on this proposed Agreement.

## Withdrawal

- 6.20 The Agreement provides that either Party may terminate it by notice in writing through diplomatic channels at any time. It would then cease to be in force on the 180<sup>th</sup> day after the day on which notice had been given.<sup>14</sup>

## Other issues

- 6.21 The proposed Agreement raised the general issue of the search and seizure provisions of mutual assistance treaties, and the methods adopted

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11 NIA for Mutual Assistance Agreement with Monaco, p. 4

12 NIA for Mutual Assistance Agreement with Monaco, p. 3

13 NIA for Mutual Assistance Agreement with Monaco, p. 3

14 NIA for Mutual Assistance Agreement with Monaco, p. 4



in other countries for the gathering of evidence for criminal proceedings. There was an issue about the warrant systems used by other treaty partners, whether these were similar to those used in Australia and, if not, whether there were any implications for implementation of these treaties.

- 6.22 AGs noted that mutual assistance treaties normally provided for each Party to be able to make a request of the other regarding the manner of carrying out the request to ensure that when, for example, evidence is returned to Australia, it would be admissible in courts in this country.<sup>15</sup>
- 6.23 Arising from the introduction of video evidence, AGs indicated that the Agreement dealt with the general implications of these treaties relating to compellability of witnesses to provide evidence. One Party may request the other to take evidence of a witness or expert who would generally be compelled to give the requested evidence but could rely on any relevant privilege available under the law of either Party to decline to give evidence.<sup>16</sup>
- 6.24 A Party is required, on request, to serve documents such as summonses issued by the courts of the other Party. However, the requested country will not compel a person to appear before a court in the requesting country pursuant to the service of a summons in this way.<sup>17</sup>
- 6.25 The Agreement provided for the requested country to facilitate such an appearance, particularly in the case of a person imprisoned in the requested country, but there is an overriding requirement for the consent of the person concerned. If a person travels to the requesting country in response to a request, that person will be compelled to give evidence to the matter in that request in accordance with the laws of the requesting country, but not in relation to any other criminal matter.<sup>18</sup>
- 6.26 AGs indicated that the treaty had come about as part of the process associated with the enactment of the *Mutual Assistance in Criminal Matters Act 1987*, when a number of western European countries were approached to negotiate these treaties.<sup>19</sup>
- 6.27 It was not clear whether bodies such as AUSTRAC, the National Crime Authority or the Australian Federal Police had been involved in negotiating this Agreement. AGs stated that there were constant inquiries

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15 Michael Manning (AGs), *Transcript of Evidence*, 18 October 1999, pp. TR20-21

16 AGs, *Submission No 1*, p. 2

17 AGs, *Submission No 1*, p. 2

18 AGs, *Submission No 1*, p. 2

19 AGs, *Submission No 1*, p. 1, Michael Manning (AGs), *Transcript of Evidence*, 18 October 1999, p. TR18

and requests from police forces and other law enforcement agencies about the possibility of obtaining information from particular countries. Without needing to enter into a formal process of consultation, AGs believed that it understood the interests of other interested Australian agencies.<sup>20</sup>

## Conclusion and recommendation

- 6.28 Mutual assistance arrangements can play a valuable role in ensuring that law enforcement agencies can extend their reach beyond national borders. There are clear legal and procedural advantages to be gained by giving these arrangements the firm footing established by a treaty-level agreement.
- 6.29 Monaco's role in international finance make this proposed treaty action a valuable addition to Australia's list in the area of mutual assistance in criminal matters.

### Recommendation 6

- 6.30 **The Committee supports the proposed *Treaty with the Government of His Serene Highness the Prince of Monaco on Mutual Assistance in Criminal Matters*, and recommends that binding treaty action be taken.**
- 6.31 In many of our Reports, we have highlighted the importance of consultation in the development of proposed treaty actions. It is through consultation that interested individuals and organisations can contribute their expertise to the treaty-making process. An effective consultation program can also help demonstrate to Parliament that particular treaty proposals are widely supported, and will advance the national interest.
- 6.32 We recognise that AGs has expertise in the development of criminal assistance treaties. We also recognise that there are some confidentiality considerations associated with bilateral treaty negotiations. Nevertheless, there could be advantages to be gained if AGs consulted with other interested organisations and individuals in the development of this type of treaty proposal.

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20 Michael Manning (AGs), *Transcript of Evidence*, 18 October 1999, p.22

- 6.33 We believe that AGs should review its approach to consultation, with a view to establishing procedures that involve other interested groups and individuals in the development of criminal assistance and similar treaties. The consultation procedures used by the Australian Taxation Office in developing double taxation agreements might provide a useful model.

## Two bilateral safeguards agreements

### Background

#### Australia's nuclear safeguards agreements

- 7.1 Australia's network of bilateral nuclear safeguards and cooperation agreements seek to provide the framework to facilitate the export of its uranium by controlling use, so that this nation's security interests in the non-proliferation of nuclear weapons is strictly protected.<sup>1</sup>
- 7.2 Such agreements generally provide for the application of International Atomic Energy Agency (IAEA) safeguards, and for prior Australian consent for the re-export, high enrichment or reprocessing of Australian uranium. This is to ensure:
- that Australian uranium is properly monitored throughout the nuclear fuel cycle;
  - the development of cooperation in the peaceful uses of nuclear energy; and
  - that Australian nuclear material is not used for any military or explosive purpose, or in any way contrary to Australia's obligations under the 1968 *Treaty on the Non-Proliferation of Nuclear Weapons* (NPT),

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<sup>1</sup> Unless specified otherwise, material in this section was drawn from the National Interest Analysis (NIA) for the *Exchange of Notes constituting an Agreement to further amend the 1982 Agreement with Japan for Cooperation in the Peaceful Uses of Nuclear Energy* (NIA, Agreement with Japan), p. 1.

and the obligations Australia will assume once the 1996 *Comprehensive Nuclear Test-Ban Treaty* (CTBT) enters into force.<sup>2</sup>

- 7.3 Australia's usual uranium exports under such Agreements are usually multiple tonne shipments, destined for use in nuclear power reactors. These are based on a standard or 'template' agreement and routinely provide for:
- prior Australian right to consent to high enrichment, to 20 per cent or more in the U-235 isotope, reprocessing or re-exports to third countries;
  - IAEA safeguards coverage of Australian nuclear material for its full life, or until legitimately removed from safeguards;
  - physical protection standards; and
  - fallback safeguards, in the event that IAEA safeguards ceased to apply for some reason.<sup>3</sup>
- 7.4 Bilateral safeguards agreements also provide for an associated Administrative Arrangement to establish and implement accounting arrangements for nuclear material, and reporting obligations for the Australian nuclear material involved. These arrangements are of less than treaty status, and are made between the Australian Safeguards and Non-Proliferation Office (ASNO) and the other Party's counterpart agency.<sup>4</sup>
- 7.5 Australia currently has 14 such Agreements, including the 1982 *Australia-Japan Agreement for Cooperation in the Peaceful Uses of Nuclear Energy* ('the 1982 Agreement').

## Previous Committee considerations

- 7.6 The previous Committee considered a number of proposed nuclear-related treaty actions:
- an Agreement regarding Australia's financial contribution to the Korean Peninsula Energy Development Authority (KEDO), and the Waigani Convention governing the importation and management of hazardous and radioactive waste within the South Pacific Region, in **First Report** (August 1996);

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2 NIA for the Agreement with New Zealand concerning the Transfer of Uranium (NIA, Agreement with NZ), p. 1. The previous Committee considered a Protocol to the NPT and the CTBT: see paragraph 7.6.

3 NIA, Agreement with NZ, pp. 1, 2

4 NIA, Agreement with NZ, p. 2. ASNO is located within the Department of Foreign Affairs and Trade (DFAT).

- the *Convention on Nuclear Safety*, in **Treaties Tabled on 15 & 29 October 1996: 4<sup>th</sup> Report** (November 1996);
- the Nuclear Retransfers Agreement with the Republic of Korea, and the Regional Cooperative Agreement for research, development and training in Nuclear Science and Technology, in **Tenth Report** (September 1997);
- the Protocol to the NPT, in **Eleventh Report** (November 1997);
- the CTBT, in **Fifteenth Report** (June 1998).

7.7 In our 19<sup>th</sup> Report (March 1999), we considered the proposed implementing arrangement for transfers of plutonium to the European Atomic Energy Community.

## 1982 Agreement with Japan

- 7.8 Australia and Japan have entered into a range of bilateral treaties, including a number on long-line tuna fishing, air services, satellite systems and cooperation in research and development in science and technology.<sup>5</sup>
- 7.9 The 1982 Agreement with Japan established conditions consistent with the commitments of both Parties to nuclear non-proliferation, including their obligations to the NPT, while facilitating the nuclear trade between the two countries.<sup>6</sup>
- 7.10 It set conditions to allow for long-term cooperative arrangements in the peaceful use of nuclear energy. It recognised the need for these arrangements to be made in a predictable and practical manner, taking into account the requirements of long-term nuclear energy programs as well as the shared objective of nuclear non-proliferation.
- 7.11 Under this Agreement, in 1998, 1588 tonnes of uranium were exported to Japan. In 1999, it was likely to be in the order of 2600 to 2800 tonnes, depending on supply and demand and the contract arrangements made by the two exporting Australian companies. Japan is a substantial part of

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5 See *Australian Treaty List, Bilateral* (as at 31 December 1998), DFAT, pp 137-147 (*passim*)

6 This Agreement superseded a 1972 Agreement for cooperation in the peaceful uses of atomic energy. It included Three Exchanges of Letters, and entered into force on 17 August 1982. It was amended by a further Exchange of Notes on 27 July 1990. See *Australian Treaty List, Bilateral* (as at 31 December 1998), DFAT, pp. 144, 142 and 146, respectively.

Australia's export market, taking just under 1600 tonnes or about one-third of a total of 6000 tonnes in 1998.<sup>7</sup>

## The Implementing Arrangement

- 7.12 The 1982 Agreement included as an annex an Implementing Arrangement that details how it would operate, including facilities at which Japan may process, use or reprocess Australian nuclear material. These facilities were listed in the delineated nuclear fuel cycle program (DRJNFCP), or capsule, attached to the Implementing Arrangement. It allows for amendments to the capsule.<sup>8</sup>
- 7.13 The Japanese nuclear fuel cycle relies on some services being provided in third countries. The Implementing Arrangement therefore allowed for amendments to the DRJNFCP to add or remove such facilities, after consultation with Australia.
- 7.14 The DRJNFCP was amended in 1990 by adding two new facilities and changing the name of a Japanese research agency. In 1997, Japan proposed a second amendment to add two American facilities, the Columbia Plant of the Westinghouse Electric Corporation and the Richland Plant of the Siemens Power Corporation, to the DRJNFCP for light water fuel fabrication. These plants are licensed by the US Nuclear Regulatory Commission, which undertakes regular audits and inspections, and both are available for IAEA safeguards inspections under the US' voluntary agreement with the IAEA.<sup>9</sup>

## Proposed treaty action

### Obligations imposed by the proposed treaty action

- 7.15 This proposed 1999 amendment to the Agreement would oblige Australia to extend recognition to the American facilities to be added to the DRJNFCP. Facilities listed in that document were divided into eight

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7 Robin Bryant (Department of Industry, Science and Resources (DISR)) and Andrew Leask (DFAT), *Transcript of Evidence*, 22 October 1999, p. 50

8 Bob Tyson (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR47

9 Material in this section was drawn from NIA, Agreement with Japan, pp. 1-2; Bob Tyson (DFAT), *Transcript of Evidence*, 22 October 1999, pp. TR47-48

categories, and the American facilities would be added to Section 4: Facilities for Fuel Fabrication.<sup>10</sup>

- 7.16 Australian material shipped to these facilities would be subject to the obligations of the Agreement. The proposed treaty action amending the DRJNFCP will not impinge on any of the obligations in the Agreement, as it will merely expand their scope to include the named American fuel fabrication facilities.
- 7.17 ASNO will account for any nuclear material that may be fabricated in the two facilities subject to the proposed treaty action and then transferred to Japan. This would provide assurance that Australia's uranium exports remain exclusively in peaceful use.<sup>11</sup>

### Date of binding treaty action

- 7.18 The proposed amendment to the Agreement will enter into force on the date on which Australia advises Japan that its constitutional and domestic requirements for entry into force have been satisfied. This was expected to be as soon as practicable after the tabling of this Report.<sup>12</sup>

### Implementation

- 7.19 Australia's obligations under the 1982 Agreement were implemented under the provisions of the *Nuclear Non-Proliferation (Safeguards) Act 1987*. No new legislation will be required to implement the proposed treaty action.

### Consultation

- 7.20 This proposed amendment was notified to the States and Territories through the Standing Committee on Treaties (SCOT) process, and there were no requests for further information. After the Exchange of Notes with Japan, DFAT issued a media release providing details of the proposed amendment. The NIA noted that there had been no requests for further information.<sup>13</sup>
- 7.21 As part of our review, we sought comments from State/Territory Premiers/Chief Ministers and also from the Presiding Officers of State/Territory Parliaments or, where appropriate, specific Committees of

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10 Material in this section was drawn from NIA, Agreement with Japan, p. 2

11 Bob Tyson (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR48

12 NIA, Agreement with Japan, p. 1

13 NIA, Agreement with Japan, p. 4



those Parliaments. No adverse comments were received on this proposed treaty action.

## Withdrawal

7.22 Article XI of the proposed Agreement states that it shall remain in force for an initial period of 30 years, after which it may be terminated by either Party providing six months' written notice to the other Party. The proposed amendment does not include a provision for withdrawal.<sup>14</sup>

## Other evidence presented

7.23 On 30 September 1999, there was an accident and explosion at, and subsequent leak of radio-active material from, a nuclear processing plant at Tokaimura in Japan. Concerns were expressed that Australian material may have been used.<sup>15</sup>

7.24 We were advised that Japanese authorities had assured Australia that this was not the case. The enrichment level of the uranium involved in the accident was far beyond that which had been provided in Australian material exported for nuclear power generation in Japan. Australian-obligated material that program was generally enriched to between three and five per cent, while that used at the Tokaimura plant had been enriched to 18 per cent.<sup>16</sup>

7.25 One of the requirements in Australia's safeguards agreement was that its uranium shall not be enriched to the higher level. Strict IAEA and ASNO requirements were also to be met.<sup>17</sup>

7.26 We were also advised that, since exports to Japan had resumed in the 1970s, there had been no loss of Australian yellowcake to the environment during shipment. It was also pointed out that, in spite of this accident, Japan had a good safety record. It had subscribed to the key international conventions and agreements for nuclear safety and safeguards. The record of its nuclear power reactors was very good, although the record of some smaller plants and arrangements was more mixed.<sup>18</sup>

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14 NIA, Agreement with Japan, p. 4

15 See: *The Canberra Times*, 2 October 1999, pp. 1, 2; *The Australian Financial Review*, 5 October 1999, p. 10, 7 October 1999, p. 16, 11 October 1999, p. 20 (Editorial), 12 October 1999, p. 12

16 Bob Tyson (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR49

17 Bob Tyson (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR51

18 Bob Tyson and Andrew Leask (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR49

- 7.27 ASNO was ‘completely satisfied’ that exported Australian uranium remained entirely in peaceful use in Japan, and that the investigation that would be conducted there would result in changes to regulatory processes to ensure, as far as possible, that such an accident did not occur again.<sup>19</sup>
- 7.28 Because uranium is available in many places around the world, there are a large number of competitors in the export industry, including Canada, Kazakhstan and Niger. Given its reserves, Australia had been under-performing, but its companies had been working hard in the past few years to build up markets.<sup>20</sup>
- 7.29 In addition, the results of the nuclear weapons disposal program had provided, and would continue to provide, ‘a very substantial’ source of supply of uranium. It also created the present low price.<sup>21</sup>

## Submission received

- 7.30 Ms Tina Lesses forwarded a submission to our review, expressing the view that:
- because of the waste, environmental and health problems it causes, there were no benefits for Australian companies in the use of nuclear energy;
  - the effects of this energy are not ‘peaceful’ and, as the reactors emit radiation, they help to increase diseases such as cancer and leukemia;
  - the proposed treaty action would only benefit the nuclear industry and would undermine the development of safe, environmentally-benign energy industries. Australians would not gain any benefit from being tied to an Agreement to promote nuclear energy; and
  - Australian involvement in the nuclear fuel cycle is having ‘disastrous results’, as radio-active contamination is now ‘widespread’ despite media silence on the issue.
- 7.31 Noting that the nuclear industry is obsolete, she asked that the proposed treaty action be scrapped and that, instead, there be a changed focus towards solar, wind and tidal energy.<sup>22</sup>

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19 Andrew Leask (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR49

20 Robin Bryant (DISR), *Transcript of Evidence*, 22 October 1999, p. TR50

21 Robin Bryant (DISR), *Transcript of Evidence*, 22 October 1999, p. TR50

22 NIA, Agreement with Japan, *Submission No 1*

## Conclusion and recommendation

- 7.32 The NIA for the proposed Agreement with New Zealand (NZ) contained an amount of useful material on bilateral safeguards agreements. This would not have been available had only this proposed Agreement with Japan been under review. That additional material was valuable in giving extra detail to the standard agreement, and could usefully have been included in the NIA for this matter.
- 7.33 While the accident at the plant in Japan should not occupy too much attention, the information that was provided as a result was also useful in setting out additional information about the range of safeguards that do exist.
- 7.34 For both Parties in this proposed treaty action, responsibilities under the NPT and the CTBT were paramount. In allowing the 1982 Agreement with Japan to be amended, it conforms to the framework of Australia's network of bilateral nuclear safeguards and cooperation agreements.

### Recommendation 7

- 7.35 **The Committee supports the proposed *Amendment to the 1982 Agreement with Japan for Cooperation in the Peaceful Uses of Nuclear Energy*, and recommends that binding treaty action be taken.**

## Proposed agreement with New Zealand

- 7.36 As befits close neighbours with much history and heritage in common, Australia and New Zealand have treaties on many subject. These include a social security agreement, and air services agreement, status of forces, and other defence agreements and the Closer Economic Relations (CER) Trade Agreement, signed in 1983.<sup>23</sup>

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23 See *Australian Treaty List, Bilateral* (as at 31 December 1998), DFAT, pp 187-198 (*passim*)

## Proposed treaty action

- 7.37 The proposed treaty action was negotiated as a result of a request by NZ for an ongoing supply of small amounts of uranium ore concentrate, or yellowcake, for use in the commercial production of tinted glass. It will open up a new, albeit small, market for Australia's uranium exporters. Article II of the proposed Agreement sets the maximum exportable amount of Australian uranium per year.<sup>24</sup>
- 7.38 There are no other, similar agreements to that proposed with NZ, but there was an exchange of letters under which monazite, a component of beach sand with a low level of uranium, is exported. This was used as the model for a one-off export of uranium to NZ.<sup>25</sup>

## Reasons for the proposed treaty action

- 7.39 In 1996, NZ asked Australia to agree to the one-off export for Gaffer Coloured Glass Company Ltd of 25 kilograms of uranium for use as a glass colouring agent. A technique dating back to the 18<sup>th</sup> Century is used, and we were advised that there is no commercial alternative to yellowcake that will provide the particular tint that is required. This is the only use that that company will make of Australian uranium.<sup>26</sup>
- 7.40 This request was supported, after taking into consideration NZ's 'impeccable' non-proliferation credentials, the intended non-nuclear use, the small quantity involved and the expectation that this would be a one-off request.
- 7.41 In 1997, NZ advised that the company wished to purchase uranium on a continuing basis, and envisaged importing up to 100 kilograms per year with the potential to increase the amount to 200 kilograms per year.
- 7.42 In terms of nuclear proliferation, the yearly amount to be provided by the proposed treaty action, 200 kilograms per year, is 'insignificant'. It would take about five tonnes of natural uranium, as well as the necessary enrichment and weapons fabrication technology, to make a nuclear explosive device.
- 7.43 Nevertheless, the Australian Government attaches considerable importance to transparency for its exports of uranium. It was therefore

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24 NIA, Agreement with NZ, p. 1; Bob Tyson (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR48

25 Bob Tyson (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR51

26 Bob Tyson (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR51

appropriate that ongoing exports to NZ be covered by a bilateral safeguards agreement.<sup>27</sup>

- 7.44 The standard agreement had been modified to reflect the small quantities of uranium that will be involved and, because there are no nuclear facilities there, the absence of IAEA safeguards inspections in NZ. Those obligations relating only to large-scale exports of uranium for nuclear power generation were removed. At the same time, the proposed Agreement sought to ensure that exported Australian nuclear material remained in exclusively peaceful, non-explosive, non-nuclear use.<sup>28</sup>
- 7.45 While there are no nuclear activities there, NZ has brought into force an Additional Protocol to its Agreement with the IAEA, allowing that body to make inspections and broad state evaluations.
- 7.46 The NIA stated that conditions to be imposed under the proposed Agreement were consistent with the commitment of both Governments to nuclear non-proliferation, including their obligations under the NPT and the CTBT.<sup>29</sup>
- 7.47 There is a clause in the safeguards agreement under which the IAEA can declare uranium is no longer recoverable. Once it is used in the glass as a chemical, it will be judged to be no longer recoverable, and it will not be tracked further.<sup>30</sup>

### Obligations imposed by the proposed treaty action

- 7.48 The NIA also noted that most of the obligations under the proposed treaty action will fall to NZ, including that uranium transferred under its provisions shall not be:
- used for, or diverted to, any purpose contrary to the NPT or the CTBT, or
  - used for any military purpose, or
  - transferred beyond NZ's territorial jurisdiction, unless both Parties were satisfied that it will not be used for such purposes.<sup>31</sup>

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27 Bob Tyson (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR51

28 Bob Tyson (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR49

29 Unless otherwise specified, material in this section was drawn from NIA, Agreement with NZ, pp. 1-2, and Bob Tyson (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR48

30 Andrew Leask (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR52

31 Unless otherwise specified, material in this section was drawn from NIA, Agreement with NZ, p. 2

- 7.49 The proposed Agreement allows for the export of a small amount of uranium to NZ for non-nuclear purposes, either directly or through a third party. The transfer of greater quantities would be allowed only after consultation between the Parties, and with their prior consent in writing. Any such additional transfer would also be subject to the conditions of the proposed Agreement.
- 7.50 ASNO would inspect the glass-making process. It would also account for the nuclear material subject to this Agreement, in accordance with the *Nuclear Non-Proliferation (Safeguards) Act 1987*, to provide assurance that Australia's uranium exports remained exclusively in peaceful use.<sup>32</sup>

### Date of binding treaty action

- 7.51 The proposed Agreement will enter into force on the date on which the Parties exchange notes confirming completion of the necessary domestic and constitutional requirements. This was expected to be as soon as practicable after the tabling of this Report.<sup>33</sup>

### Consultation

- 7.52 This proposed Agreement was notified to the States and Territories through the SCOT process, and there were no requests for further information. After it was signed, DFAT issued a media release providing details of the proposed amendment. The NIA noted that there had been no requests for further information.<sup>34</sup>
- 7.53 As part of our review, we sought comments from State/Territory Premiers/Chief Ministers and also from the Presiding Officers of State/Territory Parliaments or, where appropriate, specific Committees of those Parliaments. No adverse comments were received about this proposed treaty action.

### Implementation

- 7.54 While no legislation is required to give effect to the terms of this proposed Agreement, it will be necessary to amend the *Nuclear Non-Proliferation(Safeguards) Act 1987* to add it to the list of 'prescribed

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32 Bob Tyson (DFAT), *Transcript of Evidence*, 22 October 1999, pp. TR51, 48

33 NIA, Agreement with NZ, p. 1

34 NIA, Agreement with NZ, p. 3

agreements' under that Act. The NIA stated that this will be done by regulation.<sup>35</sup>

## Costs

7.55 For Australia, costs associated with this proposed treaty action will be limited to travel to NZ by ASNO officers to undertake appropriate verification activities. The NIA noted that ASNO would absorb these costs.<sup>36</sup>

## Withdrawal

7.56 This proposed Agreement may be terminated by either Party, provided at least 180 days' written notice is given. Should this action be taken, uranium that has been transferred subject to it, and which remains useable or practically recoverable for relevant nuclear purposes, shall remain bound by its terms and obligations.<sup>37</sup>

## Conclusion and recommendation

7.57 Responsibilities under the NPT and the CTBT are fully acknowledged in this proposed Agreement. The amount of Australian uranium that can be exported to NZ under this treaty is very small by comparison with the amounts usually involved in other bilateral safeguards agreements. It is for a specific purpose, and Australia's standard safeguards agreement has been considerably, and appropriately, modified to take account of NZ's non-nuclear status.

### Recommendation 8

7.58 **The Committee supports the proposed *Agreement with New Zealand concerning the Transfer of Uranium*, and recommends that binding treaty action be taken.**

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35 NIA, Agreement with NZ, p. 3

36 NIA, Agreement with NZ, p. 3

37 NIA, Agreement with NZ, p. 3

## Two telecommunications agreements

### Background

#### The International Telecommunications Union

- 8.1 The International Telecommunication Union (ITU) is a specialised agency of the United Nations whose membership includes 189 governments, and about 500 non-government entities. Its purposes are to maintain and extend international cooperation between all members for the improvement and rational use of telecommunications of all kinds, including the radio frequency spectrum. In pursuing its purposes, the ITU develops and recommends world standards for telecommunications and radiocommunications services, including satellites.<sup>1</sup>
- 8.2 The Australian Communications Authority (ACA), a part of the portfolio of the Department of Communications, Information Technology and the Arts (DOCITA), advised that the ITU had divided the world into three regions:
- Region 1 is Europe and Africa;
  - Region 2 is North America and South America; and
  - Region 3 is the rest of the world, including Australia.<sup>2</sup>
- 8.3 It also noted that there were three Sectors for the ITU's operational activities:

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1 National Interest Analysis (NIA) for the 1998 *Amendments to the Constitution and the Convention (1992) of the International Telecommunication Union, as amended by the Plenipotentiary Conference (Kyoto, 1994)*, (NIA for ITU), p. 1

2 Barry Matson, (ACA), *Transcript of Evidence*, 22 October 1999, p. TR57



- the Radiocommunication Sector, the forum for treaty-level agreements on the international use of the radio frequency spectrum and for broadcasting, radiocommunication and satellite transmission standards;
  - the Telecommunication Standardization Sector, which establishes global agreements ('recommendations') on telecommunications standards; and
  - the Telecommunications Development Sector, which provides technical assistance within a strategic planning framework to developing countries.
- 8.4 There are as many as 80 ITU meetings annually, including specialised study groups that develop recommendations. Australian organisations, both Government and private, participate in about half of these. Broadcasters, telecommunications carriers and others in the communications industry have a close interest in the ITU's work, and many participate in activities at Sector level.
- 8.5 Three non-government Australian entities currently participate in ITU activities: Telstra, Optus and AsiaSpace. Many other Australian commercial entities participated in the preparatory processes for ITU activities, including broadcasters, the telecommunications supply industry and other carriers.<sup>3</sup>
- 8.6 ITU member states are bound by the provisions of its Constitution, Convention and Administrative Regulations. The Plenipotentiary Conference is normally held every four years. It is the supreme ITU forum, with power to revise basic instruments and set its budget and direction. Between Plenipotentiary Conferences, the ITU Council governs, including administering and implementing decisions made at those Conferences.
- 8.7 Together, the International Telecommunication Regulations and the Radio Regulations constitute the ITU's Administrative Regulations. They establish the technical basis for the use of telecommunications and radiocommunications services.
- 8.8 During the 1990s, considerable advances have occurred in communications, as a result of technological developments. These have resulted in a multiplicity of new services. In the same period, the ITU has also had to undertake major reforms, to ensure that it remains a relevant international forum for the coordination of telecommunications.
- 8.9 Australia has encouraged reforms and improvements to efficiency, so that the ITU may continue as the pre-eminent organisation enhancing the

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<sup>3</sup> Richard Thwaites (DOCITA), *Transcript of Evidence*, 22 October 1999, p. TR66. See paragraph 8.14 for the change to the non-government membership category of the ITU.

global inter-operability of the world's various telecommunications networks and systems. This is in the interest of all countries.

- 8.10 Australia has been a member of the ITU, and its predecessor body, since the 19<sup>th</sup> Century.<sup>4</sup>

## **Proposed amendments to the ITU's Constitution and Convention**

### **Proposed treaty action**

- 8.11 The amendments proposed in 1998 were part of the continuing reform of the ITU. They included a 'substantial number' of changes to the Constitution and the Convention, whereby:<sup>5</sup>
- the roles and responsibilities of non-government ITU members were clarified;
  - the informal Sector Advisory Groups were formalised; and
  - new arrangements for financial pledges and budget controls were agreed.
- 8.12 Australia recognises that increasing the efficiency of ITU's operations, both budgetary and administrative, will lead to the most effective pursuit of its objectives, and to the most effective use of members' contributions. The ITU has embarked on a series of cost recovery and financial reforms. Australia supports cost recovery, as it provides for a more equitable distribution of costs across the users of ITU's services. The NIA stated that Australia 'played a pivotal role' in reaching agreement on the amendments needed to achieve this end.
- 8.13 In particular, as a result of these amendments, members will be able to make their contribution pledges to the ITU at the Plenipotentiary Conference, rather than six months later. Pledges are generally made in Swiss francs, and this change will allow them to be made in fixed currency terms. This will lead to greater financial certainty, particularly for larger contributors, such as Australia, and impose stronger financial disciplines on the budget discussions at the Conference itself.<sup>6</sup>

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4 Unless specified otherwise, material in this section was drawn from NIA for ITU, pp.1-2, 3

5 Unless specified otherwise, material in this section was drawn from NIA for ITU, pp. 2-4

6 Richard Thwaites (DOCITA), *Transcript of Evidence*, 22 October 1999, p. TR64

- 8.14 In addition to these general matters, specific amendments to the Constitution and the Convention included:
- non-government entities, ie. telecommunications operators and related organisations, have had their involvement formalised;
  - the term ‘Sector members’ was included for non-government organisations, and their right to participate at meetings and in decision-making was also included in the Constitution;<sup>7</sup>
  - applications for Sector membership were simplified, so that they are submitted directly to the ITU, rather than through the appropriate member state;
  - making the ITU’s Council responsible for equitable representation of women, as well as equitable geographical distribution, in the staff of the ITU, and for monitoring implementation of this matter; and
  - removal of the Rules of Procedure for ITU meetings from treaty-level documents, to allow it to be more responsive to the rapidly changing communications environment.
- 8.15 In other proposed changes, the Secretary-General of the ITU will act as the Depository for special arrangements between members and Sector members. This is a new activity for the ITU, one that reflects the increased importance of non-government participants in its processes. It will also be possible to implement voluntary agreements, such as memoranda of understanding, under the ITU’s umbrella. This would reduce the need for treaty-level agreements, another significant development in an industry where change occurs at a faster pace than can be accommodated by global treaty-making processes.<sup>8</sup>

### Date of binding treaty action

- 8.16 The NIA stated that Australia proposes to proceed to ratify the 1998 amendments to the ITU Constitution and Convention as soon as practicable after 9 December 1999 and before 1 January 2000. The latter day was set as the date for the entry into force of these amendments.<sup>9</sup>

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7 Richard Thwaites (DOCITA), *Transcript of Evidence*, 22 October 1999, p. TR64

8 Richard Thwaites (DOCITA), *Transcript of Evidence*, 22 October 1999, p. TR64

9 NIA for ITU, p. 1

## Costs

- 8.17 The NIA stated that there are no foreseeable direct financial costs to the Australian Government from the proposed treaty action, beyond normal membership contributions.
- 8.18 Non-government radiocommunications user group, carriers and industry organisations, using ITU services subject to cost recovery within Australia may be effected, depending on their level of use. There may also be some additional charges in recovering the costs of some services.<sup>10</sup>

## Implementation

- 8.19 While no changes will be needed to primary legislation, a Declaration and a Notification, made by the Minister for Communications, Information Technology and the Arts, will need to be updated.
- 8.20 Made under the provisions of the *Telecommunications Act 1997*, these documents inform relevant bodies, carriers, radiocommunications licensees, etc, and the ACA, that they must comply with these proposed 1998 Amendments to the ITU Constitution, Convention and Administrative Regulations.<sup>11</sup>

## Future protocols, etc

- 8.21 There are currently no proposals for the development of additional protocols, etc, the ITU's ongoing work involves developing proposals and activities that may result in changes to treaty-level documents in the future. Such changes can only be approved to the Constitution and/or the Convention by prescribed majorities at Plenipotentiary Conferences.<sup>12</sup>

## Consultation

- 8.22 The NIA for this matter included details of consultations with a 'preparatory group' of organisations in the telecommunications industry to obtain views and agreement on outcomes to be pursued at the 1998 Plenipotentiary Conference. These consultations were undertaken in 1997 and 1998. The NIA stated that views expressed did not include any major objections to the proposed changes. In general, it added, industry supported these changes. The preparatory group was later briefed on the outcomes of the Conference.<sup>13</sup>

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10 NIA for ITU, p. 5

11 NIA for ITU, pp. 5-6

12 NIA for ITU, p. 5

13 Material in this section was drawn from NIA for ITU, p. 6

- 8.23 Australia's delegation to that Conference included Government and industry representatives. Many multi-national companies with subsidiaries in this country were also at the Conference, although not as part of the Australian delegation.<sup>14</sup>
- 8.24 States and Territories were advised of this proposed treaty action both via the SCOT process and by letter, which included a copy of the proposal and an invitation to comment. The NIA stated that only two responses were received: the Queensland Government supported the provisions and the ACT Government made no comments.
- 8.25 As part of our review, we sought comments from State/Territory Premiers/Chief Ministers and also from the Presiding Officers of State/Territory Parliaments or, where appropriate, specific Committees of those Parliaments. No adverse comments were received about this proposed treaty action.

## Withdrawal

- 8.26 Any member may withdraw from the ITU by written notification to the Secretary-General, and such denunciation will take effect one year after the notification is received. If denunciation is undertaken, it must be done as a single instrument, withdrawing from the Constitution and the Convention simultaneously.<sup>15</sup>

## Other evidence presented

- 8.27 DOCITA stated that the major effect of the proposed changes was to provide a greater recognition of the contribution to, and enhancing the right of industry participants in, ITU processes that lead towards formal decisions. In such a treaty-based organisation, there was a level at which State members had the final word, but there were many intermediate processes. Non-government members provided a great proportion of ITU's expertise, and also had significant interests as stakeholders.
- 8.28 DOCITA also noted that it would welcome more Australian companies becoming Sector members. There are a number of reasons why they did not join, including the fact that many companies operating in Australia were affiliated with international companies that would be present at meetings as a member of some other delegation. Australia is also more

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14 Richard Thwaites (DOCITA), *Transcript of Evidence*, 22 October 1999, pp. TR65, 66

15 NIA for ITU, p. 7

flexible in the composition of its delegations and not excluding them, as is sometimes the case with other countries.<sup>16</sup>

## Conclusion and recommendation

- 8.29 Broadening its membership arrangements, leading to greater participation by the non-government, industry-based group, can only make ITU a more effective organisation. Other proposed amendments will strengthen its financial processes. In an industry where rapid change is constant, these amendments to the ITU's Constitution and Convention are likely to assist it to remain relevant and manage the changing telecommunications environment more efficiently.

### Recommendation 9

- 8.30 **The Committee supports the proposed *Amendments to the Constitution and the Convention of the International Telecommunication Union*, and recommends that binding treaty action be taken.**

## Final Acts of World Radiocommunications Conference - 1997

### ITU's Radio Regulations

- 8.31 The Radio Regulations, together with the International Telecommunication Regulations, constitute the ITU's Administrative Regulations. As part of the ITU's treaty-status instruments, the provisions of the Administrative Regulations complement those of the ITU Constitution and Convention, and are binding on its members.
- 8.32 The Radio Regulations and the International Telecommunication Regulations establish the technical basis for the use of telecommunications and radiocommunications. The function of the Radio Regulations is to ensure rational, efficient and equitable use of the radiofrequency spectrum, including those using the satellite orbit. Revisions of these

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16 Material in this section was drawn from *Transcript of Evidence*, 22 October 1999, Richard Thwaites (DOCITA), pp. TR65, 66

Regulations enable the introduction of new technologies, and ensure an efficient sharing of the radiofrequency spectrum.<sup>17</sup>

- 8.33 These Regulations are highly technical, and there is a need to ensure that all countries are well aware of, and can clearly identify their obligations in a technical field. Radiocommunications technologies evolving rapidly. There is a need to review these Regulations continually to ensure that they represent the best means of achieving desired outcomes, and that they have the capacity to enable new technologies to be introduced.<sup>18</sup>

## World Radiocommunications Conferences

- 8.34 The Radio Regulations may be altered by a World Radiocommunication Conference (WRC), usually held biennially. Such a Conference was held in Geneva in October-November 1997 (WRC-97).<sup>19</sup>
- 8.35 The ITU Constitution prescribes that any amendments to the Radio Regulations shall, to the extent permitted by national laws, apply provisionally to all members who sign them.
- 8.36 The Constitution also states that a member who has signed the Final Acts of a Conference shall be deemed to have consented to be bound by that revision 36 months from the date of commencement of provisional application, unless advice to the contrary has been received by the ITU Secretary-General.
- 8.37 A member who has not signed the Final Acts shall also be deemed to have consented to be bound by any revision if notification to the contrary has not been received within the same timeframe.<sup>20</sup>

## Allocation of spectrum

- 8.38 According to the ACA, there are number of ways of allocating the finite resource of spectrum, including:
- the 'first come, first serve' method;
  - the 'priori plan', or a plan allocation, is based on carving up the spectrum for all countries by using an algorithm;

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17 Regulation Impact Statement for WRC-97, p. 1

18 Regulation Impact Statement for WRC-97, p. 2

19 At its 1998 session, the ITU Council decided to move the next WRC from late 1999 to May-June 2000: see the NIA for the *Partial Revision of the Radio Regulations, and Final Protocol as incorporated in the ITU Final Acts of the World Radiocommunication Conference, 1997* (NIA for WRC-97), p. 5

20 Material in this section was drawn from NIA for WRC-97, pp. 1, 2

- the Broadcasting Satellite Services (BSS) Plan;
  - yearly changes of allocation for mobile satellites; and
  - allocations for low earth orbiting satellites that can, if they conform to certain technical standards, have what they want, with those following needing the agreement of the originator.
- 8.39 Once a 'first come, first served' process is in operation formally, nominated slots or frequencies cannot be used. It also means that there is no interference to other applicants in the queue, and applications are processed in order of receipt.<sup>21</sup>

### Previous Committee consideration

- 8.40 In **Report 19** (March 1999), we reviewed the proposal to be bound by the Final Acts of WRC-95: the Partial Revision of the Radio Regulations.
- 8.41 WRC-95 proposed that these Regulations be revised:
- to make additional radiofrequency spectrum available for mobile satellite services;
  - to set power limits for earth stations in certain frequencies; and
  - to open additional spectrum for high frequency broadcasting.
- 8.42 We supported this partial revision of the Radio Regulations and agreed that Australia should formally consent to be bound by them. We also supported the maintenance of the reservation, opposing a claim by some countries to preferential rights to the geostationary orbit, expressed by Australia at the meeting in November 1995.<sup>22</sup>

### Proposed treaty action

- 8.43 On 21 November 1997, Australia signed the Final Acts of WRC-97, and lodged a declaration (No 88), and is therefore bound by the provisional application of the revision. This Conference established 1 January 1999 as the date of provisional application and it will continue for the 36 month period until 1 January 2002, unless:
- the Secretary-General, ITU has been notified of consent to be bound by the WRC-97 revision, together with any reservation or declaration; or

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21 Philip McGill (ACA), *Transcript of Evidence*, 22 October 1999, pp. TR55-56

22 See **Report 19** (March 1999), pp. 15-18, (*passim*). See also paragraph 8.48 for Australia's Declaration at WRC-97.



- if Party advises that it does not wish to be bound by the Final Acts, it is in fact bound for 60 days after that notification.

8.44 Thus, if Australia takes no action, the WRC-97 revision would automatically enter into force at the end of the provisional application period, on 1 January 2002.<sup>23</sup>

### Issues addressed by WRC-97

8.45 The key issues addressed by WRC-97, and reflected in a mass of technical information tabled as part of the proposed treaty action, included:

- revision of the BSS Plan for all countries in Regions 1 (Europe and Africa) and 3 (Asia Pacific);
- the provision of new or additional spectrum access for satellite networks, such as the Skybridge and Teledesic systems;
- simplification of the Radio Regulations themselves;
- adoption of new global distress and safety services procedures; and
- adoption of High Frequency (HF) broadcasting coordination measures.<sup>24</sup>

8.46 In addition to these specific matters, the WRC-97 revision:

- set power limits for satellite stations in certain frequencies;
- established a methodology for high frequency and satellite broadcast sharing;
- agreed allocations and regulatory arrangements for broadband Fixed Satellite Services (FSS), mobile satellite services (MSS) bands, and revised plans for BSS. The latter will now allow plan allocations to be used for generic FSS, such as the Internet;
- identified a number of bands for terrestrial high-density fixed services, envisaged as supporting high capacity data and multi-media applications from stratospheric balloons;
- upgraded allocations to space science activities in a number of bands, but with the text qualified to protect other services. These additional bands will allow remote sensing, meteorology and other space science services to expand capabilities in bands not extensively used for other applications; and

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23 Material in this section was drawn from NIA for WRC-97, p. 1

24 Unless specified otherwise, material in this section was drawn from the Regulation Impact Statement for WRC-97, p. 1, and NIA for WRC-97, pp. 4-5

- retained the exclusive use of required bands by aeronautical navigation systems, for the present.

8.47 It is proposed that Australia advise the Secretary-General of Australia's consent to be bound by the WRC-97 revision, and that the declaration lodged at the time of signature be maintained.<sup>25</sup>

### Australia's declaration

8.48 Declaration No 88 supported Australia's belief that the geographical position of particular countries did not enable a claim to any preferential rights to the geostationary orbit.<sup>26</sup>

### Date of binding treaty action

8.49 As set out above, provisional application of the WRC-97 revision began on 1 January 1999 and continue under certain conditions until 1 January 2002. The NIA stated that Australia proposed to be bound by this revision as soon as practicable after 9 December 1999.<sup>27</sup>

### Implementation

8.50 ITU regulations state that countries agree that certain kinds of services, such as satellite services, broadcasting, mobile radio and radars, should use certain frequency bands. Countries then produce national plans.<sup>28</sup>

8.51 The Australian Radiofrequency Spectrum Plan therefore divides the Australian radiofrequency spectrum into a number of frequency bands, and specifies the general purposes for which bands may be used. The NIA noted that the ACA had revised this Plan to implement the WRC-97 revision, as it is provisionally applied. This is required by Sections 30 and 34 of the *Radiocommunications Act 1992*.

8.52 This revised Plan came into effect on 1 January 1999, and the previous Plan was revoked. The ACA's internal procedures were also updated to reflect WRC-97's resolutions and regulatory changes.<sup>29</sup>

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25 Unless specified otherwise, material in this section was drawn from NIA for WRC-97, pp. 4-5, 1

26 NIA for WRC-97, pp. 2, 4, 5; DOCITA, *Submission No 1*; Philip McGill (ACA), *Transcript of Evidence*, 22 October 1999, pp. TR 59-60

27 NIA for WRC-97, p. 1. See paragraphs 8.43-8.44

28 Barry Matson (ACA), *Transcript of Evidence*, 22 October 1999, p. TR 55

29 NIA for WRC-97, p. 5

## Costs

- 8.53 The NIA stated that there are no foreseeable, direct costs to Australia resulting from the proposed treaty action.
- 8.54 Represented by members of the International Radiocommunications Advisory Committee, the Australian radiocommunication industry participated in negotiating the WRC-97 revision. It was conscious that costs may be involved in moving to different areas of the radio spectrum, as well as resultant changes in the manufacture of goods that use that spectrum.<sup>30</sup>

## Consultation

- 8.55 Industry and Government representatives contributed to the preparation of Australia's brief for WRC-97. Most of those groups attended the Conference, and a debriefing session was held on its outcomes in December 1997.
- 8.56 An early draft of the NIA was circulated to State and Territory Governments for comment, as well as to industry representatives. AirServices Australia commented about the industry's longer-term access to aeronautical mobile satellite spectrum.<sup>31</sup>
- 8.57 As part of our review, we sought comments from State/Territory Premiers/Chief Ministers and also from the Presiding Officers of State/Territory Parliaments or, where appropriate, specific Committees of those Parliaments. No adverse comments were received about this proposed treaty action.

## Withdrawal

- 8.58 To withdraw from the Radio Regulations, Australia would have to denounce the ITU's Constitution and Convention by notification to the Secretary-General. This would take effect one year after it was received by the Secretary-General.<sup>32</sup>

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30 NIA for WRC-97, p. 5. See paragraph 8.64

31 See paragraphs 8.65–8.68

32 NIA for WRC-97, p. 6

## Reasons for the proposed treaty action

- 8.59 This proposed partial revision of the Radio Regulations will make possible the introduction of new satellite systems that will extend the availability of mobile telephone and broadband data services throughout Australia.<sup>33</sup>
- 8.60 These changes will involve the re-allocation of spectrum from the aeronautical and maritime services to generic mobile-satellite service use. This includes aeronautical, maritime and land mobile services. Increased availability of spectrum for satellite services will particularly benefit rural users, and rural businesses in particular.
- 8.61 By notifying its formal consent to be bound to the WRC-97 revision, Australia's good standing in the ITU will continue. Its commitment to fair and efficient administration of the radiofrequency spectrum will, the NIA stated, be placed in line with that of the rest of the world.<sup>34</sup>
- 8.62 Given its belief in competition, the ACA allocated particular services to the spectrum on a 'first come, first served' basis. The ACA advised that this has been the basis for Australia's national planning for many years. This can mean that an organisation might get spectrum because it was first to apply, not because it had the best application, and it may then tie that allocation up in inefficient applications. That is the disadvantage of the administrative allocation process, offset to some extent by the payment of 'fairly hefty' licence fees. If necessary, there are also mechanisms for recovering spectrum by Ministerial direction.<sup>35</sup>
- 8.63 While the ACA would prefer to use competition via price-based allocations of spectrum, this approach breaks down when there are applications that are not commercial, such as defence, police and social users. If the ACA was aware that spectrum was being under-used, it would attempt to change that situation by Ministerial direction.<sup>36</sup>

## Concerns raised during the review

- 8.64 As mentioned above, the NIA stated that 'costs may be involved in moving to different areas of that radio spectrum', as well as resultant changes in the manufacture of goods that use it. While the ACA, as industry regulator, does not compensate anyone affected by a spectrum

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33 Unless specified otherwise, material in this section was drawn from NIA for WRC-97, p. 3

34 NIA for WRC-97, p. 4

35 Barry Matson and Philip McGill (ACA), *Transcript of Evidence*, 22 October 1999, pp. TR56, 63. See paragraphs 8.38 and 8.39 for an outline of the ways of allocating spectrum.

36 Barry Matson (ACA), *Transcript of Evidence*, 22 October 1999, p. TR63

move, ample opportunities are provided to discuss the matter. When part of industry is required to move from a particular spectrum to make way for a new service, such changes are managed formally and according to the relevant Act. Notice is given and the firms that are required to move receive business plans to assist them. It is also possible that the 'winners' can compensate the 'losers'.<sup>37</sup>

- 8.65 The NIA also referred to Airservices Australia's comments concerning longer term access to the spectrum for the aeronautical industry. While a dedicated portion of the spectrum was provided for use by aviation for controlling aircraft, it was unused because no one wanted to put up a satellite for that purpose and aviation's needs were met in other ways.<sup>38</sup>
- 8.66 While the aeronautical industry had reserved this allocation, other commercial applications of satellites wanted to use it for general satellite communications. WRC-95 agreed that this allocation could be shared. Following objections, a footnote was created in the Regulations, so that those who used this piece of spectrum had to make their service capable of being used for aviation: quick priorities and instant communications for aircraft. The aviation industry has lobbied since for a return to the former exclusive allocation.<sup>39</sup>
- 8.67 The ACA pointed out that the amount of spectrum involved was a 'relatively small amount', very scarce and valuable. While safety was a concern and there was a wish to give aviation what it wanted, there was a cost in new services, and a reduction in competition, in so doing against which matters like this had to be weighed.<sup>40</sup>
- 8.68 As industry regulator, the ACA wanted competition and to encourage new services. It believed that protection via the footnote in the Regulations is adequate, with no demonstrated problems with its operation. The ACA had received 'some very strong representations' from the Australian aviation community, demanding support for a return to exclusive use. It was letting the issue take its course, while seeing that there was full consultation, and that any proposal that was adopted represented the combined interests of Australian industry.<sup>41</sup>

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37 NIA for WRC-97, p. 5, Barry Matson (ACA), *Transcript of Evidence*, 22 October 1999, p. TR60

38 NIA for WRC-97, p. 6, Barry Matson (ACA), *Transcript of Evidence*, 22 October 1999, p. TR61

39 Barry Matson (ACA), *Transcript of Evidence*, 22 October 1999, p. TR61

40 Barry Matson (ACA), *Transcript of Evidence*, 22 October 1999, p. TR62

41 Barry Matson (ACA), *Transcript of Evidence*, 22 October 1999, p. TR61

## Other evidence presented

- 8.69 WRC-97 faced a number of issues that are contentious in the world community, particularly the use of satellites. Space is becoming 'crowded' and there are equity issues to be resolved, such as whether countries are getting a fair deal over the number of satellites they are allowed to have and the areas these are allowed to serve. There was also an unresolved issue about short-wave broadcasting.<sup>42</sup>
- 8.70 The ACA stated that the way was now clear for the introduction of many new kinds of satellites. In particular, there was a shift from satellites that remain stationary over the earth, the traditional form of telecommunication and broadcasting satellite, to a new generation of systems that have a whole constellation orbiting around the earth at low altitudes. WRC-97 declared that these could use the same spectrum as fixed satellites. In the ACA's view, the potential for interference was 'enormous' and, as it was not resolved, the proposal had caused a great deal of controversy and discussion.<sup>43</sup>
- 8.71 The ACA also noted that one of the big issues for the next Conference would be the next generation of mobile phones, to replace the GSM digital. It expressed the hope that the replacement would be a 'world phone', but this would require countries to decide how much radio spectrum was needed and whether this could be made available in common around the globe. Because there was no spectrum available for such an approach, it would have to be recovered from other applications that have different values in different countries. It may be that such a phone system can be implemented via some tiny piece of common frequency, and commonality could be achieved through software and management, rather than through spectrum.<sup>44</sup>
- 8.72 Other issues that remain included the use of 'paper satellites: ways of reserving positions in case they are needed in the future by registering a satellite. The ACA noted that this was an extremely inefficient use of the spectrum. At WRC-97, Australia put forward a resolution that sought to reduce the number of these satellites, and to try to reduce the incidence of filing for spectrum that is not actually needed.<sup>45</sup>
- 8.73 Another issue placed on the agenda for WRC-2000 was interference with some channels for shipping and aviation. There are concerns about the

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42 Barry Matson (ACA), *Transcript of Evidence*, 22 October 1999, p. TR54

43 Barry Matson (ACA), *Transcript of Evidence*, 22 October 1999, p. TR54

44 Barry Matson (ACA), *Transcript of Evidence*, 22 October 1999, p. TR57

45 Barry Matson and Philip McGill (ACA), *Transcript of Evidence*, 22 October 1999, pp. TR54-55, 56

generally unregulated use of short-wave frequencies usually kept clear for emergency communications.<sup>46</sup>

- 8.74 The approach taken by the Asia-Pacific tele-community to common problems at WRC-97 was 'very successful'. If Australia wanted to succeed at such conferences, the ACA believed, it had to reach agreed positions with neighbouring countries.<sup>47</sup>
- 8.75 At WRC-97, Australia was able to retain its earlier allocations of spectrum, as well as receive additional allocations for its offshore territories including its Antarctic Territories.<sup>48</sup>

## Conclusion and recommendation

- 8.76 The proceedings of WRC-97 show the world community continuing to grapple with a range of complex problems. Australia seemed to play a constructive role, while at the same time protecting its positions and needs. There are, of course, concerns for industry as a result of changes to arrangements but these seem to have been handled in a sensible and practical way.
- 8.77 Whether the concerns of the aviation industry can be accommodated in a manner acceptable to all the other groups involved may be resolved at WRC-2000. Those concerns are serious but, in view of pressure on spectrum and that previous lack of use of an allocation, a return to the former dedicated arrangement is probably not feasible.
- 8.78 Provisional application of the Final Acts of WRC-97 began on 1 January 1999. This fact could have had some impact on the likely effectiveness of our review.

### Recommendation 10

- 8.79 **The Committee supports the proposed *Partial Revision of the Radio Regulations and Final Protocol as incorporated in the Final Acts of the World Radio Conference, 1997*, noting that provisional application has already begun, and recommends that binding treaty action be taken.**

46 Barry Matson (ACA), *Transcript of Evidence*, 22 October 1999, pp. TR58-59

47 Barry Matson (ACA), *Transcript of Evidence*, 22 October 1999, p. TR54

48 Philip McGill (ACA), *Transcript of Evidence*, 22 October 1999, pp. TR55, 56

## **Amendment of the Inmarsat Convention and the Operating Agreement**

### **Background**

- 9.1 The 1976 Convention on the International Maritime Satellite Organization (Inmarsat) (the Convention) established:<sup>1</sup>
- a global mobile satellite communications system for maritime communications, including those related to distress and safety of life, and
  - its commercial arm, an international organisation, attracting treaty-based rights and privileges and now called Inmarsat, to administer and deliver its services.<sup>2</sup>
- 9.2 That Convention also provided that a complementary Operating Agreement be concluded in conformity with its provisions, to govern access to the satellite system and related commercial aspects. All Parties, or their designated entities, were obliged to sign the Operating Agreement, and it entered into force at the same time as the Convention.
- 9.3 The Convention made provision for satellite-based maritime communications, aeronautical and land mobile communications. Inmarsat

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1 Unless otherwise specified, material in this section was drawn from the National Interest Analysis (NIA) for *Amendments to the Convention and Operating Agreement on the International Mobile Satellite Organization of 3 September 1976* (NIA for Inmarsat), pp.1-2

2 See *Australian Treaty List, Multilateral, (as at 31 December 1998)*, Department of Foreign Affairs and Trade (DFAT), p. 473, for the Inmarsat Convention and the Operating Agreement.



was also a means of implementing the International Maritime Organization's (IMO) 1914 *Convention for the Safety of Life at Sea* (SOLAS).<sup>3</sup>

- 9.4 SOLAS currently specifies the use of the Global Maritime Distress and Safety System (GMDSS). This provides automatic distress alerting, including position determination, maritime safety information broadcasts and general maritime communications. The Australian Maritime Safety Authority (AMSA) meets Australia's responsibilities under this Convention. Its facilities, operated under contract by Telstra, consist of six Coast radio Stations and access to a Land Earth Station in the Inmarsat system.
- 9.5 When it was established in 1979, Inmarsat was one of only two global, treaty-based organisations providing satellite communications.<sup>4</sup>
- 9.6 Since then, an increasing number of private companies have provided, or plan to provide in the near future, services that will compete with Inmarsat for the provision of broadband and telecommunications services other than those for SOLAS. This led to questioning of the appropriateness of its current structure, given its international status and rights, and the requirement for it to continue to meet the Parties' communications policy objectives.<sup>5</sup>
- 9.7 There has also been pressure on Inmarsat to remain competitive, while continuing to provide its public service obligations. The three imperatives driving the perceived need for structural change were then:
- flexibility in investment in new systems and programs;
  - speed of decision-making; and
  - ensuring equitable competition.<sup>6</sup>
- 9.8 Some countries, including Australia, are concerned to promote the development of a competitive, global, maritime safety system marketplace as free of distortions as practicable.

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3 See *Australian Treaty List, Multilateral, (as at 31 December 1998)*, DFAT, p. 327, for SOLAS. The previous Committee reviewed the 1988 Protocol to this Convention: see **Treaties Tabled on 10 & 11 September 1996: 2<sup>nd</sup> Report** (October 1996), pp. 3-6

4 John Neil (Department of Communications, Information Technology and the Arts (DOCITA)), *Transcript of Evidence*, 22 October 1999, p. TR67. That other organisation was the International Telecommunications Satellite Organization (INTELSAT). The previous Committee reviewed amendments to its Agreement and its Operating Agreement, originally signed in 1971 and in force generally in 1973, in **Treaties Tabled on 15 & 29 October 1996: 4<sup>th</sup> Report** (November 1996), pp. 27-29.

5 Richard Desmond (DOCITA), *Transcript of Evidence*, 22 October 1999, p. TR68

6 John Neil (DOCITA), *Transcript of Evidence*, 22 October 1999, p. TR67

- 9.9 Because of changes to technology and increased needs for the service provided, the Convention and the Operating Agreement were amended in 1985, 1989 and 1994 to expand their coverage.

## Proposed treaty action

- 9.10 In 1998, the Parties to the Convention agreed that Inmarsat's commercial arm should be corporatised, to preserve its long-term commercial viability and to ensure that it competed with operators on a comparable basis. That is, one without the considerable competitive advantages that the privileges and immunities of an international organisation convey. The amendments to the Convention and the Operating Agreement provide for the satellite system to be operated by a new company, to preserve its commercial viability, purpose and provision of services.<sup>7</sup>
- 9.11 A new international organisation, the International Mobile Satellite Organization (IMSO), has therefore been established. A multi-corporate structure under UK law, consisting of a holding company and an operating company, the Inmarsat Company, has also been established to take over the business of operating the Inmarsat satellites. This will ensure continuation of the SOLAS services required under the Convention according to set principles, via a public service agreement (PSA) between the new international organisation and the new company.<sup>8</sup>
- 9.12 The international organisation has the same membership as the body it replaces, and a special share in the new company. The PSA will be included in the memorandum and the articles of the new company, and they can only be amended by a vote by a certain number of members. The IMSO can veto proposed changes and bring such matters to an extraordinary meeting of the company.<sup>9</sup>
- 9.13 Among the other mechanisms that are introduced, the new company is required to report to the IMSO on a regular basis, and to consult on any matters that might affect delivery of SOLAS-type services. In that connection, there is a mechanism allowing an arbitrator to be appointed. If

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7 Unless specified otherwise, material in this section was drawn from *Transcript of Evidence*, 22 October 1999, John Neil (DOCITA), p. TR67

8 Regulation Impact Statement for ITU, pp. 1, 2, Richard Desmond (DOCITA), *Transcript of Evidence*, 22 October 1999, p. TR70

9 Richard Desmond (DOCITA), *Transcript of Evidence*, 22 October 1999, p. TR70. For more information on obligations under the PSA, see paragraphs 9.39-9.42.

a matter is not resolved by that means, the PSA is legally enforceable and as a final sanction the IMSO can take it to court.<sup>10</sup>

- 9.14 To take these actions, substantial amendments have been made to the Convention. An amendment to the Operating Agreement terminates it, either when the Convention ceases to be in force or when amendments to the Convention deleting references to that Agreement enter into force, whichever is earlier.
- 9.15 The effect of these amendments is to remove government parties from the commercial activities of satellite-based communications, but to retain the Convention's purpose by ensuring that a commercial operator will provide the required services.<sup>11</sup>
- 9.16 Given its requirements for a global maritime distress and safety system, the restructuring of Inmarsat concerned the IMO. It was consulted throughout the process, and given assurances that maritime services would be maintained.
- 9.17 Although entry into force of the amendment will occur even for those Parties not taking treaty action, acceptance is preferable to ensure that it happens as soon as possible. In addition, as the NIA observed, there is no other provider of a dedicated, satellite-based, maritime service.<sup>12</sup>

### Timing of the proposed treaty action

- 9.18 Once adopted, entry into force of amendments to the Convention normally takes some years. Formal acceptance requires a two-thirds majority of the membership, representing two-thirds of the investment shares at the time of their adoption.<sup>13</sup>
- 9.19 The Parties decided to implement the 1998 Amendments from 1 April 1999, or a later date to be decided, to enhance the sound economic and financial basis provided in the Convention. This was pending and subject to the entry into force of those amendments. Since 15 April 1999 was agreed, they had been 'rapidly implemented'.<sup>14</sup>
- 9.20 The IMO noted, however, that amendment of the Operating Agreement was conditional upon satisfactory completion of documentation, and on

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10 Richard Desmond (DOCITA), *Transcript of Evidence*, 22 October 1999, p. TR70

11 NIA for Inmarsat, p. 3

12 NIA for Inmarsat p. 3

13 NIA for Inmarsat p. 9

14 NIA for Inmarsat, p. 3, John Neil (DOCITA), *Transcript of Evidence*, 22 October 1999, p. TR 68

completion of the waiver of conditions to enable restructuring to take effect. These conditions have now been met.<sup>15</sup>

- 9.21 The IMO will have observer status on the amended Inmarsat Convention, and will ensure that services are delivered at the right level and consistent with the PSA. Among the conditions for proceeding with the amendments was that there had been consultation with AMSA, and that that body was satisfied with the proposed arrangements.<sup>16</sup>
- 9.22 The NIA stated that such rapid implementation enabled the restructuring to take effect while the Parties, within their laws, pursued requirements to expedite the process of formal acceptance of these 1998 amendments to both the Convention and the Operating Agreement.<sup>17</sup>

## Obligations

- 9.23 The amendments do not substantially change Australia's obligations under the existing Convention, nor will they breach any obligations under the SOLAS Convention. Mechanisms in the Convention require continuation of those services.<sup>18</sup>
- 9.24 By creating a new inter-governmental organisation and company, the amendments change the structure of Inmarsat and its inter-relationship with service carriers providing GMDSS and other services, and the relationship between the Parties and the service carriers. Services will be provided by the new commercial company set up by the amendments that will operate the satellite system.<sup>19</sup>
- 9.25 As set out above, obligations under the Operating Agreement will terminate either when the Convention ceases to be in force, or when amendments to the Convention deleting references to that Operating Agreement enter into force, whichever is earlier.
- 9.26 Once the 1998 Amendments are in force, Australia will not be required to be a Party to, or to designate an entity for, the Operating Agreement.<sup>20</sup>

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15 NIA for Inmarsat, p. 9

16 Richard Desmond (DOCITA), *Transcript of Evidence*, 22 October 1999, p. TR72

17 NIA for Inmarsat, pp. 3, 9

18 John Neil and Richard Desmond (DOCITA), *Transcript of Evidence*, 22 October 1999, pp. TR 68, 70

19 Richard Desmond (DOCITA), *Transcript of Evidence*, 22 October 1999, p. TR70. For obligations under the PSA, see paragraphs 9.39-11.42.

20 Unless specified otherwise, material in this section was drawn from NIA for Inmarsat, p. 4

## Implementation

- 9.27 The NIA noted that the 1998 Amendments to the Inmarsat Convention and the Operating Agreement will cause minor amendments to a number of pieces of existing Australian legislation, including:
- the *Telecommunications Act 1997*;
  - the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997*; and
  - the *International Maritime Satellite Organization (Privileges and Immunities) Regulations 1982*.<sup>21</sup>

## Consultation

- 9.28 Comments on the 1998 Amendments were sought from State and Territory Governments. The NIA included a list of the telecommunications industry organisations that were consulted. Responses received generally emphasised the need to ensure that maritime safety services were preserved, while supporting the restructuring of Inmarsat.<sup>22</sup>
- 9.29 The following particular issues were raised:
- ensuring GMDSS services were preserved;
  - adequate safeguards for the cost and quality of GMDSS services; and
  - preservation of the full range of satellite services provided by Inmarsat.
- 9.30 The NIA briefly discussed each of these matters, indicating that they have been resolved satisfactorily.
- 9.31 As part of our review, we sought comments from State/Territory Premiers/Chief Ministers and also from the Presiding Officers of State/Territory Parliaments or, where appropriate, specific Committees of those Parliaments. No adverse comments were received about these proposed amendments to the Convention.

## Future protocols, etc

- 9.32 The NIA stated that the proposed Article 9(6) of the Convention proposes that the Parties shall conclude a protocol on the privileges and immunities of the IMSO, its Director-General, staff of experts performing its missions, and of representatives of Parties and Signatories in the territory of Parties

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21 NIA for Inmarsat, p. 10, Regulation Impact Statement, p. 9

22 Unless specified otherwise, material in this section was drawn from NIA for Inmarsat, pp. 10-11

while exercising their functions. This protocol shall be independent of the Convention.

- 9.33 Australia has not signed the current Protocol on Privileges and Immunities because this country considers it inappropriate for the commercial side of Inmarsat to be exempt from normal taxes and customs duties for reasons of competitive neutrality.
- 9.34 The proposed treaty action includes amendments to the Constitution that would see the current Protocol remain in force after the restructuring to retain appropriate privileges and immunities for the IMSO, its Secretariat and Representatives of Parties. These privileges and immunities will not apply to the new Inmarsat company.
- 9.35 The Australian Government is considering whether it will become a party to the new protocol at a later date.<sup>23</sup>

## Withdrawal

- 9.36 Under the existing Article 29, Australia can withdraw from the Convention. This would become effective three months after notice is received from the Depository, the Secretary-General of the IMO. Withdrawal may potentially breach obligations under SOLAS.<sup>24</sup>
- 9.37 On their entry into force, the 1998 Amendments will enable any Party to withdraw voluntarily from the international organisation at any time, effective upon receipt of written notification by the Depository.<sup>25</sup>
- 9.38 The Operating Agreement does not include a provision for withdrawal of members because it ceases to operate if the Convention ceases.

## Public service obligations

- 9.39 The new Article 3 of the Convention sets out the basic principles or public service obligations to be observed by the new Inmarsat Company:
- ensuring the continued provision of global maritime distress and safety satellite communications services (GMDSS) and, in particular, those relating to GMDSS and specified in SOLAS, the Radio Regulations and the Convention of the ITU, as amended from time to time;
  - providing services without discrimination on the basis of nationality;

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23 Material in this section was drawn from NIA for Inmarsat, pp. 8-9

24 Unless specified otherwise, material in this section was drawn from NIA for Inmarsat, p. 11

25 Article 14 of the revised Convention refers.

- acting exclusively for peaceful purposes;
  - seeking to serve all areas where there is a need for mobile satellite communications, giving due consideration to rural and remote areas of developing countries; and
  - operating in a manner consistent with fair competition, subject to applicable laws and regulations.<sup>26</sup>
- 9.40 The new Article 4 of the Convention requires IMSO, with the approval of the Assembly, to execute a PSA with the Company to oversee and ensure the observance of those basic principles set out in the new Article 3.
- 9.41 Paragraph 7(1) of the Memorandum of Association of the Inmarsat Company state it is 'incapable of any alteration' of the basic principles, including GMDSS, and in particular those relating to GMDSS specified in SOLAS, the Radio Regulations annexed to the ITU's Constitution and Convention, as amended from time to time.
- 9.42 The public service obligations are broadly defined. If there is a need in future to amend or expand the basket of services, this could be done either by amending SOLAS, and/or by amending the PSA between IMSO and the Inmarsat Company. The PSA can be amended by a written instrument signed by duly authorised representatives of that Organization and that Company.

## Other evidence

- 9.43 Dr Michael White QC, Executive Director of the Centre for Maritime Law at the University of Queensland, commented that efficient and effective marine communications were 'highly desirable'.<sup>27</sup>

## Conclusion and recommendation

- 9.44 These amendments to the Inmarsat Convention and the Operating Agreement are an example of the trend to corporatise services, even at an international level. The GMDSS services provided by Inmarsat are more vital, in some circumstances, than many others. Any changes to structures and operating agreements demand careful preparation and subsequent

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<sup>26</sup> Unless specified otherwise, material in this section was drawn from DOCITA, *Submission No 1*, pp. 1-2

<sup>27</sup> Centre for Maritime Law, University of Queensland, *Submission No 1*, p. 1

scrutiny. Consultations with interested bodies in the likely areas of use are vital.

- 9.45 As these changes have already been partially implemented, the possible impact of our review is somewhat debatable.
- 9.46 On the basis of the evidence provided to us, we are satisfied that the restructuring of this Convention and the Operating Agreement, as proposed by these amendments, is being handled in an appropriate manner. Arrangements for the continuation of the PSA, and GMDSS services in particular, seem to be retained and protected in an appropriate manner.

### **Recommendation 11**

- 9.47 **The Committee supports the proposed amendments to the *Convention and Operating Agreement for the International Mobile Satellite Organization*, noting that implementation is already under way, and recommends that binding treaty action be taken.**



## Cultural Cooperation Agreement with Germany

### Background

- 10.1 In 1996, the Australia-Germany Partnership 2000 Action Plan was launched. It signalled the commitment of both Governments to continue developing and strengthening their bilateral relationship, politically, economically and culturally.<sup>1</sup>
- 10.2 One bi-product of this Plan was the signing on 7 November 1997 of the proposed *Agreement between the Government of Australia and the Government of the Federal Republic of Germany on Cultural Cooperation* (the Agreement).
- 10.3 This Agreement adds to and expands on a number of other agreements between the two countries. Australia currently has agreements with Germany on topics as diverse as migration, information exchange, debts, money orders, extradition, postal parcels, science and technology, taxation, trade, science and technology and visas.<sup>2</sup>

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1 Unless otherwise specified, material in this section was drawn from the National Interest Analysis (NIA) for the proposed Agreement (NIA for the Agreement), p. 1. The 2000 Action Plan was revised in 1999.

2 See *Australian Treaty List: Bilateral* (as at 31 December 1998), Department of Foreign Affairs and Trade (DFAT), pp. 78-86 (*passim*). The previous Committee reviewed two other bilateral treaty actions with Germany: *Amendments to the 1957 Air Transport Agreement with Germany* (see **Treaties Tabled on 15 & 29 October 1996: 4<sup>th</sup> Report** (November 1996), p. 11; and the *Agreement with Germany on the Establishment and Operation of a Mobile Ground Station in Australia for the PRARE Project* (see **Eleventh Report** (November 1997), pp. 45-49.

## Reasons for the proposed treaty action

10.4 The broad aims of the proposed Agreement are:

- to develop the cultural, educational, scientific and sporting relations between Australia and Germany;
- to strengthen further cooperation and understanding between the peoples of Australia and Germany;
- to strengthen further and broaden cooperation and mutual assistance in the provision of education and training; and
- to provide 'tangible encouragement and form to the promotion of links between the relevant institutions and personnel' of the two countries.<sup>3</sup>

10.5 More specifically, it is hoped this proposed Agreement will:

- encourage greater understanding between the peoples of Australia and Germany of their respective history, language, education and culture. It will do this through exchange programs and other cooperative activities;
- assist Australian cultural exports such as musicians and other artists in gaining access to the German market and in participating in various cultural festivals and events in Germany. For example, the Melbourne Symphony Orchestra, accompanied by a joint business/cultural delegation, will perform at a number of concerts in Germany in 2000. The proposed Agreement will facilitate such activities.
- encourage further and increased interaction between institutions of scientific organisations (ie. research bodies) financed solely or mainly from public funds. For example, the Australian Museum has a number of joint research projects with German universities, academics and museums, including a current project to discover the original colour of fossils. The Museum believes that the range and scope of research and other such scientific projects will increase as a result of the proposed Agreement.
- strengthen cooperation and mutual assistance in the provision of education and training by facilitating and promoting both the establishment of, and activities conducted by, relevant institutions such as Australian and German tertiary institutions, schools, theatre groups and scientific bodies. Thus, increased exchanges between these bodies is likely. There is also likely to be greater inter-country participation in

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<sup>3</sup> Unless otherwise specified, material in this section was drawn from the NIA for the proposed Agreement, p. 1-2

conferences and symposiums. There is likely to be more bilateral cooperative projects and events in fields such as the arts, media, and sport. It is also presumed that the proposed Agreement will strengthen the relationship between the Goethe Institute and Australian schools and universities.<sup>4</sup>

- 10.6 Australia decided to make such a cultural Agreement with Germany because DFAT was informed that a document of treaty status would be much more effective than the more usual memorandum of understanding. Australia was likely to get much better and closer cooperation at the institutional level from German organisations such as the Goethe Institute if a cultural agreement at treaty level was concluded between Australia and Germany.<sup>5</sup>
- 10.7 Finally, the proposed Agreement is important as a symbol of the close relationship that exists between Australia and Germany.<sup>6</sup>

## **Obligations imposed by the proposed treaty action**

- 10.8 The proposed treaty will impose on Australia and Germany a requirement that they both facilitate and promote the establishment and activities of each other's cultural institutions. Cultural institutions include cultural centres, scientific organisations of the other countries financed solely or mainly from public funding, libraries, research institutions and educational institutions.
- 10.9 The Agreement also obliges each Party, in accordance with its applicable laws, regulations and policies, to facilitate the entry and sojourns of nationals of the other Party acting within the framework of this Agreement, as well as members of their families. It also facilitates the import of the personal effects of such persons. Thus, the Agreement will facilitate the entry of experts seconded or provided for official assignments within the framework of cultural cooperation between the two countries.

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4 Unless otherwise specified, material in this section was drawn from the NIA for the proposed Agreement, p. 1-2, 4

5 A memorandum of understanding is not legally binding in international law, it is simply a 'gentlemen's agreement'. Chris Freeman (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR75

6 Chris Freeman (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR73

- 10.10 The Agreement will also facilitate the import of materials required for the purposes of the Agreement. This might include things such as pictures, books, films, and exhibit pieces.<sup>7</sup>
- 10.11 Under the Agreement, each Party is also required to:
- encourage student, academic, and teacher exchanges. Such programs will allow German students to work or study in Australia for short periods of time, on temporary student-type visas. Evidence was provided that 'Germany is currently the 13th most significant recipient of [Australian] student visas, with 1,240 students visiting during 1998-89'. This is a seven percent increase on 1997/98;<sup>8</sup>
  - encourage the development of institutional links;
  - encourage the provision and exchange of information;
  - encourage the development of cooperative activities between individuals and institutions in the fields of culture, cultural heritage and education;
  - encourage exchange programs and promote cooperation in the fields of theatre, the arts, film and other media;
  - promote cooperation in the field of sport between the respective competent institutions;
  - promote youth exchanges and foster cooperation between experts in youth work and institutions involved in youth welfare;
  - encourage other activities in its territory which, even if not specifically mentioned in this Agreement, are nonetheless in accordance with the spirit of it;
  - convene meetings at such times and places agreed by the Parties for the purpose of establishing appropriate measures for, and reviewing the implementation of, this Agreement; and
  - encourage the study of the language, culture and literature of the other Party.
- 10.12 DFAT was asked whether this greater emphasis on promoting German language studies might detract from and be at odds with the emphasis that a number of Australian Governments, for example New South Wales, are presently placing on the learning of Asian languages.

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7 Chris Freeman (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR74

8 Chris Freeman (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR74

10.13 While there appears to be no negative feedback from Australian Governments in this area, there has been an emphasis recently in the study of Asian languages because of such factors as tourism. The ability to build on existing relationships with countries like Germany was important. Germany and German companies have a range of business connections and dealings with Australia. The encouragement that would be given under the Agreement to study German would be aimed at harnessing already existing interests held by some Australians. It would not be aimed at trying to persuade those who had already decided to study an Asian language to choose German instead.<sup>9</sup>

### Date of binding treaty action

10.14 The proposed Agreement will enter into force on the date on which the Parties have notified each other that their respective national requirements for entry into force have been fulfilled. It is Australia's hope that this will take place before the end of 1999.

10.15 It should be noted here that, once entered into, the Agreement will be valid for a period of five years. It will be automatically extended for successive five-year periods unless it is denounced by either Party giving six months' written notice.

### Costs

10.16 The NIA stated that there are 'no direct costs resulting from compliance with the Agreement'. Provision is made for meetings to review its implementation. The NIA stated that any costs associated with these meetings would be borne by the host nation.<sup>10</sup>

10.17 The NIA did not explain how Australia would fulfil its obligation to facilitate and promote the establishment and activities of the cultural institutions of Germany.

10.18 No answer was given directly on this point. DFAT indicated that all expenditure required by Australia under the Agreement would be met from within the DFAT budget. A certain amount of money had already been allocated from these sources for activities with Germany, and would continue to be allocated.<sup>11</sup>

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9 Chris Freeman (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR76

10 NIA for the Agreement, p. 3

11 Chris Freeman (DFAT), *Transcript of Evidence*, 22 October 1999, pp. TR76-77

- 10.19 DFAT would probably also seek private enterprise 'seed-funding' for various projects, as successful funding had been provided by this means for other projects.<sup>12</sup>

## Consultation

- 10.20 As part of our review, we sought comments from State/Territory Premiers/Chief Ministers and also from the Presiding Officers of State/Territory Parliaments or, where appropriate, specific Committees of those Parliaments. No comments were received.
- 10.21 States and Territories were also advised of the proposed Agreement through the SCOT process. Those Governments that responded to invitations for their views seemed to support the initiative strongly.<sup>13</sup>
- 10.22 A number of universities, academics and artists were informed of the proposed Agreement. The NIA gave the impression that they were all supportive of it, believing that it would facilitate and increase cultural exchange and understanding between Australia and Germany.<sup>14</sup>
- 10.23 As part of our review, we sought comments from State/Territory Premiers/Chief Ministers and also from the Presiding Officers of State/Territory Parliaments or, where appropriate, specific Committees of those Parliaments. No adverse comments were received about this proposed treaty action.

## Other evidence presented

- 10.24 Evidence was also provided that:
- Australia has cultural agreements already with about 20 countries. The aims and objectives of these agreements are broadly similar, although, in the interests of flexibility the proposed Agreement is expressed in more general terms.<sup>15</sup>
  - DFAT did not anticipate that the number of German nationals applying for Australian residence in would be affected in any way by the proposed Agreement.<sup>16</sup>

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12 Chris Freeman (DFAT), *Transcript of Evidence*, 22 October 1999, pp. TR76-77

13 NIA for the Agreement, p. 4

14 NIA for the Agreement, pp. 4-5

15 Australia now tends to sign memoranda of understanding on cultural cooperation rather than a treaty: Chris Freeman (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR77

16 Chris Freeman (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR74

- the number of German tourists visiting Australia per year was likely to increase as a result of the proposed Agreement;<sup>17</sup>
- Australian-German relations were very strong, particularly in economic fields. For example, many banks, bankers and major German corporations used Sydney as their regional headquarters;<sup>18</sup>
- part of the promotion of German culture within Australia would involve sending Australian tours and groups to Germany. This was already done on a small scale, but was likely to increase as a result of the proposed Agreement;<sup>19</sup> and
- it is likely that, as a result of this Agreement, Germany and Australia would each identify areas of their culture and economy that would be particularly useful to promote in Australia, in order to seek assistance and facilitation in conducting such promotions in the other's country.<sup>20</sup>

## Conclusion and recommendation

10.25 We note the good relationship that already exists between Australia and Germany. It has brought cultural, scientific, sporting and economic benefits to both countries over the last few decades.

10.26 The establishment of this proposed cultural cooperation Agreement with Germany can only benefit and strengthen this relationship. We would welcome the negotiation of similar agreements with other nations, particularly those in our immediate geographical region.

### Recommendation 12

10.27 **The Committee supports the proposed *Agreement with Germany on Cultural Cooperation*, and recommends that binding treaty action be taken.**

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17 Chris Freeman (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR75

18 Chris Freeman (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR75

19 Chris Freeman (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR76

20 Chris Freeman (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR76

## Two consular agreements

### Consular agreements

- 11.1 Consuls are representatives of a country placed in another country to discharge various administrative duties and services on behalf of their nation. These services include the protection of the rights and interests of citizens residing or travelling in that other country; the issuing of passports and other travel documents; the registration of the births and deaths of citizens in that other country; and the facilitation of economic, trade, scientific, technological, cultural, and educational relations with that other country.
- 11.2 The aim of a consular agreement is to regulate the functions and services that can be provided by consuls operating in the territory of the other Party or other Parties to the Agreement.

### Proposed Consular Agreement with China

#### Background

- 11.3 There are several thousand Australian citizens living in the People's Republic of China (China) and about 45,000 in Hong Kong. Over 60,000 Australians visit the Chinese mainland per year and over 100,000 visit Hong Kong.<sup>1</sup>

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<sup>1</sup> David O'Leary Department of Foreign Affairs and Trade (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR80



- 11.4 The consular relationship between Australia and China has, to date, been governed totally by the provisions of the 1963 multilateral *Vienna Convention on Consular Relations* (the Vienna Convention) to which both Australia and China are Parties.<sup>2</sup>
- 11.5 In general, Australia's consular activities in China have been carried out without serious problems.<sup>3</sup>
- 11.6 Some particular problems, however, have arisen. These have included:
- matters such as belated notification of the arrest or detention of Australian citizens;
  - Chinese official reluctance in some cases to accept that a client is an Australian citizen especially where that client is of Chinese ethnic background and was born in China;
  - lack of clarity of rights of access by consular officials to Australian citizens who may be arrested or detained; and
  - lack of uniformity in administrative procedures in handling cases involving foreigners, depending on the province where the consular case arises. Such problems have occurred more often in areas of China where provincial authorities are unfamiliar with international norms.<sup>4</sup>
- 11.7 Both the United States and Canada have sought to overcome such consular relations problems with China by the use of consular agreements which provide more specification on matters such as access and detention.<sup>5</sup>
- 11.8 Australia has seen the benefits of following the path taken by the United States and Canada. On 8 September 1999, the proposed *Agreement on Consular Relations between Australia and the People's Republic of China* (the Agreement) was signed. It confirms and in some respects expands the provisions in the Vienna Convention. It states that matters not explicitly raised shall continue to be dealt with in accordance with the Vienna Convention.<sup>6</sup>

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2 Unless otherwise specified, material in this section was drawn from the National Interest Analysis (NIA) for the proposed *Agreement on Consular Relations between Australia and the People's Republic of China* (NIA for the Agreement), p. 1

3 David O'Leary (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR80

4 David O'Leary (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR80

5 David O'Leary (DFAT), *Transcript of Evidence*, 22 October 1999, pp. TR80-81

6 David O'Leary (DFAT), *Transcript of Evidence*, 22 October 1999, pp. TR80-81

- 11.9 This Agreement also goes further than both the comparable agreements the Chinese have negotiated with the United States and Canada by providing even more precise time frames.<sup>7</sup>
- 11.10 Australia already has a number of mutually beneficial agreements with China. These cover matters as diverse as agriculture, taxation, trade, air services, cultural cooperation, customs, development, economics, fisheries, science and technology, investment, migratory birds, and postal parcels.<sup>8</sup>

### Reasons for the proposed treaty action

- 11.11 The main reason for the proposed Agreement is that, from time to time, Australia has encountered difficulties in securing consular access to arrested or detained Australian citizens in China and their return home. This is particularly in the case of those who also possess Chinese citizenship, and it is hoped that the proposed Agreement will lessen these difficulties.<sup>9</sup>
- 11.12 Difficulties in gaining consular access to and return home of Australian citizens, according to the NIA, is partly a consequence of weaknesses in the relevant provisions of the Vienna Convention and partly due to China's nationality laws which do not recognise dual citizenship.<sup>10</sup>
- 11.13 Under the provisions of the Vienna Convention:
- the time limit for notification of the arrest or detention of citizens of each country to their respective consular officials is not explicitly defined; and
  - Its provisions are not specific in detailing the regularity of consular visits to detained nationals.<sup>11</sup>
- 11.14 By contrast, the proposed Agreement establishes:
- time limits;
  - guarantees monthly consular visits to citizens detained or arrested;
  - requires both countries to provide reasons for the detention of a national of the other and the details of any charges;
  - guarantees consular representation at trial; and

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7 David O'Leary (DFAT), *Transcript of Evidence*, 22 October 1999, pp. TR80-81

8 See *Australian Treaty List: Bilateral* (as at 31 December 1998), DFAT, pp. 31-34 (*passim*)

9 NIA for the Agreement, p. 1

10 NIA for the Agreement, pp. 1-2

11 NIA for the Agreement, p. 1

- requires adequate interpretation services to be provided to any national of the other country being tried.<sup>12</sup>
- 11.15 Under the proposed Agreement, if a Chinese official detains or arrests an Australian national, Australian consular officials must be notified of the arrest within three days and a consular visit to the detainee must be permitted within two days thereafter. These periods are 'a great deal speedier' than has occurred in the past.<sup>13</sup>
- 11.16 It remains to be established whether these periods, although an improvement on the Vienna Convention provisions, will be too long.
- 11.17 DFAT indicated that it hoped that this period would be soon enough. It noted that the five day period was the outer limit, and that Chinese authorities could still notify and allow access to consular officials at an earlier date if they so choose. It acknowledged that China has used 'fairly strong interrogation procedures' on a number of occasions in the past.
- 11.18 It also indicated that this Agreement, although not fail-safe, would improve the chances of gaining access to and protecting Australian citizens in China. It argued that relying on the proposed Agreement with its precise time specifications was better than relying on the broad and imprecise Vienna Convention. Finally, the proposed Agreement was the best Australia could get as China would be very unlikely to allow an agreement that banned such things as interrogations completely.<sup>14</sup>
- 11.19 Apart from facilitating consular access to and the return home of Australian citizens generally, the proposed Agreement facilitates the return home of and access to Australian citizens who also hold Chinese citizenship.<sup>15</sup>

## Dual citizenship

- 11.20 For most dual Australian-Chinese citizens travelling on Australian passports, travel in China presents no problems. The proposed Agreement guarantees that such persons will be granted consular access and protection by Australian consular posts.<sup>16</sup>

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12 David O'Leary (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR81

13 David O'Leary (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR81

14 David O'Leary (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR84

15 NIA for the Agreement, pp. 1-2

16 David O'Leary (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR81

- 11.21 A more difficult situation arises when Australian citizens with dual nationality choose to travel to China as Chinese citizens on Chinese travel documents. The case of Mr James Peng, recently released from jail by Chinese authorities, is a good example of problems that can occur.<sup>17</sup>
- 11.22 Travelling in China as a Chinese citizen does offer a few important advantages. A person will be:
- subject to fewer bureaucratic obstacles; and
  - can take advantage of investment provisions available only to Chinese nationals.<sup>18</sup>
- 11.23 However, if while travelling in China they run into problems, get into disputes or even arrested, then because they are travelling as a Chinese citizen, the Chinese authorities may refuse to accept their Australian citizenship and hence deny them consular access.<sup>19</sup>
- 11.24 Under the Agreement, the Chinese still will not recognise dual nationality. It does, however, allow for regular consultation on individual consular matters. This provides Australia with a forum in which it can raise and discuss cases where a person is detained in China whom the Chinese believe is Chinese.<sup>20</sup>
- 11.25 Even with the proposed Agreement in place, one of the initial difficulties with the effective operation of this Agreement will be that some of the Chinese provinces may take time to become familiar with its terms. DFAT noted that the important thing about the Agreement is that it is a 'benchmark' containing specific obligations. If Australia finds out about cases where nationals have been detained in China, it can use its influence through the Foreign Ministry to put pressure on the provinces to abide by the Agreement.<sup>21</sup>
- 11.26 DFAT also noted that there had already been one case, after the proposed Agreement was negotiated but not signed, where the Foreign Ministry had played an important role in Chinese authorities deciding to let an Australian citizen return to Australia. This was the case of a researcher, Mr Gabriel Lafitte, who was arrested in Tibet earlier in 1999.<sup>22</sup>

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17 See *The Age* (Editorial), 17 November 1999, p. A18

18 David O'Leary (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR81

19 David O'Leary (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR81

20 David O'Leary (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR81

21 David O'Leary (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR83

22 David O'Leary (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR83

## Obligations imposed by the proposed treaty action

- 11.27 Apart from the obligations already noted, the proposed Agreement will also establish, in general, a clear set of rights and obligations relating to the conduct of consular functions.<sup>23</sup>
- 11.28 The Agreement requires each Party to facilitate the operations of the consular posts by the other Party. Allowing each consular post to perform the tasks laid down for it under the Agreement. These tasks include the issuing of passports and visas, access and the provision of assistance to nationals detained by the host country, and the levying of tax-free fees and charges for consular acts.

## Costs

- 11.29 There will be no foreseeable direct financial costs to Australia as a result of ratifying this Agreement. Australian consular officers will fulfil the functions set out in the Agreement as part of their normal duties.<sup>24</sup>

## Consultation

- 11.30 As part of our review, we sought comments from State/Territory Premiers/Chief Ministers and also from the Presiding Officers of State/Territory Parliaments or, where appropriate, specific Committees of those Parliaments. No adverse comments were received about this proposed treaty action.
- 11.31 States and Territories were also advised of the proposed Agreement through the SCOT process. No comments were received.<sup>25</sup>
- 11.32 The NIA did not, however, indicate whether any Australian-Chinese friendship or business groups had been consulted. According to DFAT, consultation was not undertaken because the Department felt that it had a reasonable understanding of the problems that had occurred in China in the past. Given the detailed nature of the provisions, officials believed that this was sufficient information to negotiate an agreement covering the major concerns that had arisen over the years, and then to publicise this proposed agreement as much as possible.<sup>26</sup>

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23 NIA for the Agreement, p. 2

24 NIA for the Agreement, p. 4

25 NIA for the Agreement, p. 4

26 David O'Leary (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR86

11.33 We later discovered that there had in fact been some consultation on the matter with groups who do business in China through the Australia-Chinese Business Council and other community groups. The names of these groups, however, were not provided.<sup>27</sup>

### Date of proposed binding treaty action

11.34 The proposed Agreement will take effect on the thirty-first day after an exchange of notes by which the two Parties notify each other of the completion of the procedures required by their national laws for giving it effect. It has been proposed that Australia lodge its notification as soon as practicable after 9 December 1999.<sup>28</sup>

### Other evidence presented

11.35 Evidence was also provided on a number of related matters:

- DFAT currently has about half a dozen cases of Australian's detained in China that require intensive attention. Although this was not a large number, these were difficult cases. They were not all related to matters of dual nationality.<sup>29</sup>
- Australia had entered into a non-treaty level arrangement with China on increased legal cooperation.<sup>30</sup>
- It was unlikely that an Australian citizen born in Taiwan, travelling on an Australian passport, would have difficulties in China.<sup>31</sup>
- Australia has a dialogue each year with China on human rights. As part of this dialogue, there is an extensive human rights technical assistance program which focuses specifically on the administration of justice. It conducts exchanges where people from the courts, prisons administration, and members of the public security bureau come to see and learn how Australia administers its justice system. It is hoped that these Chinese representatives will implement what they have seen.

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27 David O'Leary (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR86

28 NIA for the Agreement, p. 1

29 David O'Leary (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR82

30 Lydia Moreton (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR83

31 David O'Leary (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR85

Feedback had already been received that Chinese officials have implemented some of the things they had seen in Australia.<sup>32</sup>

## Conclusion and recommendation

- 11.36 We believe that DFAT failed to provide us with sufficient evidence of adequate consultation, particularly with relevant Australian-Chinese community organisations, about the proposed Agreement. There was some indication that such groups had been consulted, but names were not provided. While it is true that there are many such groups, we require some detail in the information that is given to us.
- 11.37 Failure to undertake this consultation is unacceptable. We expect more from the agency responsible for implementing the reformed treaty making process.
- 11.38 This Agreement will strengthen Australia's overall relationship with China. It should also be particularly helpful in increasing the effectiveness of the assistance Australian consular staff can provide to Australian nationals travelling or residing in China, particularly those citizens who are detained or imprisoned by Chinese authorities.
- 11.39 It remains to be seen whether the new provisions will assist Australians travelling in China, especially those with dual citizenship, in gaining prompt consular access if they have problems with local authorities. As DFAT noted, the existence of this Agreement should improve these difficult situations.

### Recommendation 13

- 11.40 **The Committee supports the proposed *Agreement on Consular Relations with the People's Republic of China*, and recommends that binding treaty action be taken.**

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32 Lydia Morton (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR82

## Proposed Consular Agreement with PRC for Macau

### Background

- 11.41 There are currently about 150 Australian citizens living in Macau. Some Australian tourists also visit Macau, normally via Hong Kong. Australia's bilateral trade with Macau has been growing over the last five years and was worth almost \$A22 million in 1998/99.<sup>33</sup>
- 11.42 Australia already has treaty relations with Macau. On 24 August 1999, the Australia-Macau Air Services Agreement was signed with the aim of creating greater tourism and trade between Macau and Australia. There is also a 1988 Extradition Treaty between Australia and Macau.<sup>34</sup>
- 11.43 Although DFAT seemed to be unaware of the Air Services Agreement, the previous Committee had considered it. Permission had been received for it to be tabled prior to signature, and the Governments of both Portugal and the PRC had agreed that Macau could conclude air services agreements with foreign governments.<sup>35</sup>
- 11.44 Australia is working towards finalising the Exchange of Notes to bring the Air Services Agreement into force before the resumption of PRC sovereignty. DFAT also advised that, if this were to occur, a 'strong inference' existed that it would continue to remain in force between Australia and the PRC after the resumption of sovereignty.<sup>36</sup>
- 11.45 On 20 December 1999, China will resume its sovereignty over Macau from Portugal. Macau will then become the Macau Special Administrative Region of the People's Republic of China (MSAR). It will be governed by the same principles of the policy of 'one country, two systems' currently applied by China to the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR). Like Hong Kong, Macau will continue to enjoy a 'high degree of autonomy' from China for 50 years following the transition.<sup>37</sup>

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33 NIA for the Macau Agreement, p. 1

34 NIA for the Macau Agreement, p. 1, DFAT, *Submission No 1*, p 1

35 Lydia Morton (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR87. See the previous Committee's **Treaties Tabled on 15 & 29 October 1996: 4<sup>th</sup> Report** (November 1996), pp. 24-26, and the relevant NIA, for its consideration of the Air Service Agreement with Macau.

36 DFAT, *Submission No 1*, p 3. DFAT also advised, p. 1, that whether the Extradition Treaty would remain in force after 20 December 1999 was under consideration by the Parties involved.

37 Unless otherwise specified, material in this section was drawn from the National Interest Analysis (NIA) for the proposed *Agreement between the Government of Australia and the*



## Reasons for the proposed treaty action

- 11.46 In order to demonstrate a consistent application of its 'one country, two system's policy to both regions China has requested that, both Hong Kong and Macau be treated equally. As a consular agreement already exists between Australia and China over Hong Kong since 1997, a similar one should be concluded over Macau.<sup>38</sup>
- 11.47 As a consequence of this policy, Australia and the People's Republic of China signed the proposed *Agreement between the Government of Australia and the Government of the People's Republic of China concerning the Continuation of the Consular Functions by Australia in the Macau Special Administrative Region of the People's Republic of China*.
- 11.48 This proposed Agreement provides for the continuation of Australian consular functions and services in Macau, following the resumption by China of the exercise of its sovereignty.<sup>39</sup>
- 11.49 Since Australia does not have a resident consular presence in Macau, these services are provided by the Consulate General in Hong Kong. The proposed Agreement formalises and allows for the continuation of that arrangement in relation to the MSAR.<sup>40</sup>

## Obligations imposed by the proposed treaty action

- 11.50 The proposed Agreement states that consular matters between Australia and Macau 'shall be handled on the basis of equality and mutual benefit and in a friendly and cooperative spirit'.
- 11.51 Provision of consular services by Australia in Macau, and the facilitation of this by China, will be conducted in accordance with the provisions of the 1963 *Vienna Convention on Consular Relations*. This Convention already governs the consular relations between Australia and China generally.

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*Government of the People's Republic of China concerning the Continuation of the Consular Functions by Australia in the Macau Special Administrative Region of the People's Republic of China* (NIA for the Macau Agreement), p. 1

38 NIA for the Macau Agreement, p. 1. See the previous Committee's **Treaties Tabled on 15 & 29 October 1996: 4<sup>th</sup> Report** (November 1996), p. 17, for its consideration of this matter.

39 NIA for the Macau Agreement, p. 1

40 NIA for the Macau Agreement, p. 1

## Costs

11.52 The Agreement imposes no foreseeable direct financial costs on Australia, above those already incurred by the Australian Consulate General in Hong Kong for Macau.<sup>41</sup>

## Consultation

11.53 As part of our review, we sought comments from State/Territory Premiers/Chief Ministers and also from the Presiding Officers of State/Territory Parliaments or, where appropriate, specific Committees of those Parliaments. No adverse comments were received about this proposed Agreement.

11.54 The States and Territories were advised of the proposed Agreement through the SCOT process. No comments were received.<sup>42</sup>

## Date of proposed binding treaty action

11.55 The proposed Agreement will enter into force on 20 December 1999, subject to the Parties completing their respective domestic legal processes that are necessary to give it effect. This is the date on which China will resume sovereignty over Macau.<sup>43</sup>

## Other evidence presented

11.56 Evidence was provided about the location of Australian consulates abroad. DFAT noted that these were determined primarily by an assessment of Australia's overall interests in a particular country. Consulates were generally established where Australia had business and tourist interests, and where the greatest flows of people were most likely.<sup>44</sup>

## Conclusion and recommendation

11.57 We are concerned that DFAT officials were unaware of any other agreements that Australia had negotiated with Macau.

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41 NIA for the Macau Agreement, p. 2

42 NIA for the Macau Agreement, p. 2

43 NIA for the Macau Agreement, p. 1

44 David O'Leary (DFAT), *Transcript of Evidence*, 22 October 1999, p. TR85

11.58 After 20 December 1999, it is important that the Macau Special Administrative Region will be treated in the same way as the Hong Kong Special Administrative Region. With the Consular Agreement recently negotiated with the People's Republic of China, Australian nationals now have an increased chance of trouble-free travel in Macau, as well as in the rest of the nation.

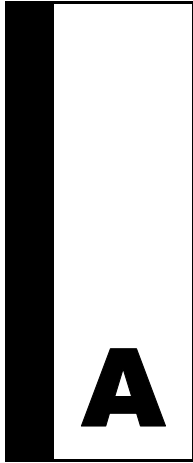
#### **Recommendation 14**

11.59 **The Committee supports the proposed *Agreement concerning the Continuation of the Consular Functions in the Macau Special Administrative Region of the People's Republic of China*, and recommends that binding treaty action be taken.**

**ANDREW THOMSON MP**

Committee Chairman

23 November 1999

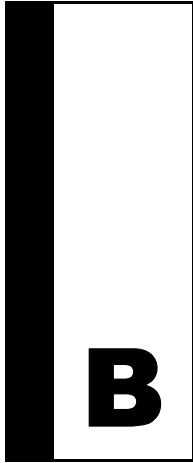


## **Appendix A - Extract from Resolution of Appointment**

The Joint Standing Committee on Treaties was reconstituted in the 39th Parliament on 9 December 1998.

The Committee's Resolution of Appointment allows it to inquire into and report upon:

- (a) matters arising from treaties and related National Interest Analyses and proposed treaty actions presented or deemed to be presented to the Parliament;
- (b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
  - (i) either House of the Parliament, or
  - (ii) a Minister; and
- (c) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



## **Appendix B - Submissions**

### **United Nations' Convention on the Law of the Sea relating to the Conservation and Management of Fish Stocks**

<b>Submission No</b>	<b>Organisation</b>
1	Dr Michael White, Executive Director, Centre for Maritime Law, University of Queensland
2	Tuna Boat Association
3	Australian Institute of Marine Science
4	Tasmanian Fishing Industry Council
5	Harry Battam, Southern Oceans Seabird Study Association
6	World Wide Fund For Nature Australia
7	Australian Society for Fish Biology

### **Double Taxation Agreements with Argentina and the Slovak Republic**

<b>Submission No</b>	<b>Organisation</b>
1	Australian Taxation Office

**Agreement with Monaco on Mutual Assistance in Criminal Matters**

Submission No	Organisation
1	Attorney-General's Department

**Agreement with Japan for Cooperation in the Peaceful Uses of Nuclear Energy**

Submission No	Organisation
1	Tina Lesses

**WRC-97 and ITU**

Submission No	Organisation
1	Department of Communications, Information Technology and the Arts

**Amendments to the Convention and the Operating Agreement of the International Maritime Satellite Organisation**

Submission No	Organisation
1	Dr Michael White, Executive Director, Centre for Maritime Law, University of Queensland
2	Department of Communications, Information and Technology

**Agreement with China on the Continuation of the Australian Consular Function in Macau**

Submission No	Organisation
1	Department of Foreign Affairs and Trade



## **Appendix C - Witnesses at Public Hearings**

**Monday, 18 October 1999, Canberra**

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

David Mason, Executive Director, Treaties Secretariat, International Organisations and Legal Division

### **Double Tax Agreements with Argentina and the Slovak Republic**

#### **Australian Taxation Office**

Michael Lennard, Manager, Treaties Unit, International Tax Division

Michael Nugent, Senior Advisor, Treaties Unit, International Tax Division

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

Rebecca Irwin, Acting Assistant Secretary, Public International Law Branch

### **Agreement on Judicial Assistance with the Republic of Korea and Agreement on Criminal Assistance with Monaco**

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

John McGinness, Principal Legal Officer, Legal Procedure Unit

Michael Manning, Senior Legal Officer, International Branch, Criminal Law Division

### **Agreement with Singapore for the Use of Shoalwater Bay**

#### **Department of Defence**

Peter Bleakley, Director of Agreements, Defence Legal Office

Colonel Don Higgins, Acting Director General, Major Powers and Global Security

Lieutenant Colonel Greg Molyneux, Deputy Director, Preparedness and

**Mobilisation**

Feargus O'Connor, Senior Policy Adviser, International Policy Division, Defence Headquarters

Lieutenant Scott Ritchie RAN, Legal Officer, Directorate of Agreements, Defence Legal Office

**Defence Estate Organisation**

Mark Imber, Environmental Policy Officer

**Implementation of the United Nations Convention on the Law of the Sea relating to the Straddling Fish Stocks and Highly Migratory Species****Department of Agriculture, Fisheries and Forestry**

Jennifer Doust, Senior Policy Officer, Fisheries and Aquaculture Branch

Matt Gleeson, Senior Policy Officer, Fisheries and Aquaculture Branch

Glenn Hurry, Assistant Secretary, Fisheries and Aquaculture Branch

Andrew Pearson, Director, Fisheries Policy and Trade, Fisheries and Aquaculture Branch

**Dominion Consulting Pty Ltd**

Dr Alistair McIlgorm, Director

**Australia Fisheries Management Authority**

Frank Meere, Acting Managing Director

**Friday, 22 October 1999, Canberra****Department of Foreign Affairs and Trade**

David Mason, Executive Director, Treaties Secretariat, International Organisations and Legal Division

**Attorney-General's Department**

Sama Payman, A/Principal Legal Officer, Office of International Law

Renee Leon, Assistant Secretary, Public International Law Branch

**Development Cooperation Agreement with PNG****Department of Foreign Affairs and Trade**

Joanna Adamson, Director, Papua New Guinea Section

**AusAID**

Michael Dillon, Acting Deputy Director General, Pacific, Africa and International Division

Robert Jauncey, Acting Assistant Director General, Papua New Guinea Branch

Grant Morrison, Country Program Manager, Governance and Coordination



Section, Papua New Guinea Branch

Gaynor Shaw, Acting Director, Governance and Coordination Section, Papua New Guinea Branch

**Austrade**

Pat Stortz, Manager, South Pacific Office

**Japanese Nuclear Fuel Agreement and Transfer of Uranium with New Zealand Agreement**

**Department of Industry, Science and Technology**

Robin Bryant, General Manager, Energy Minerals Branch

**Department of Foreign Affairs and Trade**

Susan Dietz, Director, Nuclear Trade and Security Section, Nuclear Policy Branch, International Security Branch

Andrew Leask, Assistant Secretary, Australian Safeguards and Non-Proliferation Office

Robert Tyson, Assistant Secretary, Nuclear Policy Branch

**WRC-97 and ITU**

**Australian Communications Authority**

Barry Matson, Executive Manager, Radio Frequency Planning

Philip McGill, Manager, International Liaison

**Department of Communications, Information Technology and the Arts**

Helen Anderson, Director, International Strategy, National Office for the Information Economy

Richard Thwaites, General Manager, International Branch, National Office for the Information Economy

**INMARSAT**

**Department of Communications, Information Technology and the Arts**

Richard Desmond, Manager, Radiocommunications and Satellite Section

John Neil, General Manager, Enterprise and Radiocommunications Branch

**Cultural Cooperation Agreement with Germany**

**Department of Foreign Affairs and Trade**

Chris Freeman, Media Strategies Internet Unit, Images of Australia Branch

Melanie Parks, Project Officer, Images of Australia Branch

## **Consular Relations Agreements with China**

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

James Larsen, Director, Administrative and Domestic Law

David O'Leary, Assistant Secretary, Consular Branch

Lydia Morton, Assistant Secretary, East Asia Branch

## **Convention for the Protection of New Varieties of Plants**

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

Ian Thomson, Assistant Secretary, Field Crops Branch

Doug Waterhouse, Registrar, Plant Breeders Rights Office

### **Seed Industry Association of Australia**

Keith Glasson, Vice President (and Managing Director, Pioneer Hibred Australia Pty Ltd)

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

Antony Taubman, World Trade Organisation, Intellectual Property



## **Appendix D - Exhibits**

### **United Nations' Convention on the Law of the Sea relating to the Conservation and Management of Fish Stocks**

#### Exhibit No

1. Department of Agriculture, Fisheries and Forestry-Australia, Brochure Sustainable Fishing For International Stocks'
2. Department of Agriculture, Fisheries and Forestry-Australia, PowerPoint Presentation

### **Agreement with Multinational Force and Observers in the Sinai**

#### Exhibit No

1. Map of Sinai
2. Photos of the Sinai and Multinational Force Headquarters
3. Defence paper

### **Development Cooperation Agreement with Papua New Guinea**

#### Exhibit No

1. (Papua New Guinea's) Medium Term Development Strategy 1997-2002
2. Joint Declaration of Principles Guiding Relations between Australia and Papua New Guinea, 1987 (as amended by exchange of letters 1992)
3. PNG Incentive Fund: Draft Project Design Document, October 1999
4. The Restoration of the Gazelle Peninsula (prepared by AusAID)

5. Material supplied by the Australia Papua New Guinea Business Council

**Agreement with China on Consular Relations**

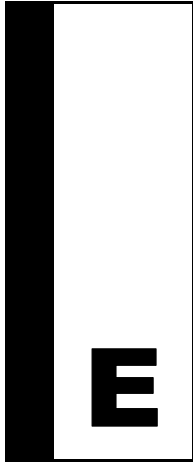
Exhibit No

1. Media Release, Minister for Foreign Affairs, The Hon Alexander Downer MP ,8 September 1999

**Agreement with China on the Continuation of the Australian Consular Function in Macau**

Exhibit No

1. Media Release, Minister for Foreign Affairs, The Hon Alexander Downer MP, 8 September 1999



## **Appendix E - Committee Reports on PNG**

### **Foreign Affairs, Defence and Trade issues**

*The Torres Strait Boundary* (tabled 9 December 1976)

*The Torres Strait Treaty* (tabled 31 May 1979)

*Report of a Visit to Papua New Guinea* (tabled 27 November 1986)

*Australia's Relations with the South Pacific* (tabled 13 April 1989)

*Report of a Visit to Papua New Guinea, February/March 1991* (tabled 6 June 1991)

*Australia's Relations with Papua New Guinea* (tabled 19 December 1991)

*Papua New Guinea Update, Report on Proceedings of a Seminar, 11-12 November 1996*  
(tabled 24 February 1997)

*Interim Report: Visit to Bougainvillea, 15-18 March 1999* (tabled 31 March 1999)

*Bougainvillea; The Peace Process and Beyond* (tabled 27 September 1999)

### **Development cooperation issues**

*Australia's Foreign Aid* (tabled 6 March 1973)

*The Jackson Report on Australia's Overseas Aid Program* (tabled 24 May 1985)

*A Review of the Australian International Development Assistance Bureau and Australia's Overseas Aid Program.* (tabled 9 March 1989)

*The Australian Aid Program, Report on the Proceedings of a Seminar* (tabled 16 September 1996)

*Sharpening the Focus: Report on a Seminar on the Simons Committee Report, 11 July 1997* (tabled 20 October 1997)

### **Human rights issues**

*A Review of Australia's Efforts to Promote and Protect Human Rights* (tabled 8 and 17 December 1992)

*Australia's Efforts to Promote and Protect Human Rights* (tabled 5 December 1994)

*Improving But...: Australia's Regional Dialogue on Human Rights* (tabled 29 June 1998)