
The Parliament of the Commonwealth of Australia

Report 116

Treaties tabled on 24 and 25 November 2010, 9 February and 1 March 2011

Treaties referred on 16 November 2010 (Part 3)

2010 Amendments to Appendices I and II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora

Amendments to the Implementation Procedures for Airworthiness Covering Design Approval, Production Activities, Export Airworthiness Approval, Post Design Approval Activities, and Technical Assistance Between Authorities under the Agreement on the Promotion of Aviation Safety Between the Government of Australia and the Government of the United States of America

United Nations Convention on the Use of Electronic Communications in International Contracts

Exchange of Letters Constituting an Agreement to Amend Annex 4-A (Textile or Apparel Specific Rules of Origin) of the Australia-United States Free Trade Agreement

Exchange of Letters Constituting an Agreement between the Government of Australia and the Government of New Zealand to amend Article 3 of the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) and Exchange of Letters Constituting an Agreement between the Government of Australia and the Government of New Zealand to amend Annex G of the ANZCERTA

International Labour Organization Protocol of 2002 to Convention No. 155: concerning Occupational Safety and Health and the Working Environment, 1981

International Labour Organization Convention No. 162: Convention Concerning Safety in the Use of Asbestos

International Labour Organization Convention No. 175: Part-Time Work

International Labour Organisation Convention No. 186: Maritime Convention

Resolution MEPC.196 (59), adopted 17 July 2009, Amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships

Amendments to the Convention Establishing the Multilateral Investment Guarantee Agency to Modernise the Mandate of the Multilateral Investment Guarantee Agency and Amendment to the International Finance Corporation Articles of Agreement

Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement

Australia's Accession to the Council of Europe Convention on Cybercrime

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Canberra

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Resolution of Appointment

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

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



List of abbreviations

AIMPE	Australian Institute of Marine and Power Engineers
ANZCERTA	Australia New Zealand Closer Economic Relations Trade Agreement
APMA	Australian Parts Manufacturers Approval
ASA	Australian Shipowners' Association
AUSFTA	Australia-United States Free Trade Agreement
BASA	Bilateral Aviation Safety Agreement
CASA	Civil Aviation Safety Authority
CITES	Convention on International Trade in Endangered Species
CTC	Change-in-Tariff-Classification
DFAT	Department of Foreign Affairs and Trade
DIISR	Department of Innovation, Industry, Science and Research
EA	Executive Agreement
FAA	Federal Aviation Administration
IBRD	International Bank for Reconstruction and Development
IFC	International Finance Corporation

ILO	International Labour Organisation
IMO	International Maritime Organisation
IPA	Implementation Procedures for Airworthiness
MARPOL	International Convention for the Prevention of Pollution from Ships
MIGA	Multilateral Investment Guarantee Agency
MUA	Maritime Union of Australia
NIA	National Interest Analysis
NZ	New Zealand
PACER	Pacific Agreement on Closer Economic Relations
PSR	Product Specific Rules
RIS	Regulation Impact Statement
RVC	Regional Value Content
SCAG	Standing Committee of Attorneys-General
SPARTECA	South Pacific Regional Trade and Economic Co-operation Agreement
TFIA	Textile and Fashion Industries Australia
US	United States
UNCITRAL	United Nations Commission on International Trade Law



List of recommendations

3 Amendments to the Implementation Procedures for Airworthiness covering Design Approval, Production Activities, Export Airworthiness Approval, Post Design Approval Activities, and Technical Assistance between Authorities

Recommendation 1

The Committee supports the *Amendments to the Implementation Procedures for Airworthiness covering Design Approval, Production Activities, Export Airworthiness Approval, Post Design Approval Activities, and Technical Assistance between Authorities* and recommends that binding treaty action be taken.

4 United Nations Convention on the Use of Electronic Communications in International Contracts 2005

Recommendation 2

The Committee supports the *United Nations Convention on the Use of Electronic Communications in International Contracts* and recommends that binding treaty action be taken.

5 Exchange of Letters Constituting an Agreement to Amend Annex 4-A (Textile or Apparel Specific Rules of Origin) of the Australia-United States Free Trade Agreement

Recommendation 3

The Committee supports the *Exchange of Letters Constituting an Agreement to Amend Annex 4-A (Textile or Apparel Specific Rules of Origin) of the*

Australia–United States Free Trade Agreement, and recommends binding treaty action be taken.

6 Exchange of Letters Constituting an Agreement between the Government of Australia and the Government of New Zealand to amend Article 3 of the Australia New Zealand Closer Economic Relations Trade Agreement, and

Exchange of Letters Constituting an Agreement between the Government of Australia and the Government of New Zealand to amend Annex G of the Australia New Zealand Closer Economic Relations Trade Agreement

Recommendation 4

The Committee supports the Exchange of Letters implementing Amendments to Article 3, and to Annex G, of the *Australia New Zealand Closer Economic Relations Trade Agreement* (ANZCERTA) and recommends binding treaty action be taken.

Recommendation 5

The Committee recommends the Minister of Innovation, Industry, Science and Research report to the Committee on the measures implemented to address the impact of ‘duty drawback’ on Australia’s Structured Apparel sector under the amendments to Article 3 and to Annex G of ANZCERTA, and monitor ongoing effects on the sector after 2012.

7 Four International Labour Organisation Treaties

Recommendation 6

The Committee supports the *International Labour Organisation Protocol of 2002 to Convention No. 155 concerning Occupational Safety and Health and the Working Environment* and recommends that binding treaty action be taken.

Recommendation 7

The Committee supports the *International Labour Organisation Convention No. 162: Convention Concerning Safety in the Use of Asbestos*, and recommends that binding treaty action be taken.

Recommendation 8

The Committee supports the *International Labour Organisation Convention No. 175: Part Time Work*, and recommends that binding treaty action be taken.

Recommendation 9

The Committee supports the *International Labour Organisation Convention No. 186: Maritime Labour Convention*, and recommends that binding treaty action be taken.

8 Amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships**Recommendation 10**

The Committee recommends that all future amendments to *International Convention for the Prevention of Pollution from Ships 1973 (MARPOL)* be tabled in Parliament in sufficient time for the view of the Parliament to be taken into consideration before the period for objections to the amendments ends.

9 Amendments to the Convention Establishing the Multilateral Investment Guarantee Agency to Modernise the Mandate of the Multilateral Investment Guarantee Agency and Amendment to the International Finance Corporation Articles of Agreement**Recommendation 11**

The Committee recommends that all future amendments to the *Convention Establishing the Multilateral Investment Guarantee Agency and International Finance Corporation Articles of Agreement* be tabled in Parliament in sufficient time for the view of the Parliament to be taken into consideration before the amendments come into force.

10 Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement**Recommendation 12**

The Committee supports the *Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement* and recommends binding treaty action be taken.

11 Council of Europe Convention on Cybercrime

Recommendation 13

The Committee supports Australia's accession to the Council of Europe *Convention on Cybercrime* and recommends binding treaty action be taken.

Recommendation 14

The Committee recommends that the Attorney General report to the Committee on any proposed amendments to Commonwealth or State and Territory law in support of the Council of Europe *Convention on Cybercrime*.

Introduction

Purpose of the report

- 1.1 This report contains the Joint Standing Committee on Treaties' review of thirteen treaty actions (two paired) referred or tabled during the first months of the 43rd Parliament.
- 1.2 Five of these treaties were referred on 16 November 2010, having been tabled during the 42nd Parliament (15, 16 and 21 June 2010). A further four treaty actions were tabled on 24 November 2010, one on 25 November 2010, followed by two on 9 February 2011 and the final one on 1 March 2011.
- 1.3 These treaty actions are proposed for ratification, and are dealt with in this report according to the order of presentation:
 - *2010 Amendments to Appendices I and II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora* (Doha, 25 March 2010)
 - *Implementation Procedures for Airworthiness Covering Design Approval, Production Activities, Export Airworthiness Approval, Post Design Approval Activities, and Technical Assistance Between Authorities under the Agreement on the Promotion of Aviation Safety Between the Government of Australia and the Government of the United States of America* (Gold Coast, 26 September 2005)
 - *United Nations Convention on the Use of Electronic Communications in International Contracts* (New York, 23 November 2005)

- *Exchange of Letters Constituting an Agreement to Amend Annex 4-A (Textile or Apparel Specific Rules of Origin) of the Australia-United States Free Trade Agreement (Washington, 18 May 2004)*
- *Exchange of Letters Constituting an Agreement between the Government of Australia and the Government of New Zealand to amend Article 3 of the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) (Canberra, 28 March 1983) and Exchange of Letters Constituting an Agreement between the Government of Australia and the Government of New Zealand to amend Annex G of the ANZCERTA (Canberra, 28 March 1983)*
- *International Labour Organization Protocol of 2002 to Convention No. 155: concerning Occupational Safety and Health and the Working Environment, 1981 (Geneva, 20 June 2002)*
- *International Labour Organization Convention No. 162: Convention Concerning Safety in the Use of Asbestos (Geneva, 24 June 1986)*
- *International Labour Organization Convention No. 175: Part-Time Work (Geneva, 24 June 1994)*
- *International Labour Organisation Convention No. 186: Maritime Convention (Geneva, 7 February 2006)*
- *Resolution MEPC.196 (59), adopted 17 July 2009, Amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships (MARPOL, London, 2 November 1973)*
- *Amendments to the Convention Establishing the Multilateral Investment Guarantee Agency to Modernise the Mandate of the Multilateral Investment Guarantee Agency (Seoul, 11 October 1985) and Amendment to the International Finance Corporation Articles of Agreement (Washington DC, 20 July 1956)*
- *Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement (Christchurch, 24 July 2008)*
- *Australia's Accession to the Council of Europe Convention on Cybercrime (Budapest, 23 November 2001)*

1.4 The Committee's resolution of appointment empowers it to inquire into and report on matters arising from a treaty and the related *National Interest Analysis* (NIA). This report deals with inquiries conducted under this

power and, consequently, refers frequently to the treaty text and to the NIA prepared by Government, in addition to other evidence taken.

- 1.5 Copies of each treaty and its associated NIA may be obtained from the Committee Secretariat or accessed through the Committee's website at:
<www.aph.gov.au/house/committee/jsct>

Conduct of the Committee's review

- 1.6 The treaties contained in this report were advertised in the national press and on the Committee's website. Invitations to lodge submissions were sent to all State Premiers, Chief Ministers and to the Presiding Officers of each Parliament, as well as to individuals who have expressed an interest in the Committee's review of proposed treaty actions. Submissions received and their authors are listed at Appendix A.
- 1.7 The Committee examined these treaties at public hearings held in Canberra on 22 November 2010, on 7 and 28 February, and on 21 and 25 March 2011. On 2 February 2011 the Committee met in Melbourne to enquire further into the proposed amendments to the ANZCERTA. The Committee also conducted a related site inspection of Stafford Group's suit-making factory in Preston, Victoria.
- 1.8 Transcripts of evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee's website under the date referred or the treaty's tabling date at:
- **16 November 2010**
<www.aph.gov.au/house/committee/jsct/16november2010/hearings.htm>
 - **24 November and 25 November 2010**
<www.aph.gov.au/house/committee/jsct/24november2010/hearings.htm>
 - **9 February 2011**
<www.aph.gov.au/house/committee/jsct/9february2011/hearings.htm>
 - **1 March 2011**
<www.aph.gov.au/house/committee/jsct/1march2011/hearings.htm>
- 1.9 A list of witnesses who appeared at the public hearings is at Appendix B.

2010 Amendments to Appendices I and II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora

Introduction

- 2.1 The *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES) is a multilateral environmental agreement that regulates international trade in endangered species.¹ Australia has been a party to the Convention since 1976.²
- 2.2 The CITES provides a mechanism for the listing of species identified as being at risk if subject to international trade. The listings are recorded in three appendices to the Convention, according to the degree of that risk:
- Appendix I – the species is endangered, international trade in the species is generally prohibited with movement allowed only for non-commercial purposes, such as for research or conservation breeding;
 - Appendix II – potentially endangered species may be traded subject to a permit system which requires the exporting country to determine that

1 Trade is defined as export, re-export, import and introduction from the sea. *National Interest Analysis* (NIA) [2010] ATNIA 32, 2010 Amendments to Appendices I and II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Doha on 25 March 2010, [2010] ATNIF 32, para. 17.

2 NIA, para. 6.

trade will not be detrimental to the survival of the species in the wild;
and

- Appendix III – where international co-operation is required to regulate international trade of a species or population nominated by an individual country for regulation within its jurisdiction.³

2.3 Amendments to CITES appendices are regularly made in accordance with provisions of Article XV of the Convention and are put forward as nominations for agreement at the CITES triennial Conference of the Parties meetings.⁴

2.4 The current amendments propose inclusion, transferral or deletion of species in Appendices I and II, and provide clarification of amendment annotations. The amendments were considered and agreed at the most recent Fifteenth Conference of the Parties meeting, held in March 2010 in Doha, Qatar.⁵

2.5 The Department of Sustainability, Environment, Water, Population and Communities advised that Australia had not put forward proposals at the last meeting, and that none of the amendments subject to the Committee's review relate to Australian species. One exception involves a taxonomic clarification of an annotation relating to *Canis Lupus*, the grey wolf, and to the dingo.⁶

2.6 The Committee was informed that CITES is an important vehicle for the management and protection of Australian native species internationally. The Department's representative Ms Deb Callister stated:

One of the most important aspects of it is that it allows us to have international cooperation on protecting trade in Australian species, so it means other countries can help us in regulating wildlife trade in Australian species. We have very strict laws here, but having those reciprocal laws in place in other countries means that, for example, if something is illegally exported from Australia

3 Ms Deb Callister, Department of Sustainability, Environment, Water, Population and Communities, *Transcript of Evidence*, Canberra, 21 March 2011, p. 2, and see NIA, para. 3.

4 NIA, para. 25.

5 *The Convention on International Trade in Endangered Species of Wild Fauna and Flora*, The Fifteenth Meeting of the Conference of the Parties, 13–25 March 2010 <<http://www.cites.org/eng/cop/index.shtml>> viewed 7 April 2011.

6 Ms Callister, Department of Sustainability, Environment, Water, Population and Communities, *Transcript of Evidence*, Canberra, 21 March 2011, pp. 2–3.

then those other countries can help us regulate it. So from our perspective it has been a very helpful and successful treaty.⁷

The CITES amendment process

- 2.7 The main objective of CITES is to regulate the commercial trade of wild animals and plants to ensure those species will not be endangered or put at risk. Timely adjustment of the CITES Appendices is therefore critical to the Convention's effective operation.⁸
- 2.8 At the triennial Conference of the Parties meetings, species may be nominated for insertion or deletion, or moved to a different category to reflect a variation in necessary protection status. These proposals are then voted on and agreed by a two thirds majority, with a second consideration possible in a plenary session.⁹
- 2.9 The Amendments to Appendices I and II contained in the treaty action, as agreed at the 15th Conference of the Parties, comprise:
- *Anas oustaleti* (Mariana mallard) to be deleted from Appendix I;
 - *Euphorbia misera* (cliff spurge), *Orothamnus zeyheri* (marsh rose) and *Protea odorata* (Swartland sugarbush) to be deleted from Appendix II;
 - Populations of *Crocodylus moreletti* (Morelet's crocodile, populations of Belize and Mexico only) and *Crocodylus niloticus* (Nile crocodile, populations of Egypt only) to be transferred from Appendix I to Appendix II; and
 - *Neurergus kaiseri* (Kaiser's spotted newt) to be added to Appendix I.¹⁰
 - Proposed and agreed for insertion into Appendix II were:
 - ⇒ *Ctenosaura bakeri*, *Ctenosaura oedirhina*, *Ctenosaura melanosterna*, *Ctenosaura palearis* (spiny-tailed iguanas);
 - ⇒ *Agalychnis spp.* (tree frogs);
 - ⇒ *Dynastes satanas* (rhinoceros beetle);

7 Ms Callister, Department of Sustainability, Environment, Water, Population and Communities, *Transcript of Evidence*, Canberra, 21 March 2011, p. 3.

8 NIA, para. 9.

9 Ms Callister, Department of Sustainability, Environment, Water, Population and Communities, *Transcript of Evidence*, Canberra, 21 March 2011, p. 5.

10 NIA, para. 10.

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- ⇒ *Operculicarya hyphaenoides*, *Operculicarya pachypus* (Madagascan shrubs);
 - ⇒ *Zygosicyos pubescens*, *Zygosicyos tripartitus* (Madagascan lump plants);
 - ⇒ *Aniba rosaeodora* (rosewood as logs, sawn wood, veneer sheets, plywood and essential oil, excluding finished products packaged for retail);
 - ⇒ *Adenia olaboensis* (adenia);
 - ⇒ *Cyphostemma elephantopus*, *Cyphostemma montagnacii* (grape trees);
and
 - ⇒ *Bulnesia sarmientoi* (Argentine lignum vitae tree as logs, sawn wood, veneer sheets, plywood, powder and extracts).¹¹
- 2.10 Amendments were also proposed to the interpretive annotations of the listings, notably to both Appendices I and II to exclude the domesticated dingo under the clarification of a taxonomic listing for *Canis lupus*, as well as minor technical variations to a number of flora species.¹²
- 2.11 The Committee investigated outcomes for shark and blue fin tuna species for which listings had been proposed but not supported at the last Conference of the Parties meeting.¹³
- 2.12 The Department of Sustainability, Environment, Water, Population and Communities advised that Australia had not supported an Appendix I listing for the blue fin tuna, which would have banned trade, but would have supported a proposal for Appendix II if introduced. The proposals for increased protection for some shark species had been particularly controversial, with one species of shark failing nomination by one vote only.¹⁴
- 2.13 The Committee notes that the species which lost support by single vote, the porbeagle shark, had been re-opened for consideration in plenary session. The Department considered that this species would have had a greater chance of success if proposed jointly by more than one nation, and committed to monitor the situation for this and other shark species over the next 12 months.¹⁵
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11 NIA, para. 10.

12 NIA, paras 12 and 13.

13 Ms Callister, Department of Sustainability, Environment, Water, Population and Communities, *Transcript of Evidence*, Canberra, 21 March 2011, p. 3.

14 Ms Callister, Department of Sustainability, Environment, Water, Population and Communities, *Transcript of Evidence*, Canberra, 21 March 2011, pp. 3, 4.

15 Ms Callister, Department of Sustainability, Environment, Water, Population and Communities, *Transcript of Evidence*, Canberra, 21 March 2011, p. 4.

- 2.14 In regard to future nominations for CITES, the Committee was informed that species may be proposed to Government by its expert agencies, by State Governments and by Non-Government Organisations. To gain endorsement at the Conference of the Parties meetings, however, all such proposals must be supported by solid data.¹⁶
- 2.15 General proposals for consideration at the next meeting would likely include marine species and African elephants.¹⁷

Obligations

- 2.16 Australia's substantive obligations under CITES are not affected by the amendments as Australia is not a range state for any species listed.¹⁸ Relevant export and import rules however must be applied.¹⁹
- 2.17 The *National Interest Analysis* notes the following implications arising for Australian importers under Appendix II amendments:
- *Bulnesia sarmientoi* (*lignum vitae*), used for essential oil and timber flooring, will now require a permit for import (there are no Australian importers of this species at present);²⁰
 - *Aniba rosaedora* (rosewood) importers will require a permit to import raw products;²¹ and
 - *Cactaceae* (Cacti) species as well as finished products of *Euphorbia antisyphilitica* will no longer require importers to obtain permits.²²
- 2.18 The Committee further notes that the amendment of annotations to *Canis Lupus*, to exclude *Canis Lupus Dingo* from listings in the Appendices I and II, will not change Australia's export restrictions for dingos, which are classified as an Australian native species.²³
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16 Ms Callister, Department of Sustainability, Environment, Water, Population and Communities, *Transcript of Evidence*, Canberra, 21 March 2011, p. 5.

17 Ms Callister, Department of Sustainability, Environment, Water, Population and Communities, *Transcript of Evidence*, Canberra, 21 March 2011, p. 4.

18 NIA, para. 16.

19 NIA, para. 16.

20 NIA, para. 11.

21 NIA, para. 22.

22 NIA, para. 23.

23 NIA para. 13. *Submission 1.6.*, from the Australian Patriot Movement objected to trade in the dingo as Australia's native dog.

- 2.19 Under CITES Article XV(1)(c), amendments to the appendices automatically enter into force 90 days after the meeting at which they are agreed unless a party lodges a reservation.²⁴
- 2.20 These amendments entered into force for Australia on 23 June 2010,²⁵ and prior to the Committee's review. The Committee was advised of this in writing by the former Environment Minister, the Hon. Peter Garrett AM.
- 2.21 CITES is implemented in Australia via the *Environment Protection and Biodiversity Conservation Act 1999*, which requires the Minister to establish a list of CITES species for the purposes of the Act. This list now contains the most recent amendments.²⁶

Conclusion

- 2.22 The Amendments to Appendix I and II of the CITES are already in force. The Committee received notification of this from the former Environment Minister, and accepts that this course of events is a consequence of the CITES' amendment processes on this occasion.
- 2.23 The Committee recognises the important role played by CITES in providing a flexible framework for trade regulation and the protection of wild fauna and flora, and is satisfied that current amendments pose no adverse implications for Australia. The Committee therefore acknowledges and supports binding treaty action.
- 2.24 In relation to future amendments to the CITES Appendices, the Committee anticipates that the Department of Sustainability, Environment, Water, Population and Communities will continue to assess and, where appropriate, initiate opportunities for joint nomination of Australian marine species at risk at CITES negotiations.
- 2.25 The Committee will monitor Australian proposals at the next Conference of the Parties meeting, and in the subsequent CITES treaty actions under parliamentary review.

24 Article XV (3) provides that reservations may be made in respect to a particular amendment during that 90 day period see NIA, para. 2.

25 NIA, para. 15.

26 NIA, para. 20.

Amendments to the Implementation Procedures for Airworthiness covering Design Approval, Production Activities, Export Airworthiness Approval, Post Design Approval Activities, and Technical Assistance between Authorities

Introduction

- 3.1 The proposed treaty action amends the Implementation Procedures for Airworthiness (IPA) under the *Agreement on the Promotion of Aviation Safety between the Government of Australia and the Government of the United States of America*, known as the Bilateral Aviation Safety Agreement (BASA).¹
- 3.2 The BASA is a bilateral technical co-operation agreement which facilitates recognition of aviation safety certification between the United States and Australia. In two parts, its Executive Agreement (EA) provides the framework for co-operation on aviation safety while a series of Implementation Procedures on specific topics give effect to the BASA. All are treaty level documents.²

1 *Agreement on the Promotion of Aviation Safety between the Government of Australia and the Government of the United States of America – BASA* (entered into force for the Executive Agreement (EA), 24 December 1974 and Implementation Procedures, 11 June 1975).

2 *National Interest Analysis (NIA)*, [2010] ATNIA 29, Amendments to the Implementation Procedures for Airworthiness Covering Design Approval, Production Activities, Export Airworthiness Approval, Post Design Approval Activities, and Technical Assistance between

- 3.3 The IPA was the first of a number of the technical Implementation Procedures to be developed under Article 4 of the EA.³ It identifies the civil aeronautical parts and appliances eligible for import between United States and Australia and establishes safety requirements and obligations of the implementing authorities.⁴
- 3.4 The proposed IPA amendments will enable mutual recognition of aviation certification standards for identified products. In particular, Australian Parts Manufacturers Approval (APMA) standards for aircraft parts, endorsed by Australia's Civil Aviation Safety Authority (CASA), will be accepted and recognised by the United States' (US) Federal Aviation Administration (FAA).⁵

Benefits of the proposed amendments

- 3.5 The primary purpose of the amendments is to ensure that Australian new made products and replacement parts are accepted by the FAA for instalment in an FAA approved aircraft, irrespective of the aircraft design.⁶
- 3.6 Under current arrangements, certain Australian products and parts for export into US aeronautical markets must undergo a comprehensive two stage certification process: first, provision of extensive supporting documentation for certification by CASA and then recognition by the FAA.⁷ This dual certification process is time consuming, costly and labour intensive with the result that there are no known Australian manufacturers with both CASA and FAA approvals.⁸
- 3.7 The proposed amendments aim to streamline certification processes so that Australian certification will be sufficient for FAA authorities to accept for import the range of new and used aircraft and engines, propellers and specified replacement and modification parts identified in the IPA.⁹

Authorities (IPA amendments), done at Gold Coast on 26 September 2005 [2006] ATS 17; [2010] ATNIF 30, para. 2.

3 The Implementation Procedures were signed in May 2006 and came into effect, along with the EA framework, for both parties in November 2006.

4 NIA, para. 6.

5 *Regulation Impact Statement (RIS)*, para. 13.

6 RIS, para. 13.

7 NIA, para. 10, RIS, paras 8, 21.

8 RIS, para. 21.

9 See IPA amendments text, Tables 1 and 2, pp. 13 and 14 for full lists.

- 3.8 The IPA amendments will thus address an ‘imbalance’ in the original process, whereby Australian regulations recognised and accepted US manufactured and FAA certified aviation parts, but the FAA did not accept CASA certified products.¹⁰
- 3.9 The *Regulation Impact Statement* (RIS) for the agreement noted that these arrangements resulted from FAA concerns about CASA’s oversight and auditing of manufacturing approval holders, concerns that have since been resolved.¹¹ The RIS concluded that continuation of the current arrangements pose ‘significant obstacles for the viability of Australian aviation design, manufacturing and maintenance businesses which have the potential to service the global market’.¹²
- 3.10 CASA representative Ms Louise Brooks confirmed the timeliness of the reforms, foreshadowing:
- ...significant benefits for Australian manufacturers of aeronautical parts and appliances by enabling them to export Australian certified civil aeronautical parts directly to the United States. These amendments will remove regulatory hurdles that require Australian parts and appliances to undergo additional, often duplicated, manufacturing certification by American authorities when exporting to the United States.¹³
- 3.11 The United States is the largest market for Australia’s export of aircraft parts, but Australian exports of parts to the US (at \$AUD579 million per annum) is roughly half that of US imports to Australia (at \$ AUD1055 million).¹⁴
- 3.12 Supplementary advice from the Department of Infrastructure and Transport supported the view that the amendments have the potential to enhance competitiveness of Australian products, given favourable trade conditions for Australian originated aircraft and parts under the Australia–United States Free Trade Agreement (AUSFTA).¹⁵
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10 Ms Louise Brooks, *Transcript of Evidence*, Canberra, 25 February 2011, p. 31.

11 RIS, para. 12.

12 RIS, para. 14.

13 Ms Brooks, *Transcript of Evidence*, Canberra, 25 February 2011, pp. 30–31.

14 Estimates for 2008–09, Department of Infrastructure and Transport, *Supplementary Submission 3.1*, p. [1].

15 Department of Infrastructure and Transport, *Supplementary Submission 3.1* with reference to Question on Notice, Civil Aviation Safety Authority, *Transcript of Evidence*, Canberra, 25 February 2011, pp. 30, 31.

- 3.13 The CASA informed the Committee that Australia is pursuing similar reciprocal agreements with seven other countries from which we accept aeronautical parts under similar terms to that set out in the BASA. The end objective will be to negotiate collectively with the European Aviation Safety Agency to open up a number of markets in Europe.¹⁶

Obligations

- 3.14 The IPA is composed of six sections, four providing obligations and detailed process for the implementation procedures, and two providing support arrangements and listing agency details:
- Section I – covers the general principles, obligations and definitions;
 - Section II – sets out the scope of the IPA, indicating aircraft and parts eligible for import by the Parties;
 - Section III – establishes the working principles of the agreement, such as the design approval process;
 - Section IV – makes provision for each Party to provide the other with technical assistance; and
 - Section V – provides for special arrangements to respond to situations not specified by implementing authorities, as listed in the appendices in Section VI.
- 3.15 The following principal obligations govern the mutual recognition of safety standards and procedures under the amended IPA, requiring that:
- certification and other decisions of implementing authorities in Australia and the US be recognised as valid by each Party;¹⁷
 - the importing and exporting authorities of each Party to provide timely advice on any changes to aircraft certification requirements;¹⁸
 - the Parties accept Export Certificates of Airworthiness, Authorised Release Certificates and standard parts for all products, parts and appliances made in the country of the exporting authority;¹⁹

16 Mr David Villiers, Civil Aviation Safety Authority, *Transcript of Evidence*, Canberra, 25 February 2011, p. 34.

17 Section I, para. 1.2; NIA, para. 18.

18 Section I, para. 1.3.0; NIA, para. 21.

19 Section II, paras 2.1.1, 2.1.2 and 2.1.3; NIA para. 24.

- Parties are under reciprocal obligations to accept respective aviation authorities' specific standards for Design Approval, including certificates and Technical Standard Order authorisations;²⁰ and
 - there be agreed working procedures for Design Approval, surveillance activities, Export Airworthiness Approval and Post Design.²¹
- 3.16 The General Principles to the IPA (Section I. 1. 2) state that the new streamlined compliance regime will require a 'high degree of mutual confidence' in both the technical competence and regulatory capabilities of the implementing authorities of both Parties.
- 3.17 Section IV in particular contains safeguards for this, requiring implementing authorities of both Parties to ensure protection of confidentiality of data under intellectual property laws, and that approval holders (CASA and the FAA) be informed of and consulted about Freedom of Information requests.²²
- 3.18 The amended IPA will supersede the original IPA, with no change to the executive document.²³

Implementation

- 3.19 Amendments to Australian legislation are not required as Australia already accepts US certification for the items covered in the original IPA.²⁴
- 3.20 The Australian Government has designated CASA as the implementing authority but under Article 2 of the BASA's Executive Agreement it is possible to delegate another authority for a particular technical area. There will be no other consequent changes to existing Federal or State government roles.²⁵
- 3.21 The IPA will enter force on the date Australia advises the US that necessary domestic requirements to support the IPA are in place.²⁶

20 Section II, para. 2.3.0; NIA para. 27.

21 Section III, paras 3.0, 3.1. 3.3.

22 Sections 1, 1.0.1; NIA, paras 30 and 33.

23 Section 1, 1.0.1.

24 NIA, para. 35.

25 NIA, para. 34.

26 Article 6, NIA para. 5.

Conclusion

- 3.22 The Committee supported the ratification of the BASA and the associated IPA in its *Report 73, Treaties tabled in February 2006*.²⁷
- 3.23 Australia's aeronautical manufacturers have since benefited under the BASA. However, duplication in certification requirements have continued to apply to Australian made and certified parts for certain FAA designed aircraft. To date Australia has not had a competitive opportunity to trade its aeronautical parts and products into US markets.
- 3.24 The Committee considers the proposed amendments to the IPA should remedy that problem, reducing regulatory hurdles and opening markets to Australian aeronautical suppliers. The Committee supports binding treaty action being taken.

Recommendation 1

The Committee supports the *Amendments to the Implementation Procedures for Airworthiness covering Design Approval, Production Activities, Export Airworthiness Approval, Post Design Approval Activities, and Technical Assistance between Authorities* and recommends that binding treaty action be taken.

27 Recommendation 1.

United Nations Convention on the Use of Electronic Communications in International Contracts 2005

Introduction

- 4.1 The *United Nations Convention on the Use of Electronic Communications in International Contracts* (the Convention) is the first United Nations Convention to address legal issues arising from the digital economy.¹
- 4.2 The Convention was developed by the United Nations Commission on International Trade Law (UNCITRAL).² Australia is currently a member of UNCITRAL and has recently been re-elected as a member for six years.³
- 4.3 Eighteen countries have signed the Convention, including some of Australia's main trading partners: the Republic of Korea; China; and Singapore.⁴

1 *National Interest Analysis (NIA)*, [2010] ATNIA 33, *United Nations Convention on the Use of Electronic Communications in International Contracts*, done at New York on 23 November 2005 [2010] ANTIF 47, para. 7.

2 NIA, para. 7.

3 NIA, para. 7.

4 Ms Helen Daniels, Attorney-General's Department, *Transcript of Evidence*, Canberra, 7 February 2011, p. 17.

Convention's purpose

- 4.4 The Convention is based on the principles of functional equivalence and technological neutrality:⁵

‘Functional equivalence’ refers to the establishment of international standards for the recognition of electronic communications as the legal equivalent of paper based documentation.⁶

The Principle of ‘technological neutrality’ refers to the accommodation of technological developments in the field of e-commerce by incorporating flexibility into the methods of recognising electronic communications.⁷

- 4.5 The Convention is based on previous efforts to regulate electronic contracts, in particular, the *Model Law on Electronic Commerce 1996*, which was also developed by UNCITRAL.⁸
- 4.6 The *Model Law on Electronic Commerce 1996* established the principles of electronic commerce outlined above, but was not a binding instrument. The Convention is a binding document that updates and introduces some refinements in many of the core provisions to take into account the greater use and knowledge of the electronic environment.⁹
- 4.7 The Convention will establish uniform rules regarding the use of electronic communications in connection with the formation or performance of a contract between parties whose places of business are in different signatory countries¹⁰ by requiring contracting states to bring their domestic legislation into compliance with the Convention.¹¹
- 4.8 According to the Attorney-General's Department, accession to the Convention will:
- enhance legal certainty and commercial predictability where electronic communications are used in relation to international contracts;¹²

5 NIA, para. 11.

6 NIA, para. 11.

7 NIA, para. 11.

8 NIA, para. 7.

9 NIA, para. 8.

10 NIA, para. 5.

11 NIA, para. 11.

12 NIA, para. 5.

- facilitate international trade and commerce by offering practical solutions for issues arising out of the use of electronic communications;¹³
- facilitate the use of electronic communications in international commerce as reflected in Free Trade Agreements;¹⁴ and
- ensure that Australia remains up to date with international rules governing paperless communication in international commerce.¹⁵

Obligations

4.9 The Convention obliges contracting states to adopt domestic legislation that accords with the Convention's definitions and regulations concerning the use of electronic communications for commercial contracts between signatory countries.¹⁶

4.10 The Convention does not apply to:

- contracts concluded for personal, family or household purposes;
- foreign exchange transactions;
- interbank transfers; and
- the transfer or purchase of securities or other financial instruments.¹⁷

4.11 In addition, the Convention does not deal with issues of inequality of bargaining power in contracts between consumers and retailers:

It is really for dealing business to business... it is not really even about the terms of the contract. It is really for when things go wrong.¹⁸

Specific provisions

4.12 Article 3 of the Convention preserves the right of those entering into contracts to vary or exclude the provisions of the Convention. Parties to a

13 NIA, para. 5.

14 NIA, para. 6.

15 NIA, para. 8.

16 NIA, para. 11.

17 Article 2, para. 1.

18 Ms Daniels, Attorney-General's Department, *Transcript of Evidence*, Canberra, 7 February 2011, p. 20.

commercial contract can expressly derogate from the Convention if they so agree.¹⁹

- 4.13 The Convention excludes from its application persons who send or receive electronic communications on behalf of another person. The Convention only applies to the originator and the addressee of the electronic communication, not parties acting on their behalf.²⁰
- 4.14 Where matters are not expressly settled by the Convention, they are to be settled in accordance with the general principles on which the Convention is based.²¹
- 4.15 Article 6 of the Convention provides a set of presumptions and default rules to determine for contractual purposes the place of business of the parties to an electronic contract.²²
- 4.16 Article 8 provides that a contract shall not be denied validity or enforceability on the sole ground that it is in the form of an electronic communication. However, the Convention does not force a party to accept electronic communications and does not purport to vary existing contract law.²³
- 4.17 Article 9 establishes minimum standards for contracts but only applies in so far as laws in the signatory country exist to regulate such requirements in a contract,²⁴ including that:
- nothing in the Convention requires a communication or a contract to be made or evidenced in any particular form;²⁵
 - where a law requires that a communication or a contract should be in writing, the Convention will have been met if the electronic communication is accessible for future reference;²⁶
 - where a law requires that a communication or contract be signed, that requirement is met if a reliable method is used to identify the party to the electronic communication and to indicate the party's intention in

19 NIA, para. 13.

20 Article 4.

21 Article 5, para. 2.

22 NIA, para. 13.

23 Article 8, paras. 1 and 2; NIA, para. 13.

24 NIA, para. 14.

25 Article 9, para. 1.

26 Article 9, para. 2.

respect of the information contained in the electronic communication;²⁷
and

- where a law requires that a contract should be retained in its original form, that requirement is met if there is a reliable assurance as to the integrity of the information it contains from the time when it was first generated in its final form.²⁸

4.18 Article 10 provides default rules to determine the time of dispatch and receipt of an electronic communication. An electronic communication is defined as having been sent when it leaves the information system under the control of the originator or, if it does not leave the information system controlled by the originator, then the time the electronic communication is received.²⁹

4.19 This Article also recognises the effect on the receipt of electronic communications arising from the increasing use of security filters and other technologies restricting the receipt of unwanted or potentially harmful communications. Consequently, the electronic communication is deemed to have been received when it is capable of being retrieved by the addressee.³⁰

4.20 Article 11 clarifies the extent to which parties offering goods or services through open, generally accessible communications systems, such as websites, are bound by advertisements made by providing rules about what is an invitation to treat in the electronic context.³¹

4.21 Article 12 concerns the use of automated message systems and recognises that the absence of human intervention does not by itself preclude the conclusion of a valid contract.³²

4.22 Article 14 provides a right of withdrawal for an input error made in transactions between a person and an automated message system where the system does not provide the person with the opportunity to correct the error.³³

27 Article 9, para. 3.

28 Article 9, para. 4.

29 Article 10, para. 1; NIA, para. 15.

30 Article 10, para. 2; NIA, para. 15.

31 NIA, para. 16.

32 NIA, para. 17.

33 NIA, para. 18.

Electronic Transactions Acts

- 4.23 The Commonwealth, States and Territories all have Electronic Transaction Acts based on the 1996 Model Law.³⁴
- 4.24 Acceding to the Convention requires harmonisation of Australia's various Electronic Transaction Acts with the international standards contained in the Convention.³⁵ According to the Attorney-General's Department, the amendments required are minor.³⁶
- 4.25 The process of accession began in April 2007, when the Standing Committee of Attorneys-General (SCAG) agreed to consider updating the model Commonwealth, State and Territory electronic transactions legislation in light of the proposal to accede to the Convention.³⁷
- 4.26 The Commonwealth prepared a discussion paper on changes that would be required to the uniform electronic transactions regime for SCAG officers to consider. The consultation paper contained an article by article analysis of the Convention, the differences between the Convention and Australian law, and proposed amendments to the current regime.³⁸
- 4.27 On 10 November 2008, the Commonwealth Attorney General launched a consultation paper seeking comments on the proposal to accede to the Convention. In addition, the Attorney General wrote to peak business groups and law societies seeking submissions.³⁹
- 4.28 Nine submissions were received and all were positive and supported Australia's accession to the Convention.⁴⁰
- 4.29 Model provisions to amend the various Electronic Transactions Acts have been drafted and approved by the SCAG.⁴¹
- 4.30 To date, no Australian company has tested the Electronic Transactions Acts in court. A representative of the Attorney-General's Department advised that:

34 NIA, para. 8.

35 NIA, para. 9.

36 NIA, para. 23.

37 NIA, para. 30.

38 NIA, para. 31.

39 NIA, para. 36.

40 NIA, para. 38.

41 NIA, para. 24.

...if things do go wrong, then a company has somewhere to turn, but it seems that... companies are sorting out the problems themselves.⁴²

Conclusion

4.31 The Committee notes that, to date, businesses with disputes relating to electronic contracts have not sought to use legal means to resolve their differences. The Committee believes the Convention will ensure that, when the inevitable legal dispute arises, the Australian legal system will be in a position to ensure that the internationally accepted process for resolving disputes is applied.

Recommendation 2

The Committee supports the *United Nations Convention on the Use of Electronic Communications in International Contracts* and recommends that binding treaty action be taken.

42 Ms Daniels, *Transcript of Evidence*, 7 February 2011, p. 19.

Exchange of Letters Constituting an Agreement to Amend Annex 4-A (Textile or Apparel Specific Rules of Origin) of the Australia-United States Free Trade Agreement

Introduction

- 5.1 The *Australia-United States Free Trade Agreement* (AUSFTA) aims to increase trade liberalisation and facilitate investment between Australia and the United States.¹
- 5.2 The Exchange of Letters under the agreement will amend the Product Specific Rule for tariff classifications concerning yarns made of mixed synthetic staple fibres (Classifications 5501.00 to 5510.30, 5510.90 and 5511 in AUSFTA Annex 4-A).²
- 5.3 The proposed amendment responds to changes in the textile industry in Australia and the United States (US) since agreement on the Product Specific Rules in 2004. Specifically, the lack of availability of Australian

1 *National Interest Analysis* (NIA) [2010] ATNIA 26, Exchange of Letters Constituting an Agreement to Amend Annex 4-A (Textile or Apparel Specific Rules of Origin) of the Australia-United States Free Trade Agreement (AUSFTA) done at Washington on 18 May 2004, [2010] ATNIF 23, para. 2.

2 AUSFTA, Article 23.3 provides for amendment by agreement in writing by the Parties following completion of respective necessary internal requirements. This extends to amendment of AUSFTA Annexes, being integral to the agreement (Article 23.2).

and US made viscose rayon fibres for use in yarn manufacture made it impracticable to achieve 'originating goods' status under the current rule, and AUSFTA's preferential rate of duty could not be accessed.³

5.4 The new arrangements will provide Australian and US manufacturers with access to the preferential duty rate when exporting into each Party's markets, regardless of the origin of the viscose rayon staple fibres used to produce the yarn.⁴

5.5 The Department of Foreign Affairs and Trade (DFAT) advised the Committee that the proposed amendment is consistent with the objective of the AUSFTA to:

Establish clear and mutually advantageous rules governing the Parties' trade and reduce the barriers to trade that exist between them.⁵

Amendments to the AUSFTA

5.6 The purpose of the amendments to the Product Specific Rules under the AUSFTA is to create a reciprocal obligation for Australia and the United States to provide manufacturers with the preferential rate of duty when exporting yarn into each other's markets.⁶

5.7 The Committee notes that this is the first and only such amendment made to the Product Specific Rules since the signing of the AUSFTA in 2004, and is necessitated by changes in the textile market.⁷

5.8 Investigating the nature of the change, the Committee was informed that the sole US manufacturer of viscose rayon staple fibres had ceased operation, causing the Australian yarn manufacturer to source viscose rayon from Asian suppliers.⁸ Subsequent advice on this clarified that the US manufacturer had closed due to the inability to compete with the

3 NIA, paras 6 and 10.

4 NIA, para. 5.

5 Ms Catherine Johnstone, *Transcript of Evidence*, Canberra 21 March 2011, p. 6, citing the Preamble to the Agreement, NIA, para. 4.

6 NIA, paras 5 and 7.

7 NIA, paras 6 and 10.

8 NIA, para. 10

cheaper made Asian product in 2005, shortly after the AUSFTA had been entered into.⁹

- 5.9 DFAT's representative Ms Catherine Johnstone commented on the broader reciprocal benefits to be anticipated under the AUSFTA amendments, stating:

We see it as a win-win situation that enhances trade opportunities for both Australian and US industry and gives Australian industry an opportunity to realise the benefit of price competitiveness relative to other countries that cannot claim the duty-free preference. This is particularly the case with apparel manufactured from the viscose rayon staple fibres. Under the relevant product-specific rule for tariff classification, 5510, Australian industry in 2010 had exports to the US valued at \$4.4 million, whereas there were no US imports into Australia in 2010 under that particular code.¹⁰

- 5.10 Given Australia's current export dominance indicated by the data cited above, the Committee determined to assess the extent the amendments might benefit Australian exporters.
- 5.11 The Committee noted that an evaluation of the proposed amendments provided by DFAT indicated that only marginal advantage would accrue to the relevant industry sectors in both nations.¹¹ On the broader export outcomes under AUSFTA, the Committee established with DFAT that, although there had been an overall growth in exports and imports for both parties, Australia's share of trade with the US had fallen under the Agreement.¹²
- 5.12 Notwithstanding this, the Committee was informed that Australian and US industry representatives had actively sought the proposed amendments. Consultations on the matter began in November 2007 and

9 United States International Trade Commission, 'Viscose Rayon Staple Fiber: probable Effect of Modification of U.S.-Australia FTA Rules of Origin', *Investigations No. U.S.-Australia FTA-103-021 USTIC Publication 4041*, October 2008, p. 4, received from the Department of Innovation, Industry, Science and Research through the Department of Foreign Affairs and Trade, 12 April 2011.

10 Ms Catherine Johnstone, *Transcript of Evidence*, Canberra 21 March 2011, pp. 6-7.

11 United States International Trade Commission, 'Viscose Rayon Staple Fiber: Probable Effect of Modification of U.S.-Australia FTA Rules of Origin', *Investigations No. U.S.-Australia FTA-103-021 USTIC Publication 4041*, October 2008, p. 4.

12 This could not, however, be directly attributed to the Agreement itself. Ms Catherine Johnstone, *Transcript of Evidence*, Canberra 21 March 2011, p. 8.

industry assessments were conducted. In late 2008, the US Government issued a proclamation endorsing the changes which initiated Australia's domestic progression of the amendment proposal.¹³

- 5.13 Acknowledging the apparently protracted timeframe taken for negotiations given early industry requests, Ms Johnstone advised that the long delay post 2008 was largely the result of the complex clearance process in Australia. The Committee's review was also entailed, given the Election prorogation (in 2010). Ms Johnstone suggested that the process might be simplified by treating such amendments as minor, or less than, treaty actions.¹⁴

Implementation

- 5.14 The Committee was advised that the letter setting out the requested amendments had been approved by the American Trade Ambassador and forwarded to the President for Proclamation.¹⁵
- 5.15 Following review by JSCOT, and its support for ratification, the *Customs (Australia-US Free Trade Agreement) Regulations 2004* will be amended to incorporate the amendment. Letters will then be exchanged confirming readiness for the amendments to enter force on an agreed date.¹⁶

Conclusion

- 5.16 The Committee notes this is the first and only amendment to AUSFTA, an agreement which governs an important trade relationship.
- 5.17 The Committee regards examination of this apparently minor change to the AUSFTA as an important obligation. Evaluations of even minor amendments provide an opportunity for periodic evaluation of industry specific and broader outcomes under this trade agreement.
- 5.18 In the course of its evaluation of the proposed amendments, it became evident, for example, that Australia's share of trade with the United States

13 Mr Alan Coleman, Department of Innovation, Industry, Science and Research, and Ms Johnstone, Department of Foreign Affairs and Trade, *Transcript of Evidence*, Canberra, 21 March 2011, p. 7.

14 *Transcript of Evidence*, Canberra 21 March 2011, p. 10.

15 Ms Johnstone, *Transcript of Evidence*, Canberra, 21 March 2011, p. 9.

16 NIA paras 8 and 3.

has fallen under the AUSFTA, despite overall growth in exports and imports for both parties. This is a cause for reflection in the framing and adjustment of such agreements.

- 5.19 The Committee notes, however, that the particular proposals made in this agreement were sought by industry in both countries, with mutual benefits anticipated. The Committee supports binding treaty action.

Recommendation 3

The Committee supports the *Exchange of Letters Constituting an Agreement to Amend Annex 4-A (Textile or Apparel Specific Rules of Origin) of the Australia-United States Free Trade Agreement*, and recommends binding treaty action be taken.

Exchange of Letters Constituting an Agreement between the Government of Australia and the Government of New Zealand to amend Article 3 of the Australia New Zealand Closer Economic Relations Trade Agreement, and

Exchange of Letters Constituting an Agreement between the Government of Australia and the Government of New Zealand to amend Annex G of the Australia New Zealand Closer Economic Relations Trade Agreement

Introduction

- 6.1 The proposed amendments to Article 3 and Annex G of the *Australia New Zealand Closer Economic Relations Trade Agreement* (ANZCERTA) implement recommendations made by a joint Australia and New Zealand review of the agreement completed in March 2010.¹

1 *National Interest Analysis* [2010] ATNIA 35, Exchange of Letters Constituting an Agreement between the Government of Australia and the Government of New Zealand to amend Annex G of the ANZCERTA, done at Canberra on 28 March 1983[2010] ATNIF 31, (Annex G NIA)

- 6.2 Australia's strong economic relationship with New Zealand is conducted within the framework of ANZCERTA, which was Australia's first bilateral free trade agreement.² As the main instrument governing economic relations between the two nations, it covers all trans-Tasman trade in goods and plays a key role in the elimination of trade barriers between the two nations.³
- 6.3 Under the proposed amendment to Article 3 of ANZCERTA, goods made in Australia and New Zealand which meet the relevant criteria will be deemed to be 'originating goods' and have duty free entry into the importing state.⁴
- 6.4 According to the *National Interest Analysis* for Article 3, this proposal involves minor technical amendments to existing obligations under the ANZCERTA Rules of Origin, providing for new definitions, Minimal Operations and Processes.⁵
- 6.5 More substantive change is implemented under Annex G, which contains ANZCERTA's Product Specific Rules (PSR) schedule. The proposed amendments will adjust 700 tariff lines in the schedule so that they are treated consistently with others listed.⁶
- 6.6 The proposed changes are intended to reduce the administrative burden for exporters and provide duty free admission for Australian products entering the New Zealand market.⁷ Department of Foreign Affairs and Trade (DFAT) representative Mr Roy Clogstoun further advised:

These amendments reflect the broader benefits of deeper economic links between Australia and New Zealand so as to advance economic integration between the two countries. The proposed amendments to ANZCERTA are consistent with its central role in

para. 1.

2 *Australia New Zealand Closer Economic Relations Trade Agreement* (ANZCERTA), done at Canberra, 28 March 1983.

3 Department of Foreign Affairs and Trade <http://www.dfat.gov.au/fta/anzcerta/anzcerta_history.html> viewed 4 March 2011.

4 *National Interest Analysis* [2010] ATNIA 34, Exchange of Letters Constituting an Agreement between the Government of Australia and the Government of New Zealand to amend Article 3 of the ANZCERTA, done at Canberra on 28 March 1983[2010] ATNIF 31, (Article 3 NIA), para. 12.

5 Article 3 NIA, paras 8, 11.

6 Annex G NIA, para. 11.

7 Annex G NIA, para. 4.

the trans-Tasman economic relationship and continued efforts to advance this relationship.⁸

The ANZCERTA review

- 6.7 The ANZCERTA has been amended several times since it entered force three decades ago. The current proposals follow major reforms made to the ANZCERTA Rules of Origin in 2007 and were recommended for implementation in a subsequent review, completed in March 2010.⁹
- 6.8 Rules of Origin determine the real level of market access provided under trading schemes.¹⁰ The review of these rules in 2007 brought a major shift in benefit access under ANZCERTA. Prior to the review, assessments for originating product value had been calculated on the factory cost of particular goods, known as the Regional Value Content (RVC). The new approach, the Change-in-Tariff-Classification (CTC) system, applied benefits (duty free access) consistently to products qualifying as originating goods in all tariff lines.¹¹
- 6.9 While consistency of treatment was the object of the review, the Committee was advised that some tariff lines were provided with a transitional arrangement. For this group, the factory cost based RVC was retained as an additional requirement, effectively meaning that the content rule for those products was unchanged.¹²
- 6.10 A condition of this arrangement was that these exempt lines would be subject to review. A new Article 3.27 was inserted into ANZCERTA, requiring:
- The Member States shall complete a review within three years of entry into force of this Article to address any differences between the Member States arising from the operation of this Article.¹³
- 6.11 In March 2010, the Joint Australian and New Zealand Review acted on this requirement, recommending that the amendments be made to
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8 *Transcript of Evidence*, 22 November 2010, p. 1.

9 NIA, para. 7.

10 Oxfam Australia, *Submission 1*, p. 12.

11 Article 3 NIA, para. 6.

12 Article 3 NIA, para. 6.

13 Article 3, Article 3 NIA, para. 7.

ANZCERTA Article 3 and the Product Specific Rules schedule to bring the 700 exempt tariff lines into line with the CTC approach.¹⁴

- 6.12 The Committee was informed that this transition to the ‘substantial transformation approach’,¹⁵ will create consistency with zero tariff conditions under other bilateral and plurilateral free trade agreements entered into by Australia and New Zealand subsequent to the 2007 ANZCERTA reforms.¹⁶

Industry concerns about the amendments

- 6.13 Australian Structured Men’s Apparel, covering men’s suits, was among the tariff lines which retained a transitional arrangement for product treatment following the 2007 reforms.¹⁷
- 6.14 The Council of Textile and Fashion Industries Australia (TFIA), and Stafford Group, which controls the Anthony Squires men’s suit label, informed the Committee that successful lobbying from the sector had secured this exemption. New Zealand suit manufacturers had since been obliged to continue to meet the 50 per cent regional value requirement.¹⁸
- 6.15 Industry representatives saw this as an appropriate offset to New Zealand’s competitive advantages, such as the capacity to access better quality cloth at lower price points, the high Australian dollar and lower operating costs.¹⁹
- 6.16 The TFIA maintained that the proposed amendments, however, would reverse these arrangements, implementing a structural distortion that would disproportionately benefit New Zealand suit manufacturers:

14 Annex G NIA, paras. 4, 11.

15 Mr Roy Clogstoun, Department of Foreign Affairs and Trade, *Transcript of Evidence*, 28 February 2011, p. 3.

16 These include the *Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA)*, the *Australia-Chile Free Trade Agreement* and the *New Zealand-China Free Trade Agreement*. See Annex G and Article 3 NIAs, para. 9.

17 Customs Classification 6203, Mr Peter Waddell, Stafford Group, *Transcript of Evidence*, Melbourne, 2 February 2011, p. 15.

18 Mr Waddell, Stafford Group, *Transcript of Evidence*, Melbourne, 2 February 2011, pp. 15; and see Council of Textile and Fashion Industries Australia (TFIA), *Supplementary Submission 8.1*, p. [1].

19 Mr Waddell, Stafford Group, *Transcript of Evidence*, Melbourne, 2 February 2011, p. 1, 21 and see Mr Clogstoun, Department of Foreign Affairs and Trade, *Transcript of Evidence*, 22 November 2010, p. 3.

... it is the combination of duty free entry of finished product ex-New Zealand under ANZCERTA and ability to avoid duty on the input materials that creates the significant advantage for New Zealand producers over their Australian counterparts.²⁰

- 6.17 Stafford Group representative Mr Peter Wadell explained that while Australian suits exported to New Zealand attract the same 'duty drawback' benefits under ANZCERTA, Australian made products sold into the domestic market do not:²¹

What we cannot understand is why this structure should be set up in such a way that it disadvantages Australian manufacturers...If there is going to be duty on our inputs, then there should be some constraint on what is coming out of New Zealand on a duty free basis so that at least the playing field is relatively level.²²

- 6.18 Ms Jo-Ann Kellock, TFIA Chief Executive Officer, shared Stafford Group's view that the arrangements will put at risk the viability of Australia's two remaining suit manufacturers, employers of 250 people, and potentially drive them offshore to join major past competitors.²³

- 6.19 The Committee investigated this matter with DFAT. The Department's representative acknowledged that the issue constitutes an anomaly under the agreement: Australian manufacturers would continue to pay five per cent tariffs on fabrics without offsets, while New Zealand importers would be reimbursed under the 'duty drawback'. The Committee was advised that this would be rectified on implementation of the ANZCERTA tariff changes, planned for 2012.²⁴

- 6.20 Apparently, the Government's intention had not, however, been conveyed to industry representatives. TFIA's Ms Kellock informed the Committee that there had been no recent discussion with Government on the proposed changes, which had progressed on a bilateral basis without consultation despite undertakings given at Ministerial level to the contrary.²⁵

20 TFIA *Submission 8*, p. [2].

21 *Transcript of Evidence*, Melbourne, 2 February 2011, pp. 21, 23.

22 *Transcript of Evidence*, Melbourne, 2 February 2011, p. 16.

23 Ms Kellock, TFIA and Mr Waddell, Stafford Group, *Transcript of Evidence*, Melbourne, 2 February 2011, pp. 14, 16, 20.

24 Mr Clogstoun, Department of Foreign Affairs and Trade, *Transcript of Evidence*, Canberra, 28 February 2011, p. 2.

25 *Transcript of Evidence*, Melbourne, 2 February 2011, p. 17 and see TFIA, *Submissions 8 and 8.1*.

- 6.21 DFAT's response indicated that consultations with the Minister for Department of Innovation, Industry, Science and Research (DIISR) had last occurred in 2009, and that Senior Officials had met with Stafford Group in mid 2010.²⁶ The Committee was also informed that, in DFAT's view, the issue for the industry was transition under ANZCERTA, which had a shorter lead-time than other free trade agreements.²⁷
- 6.22 The Committee sought supplementary advice about the potential economic impact on the structured apparel sector under the proposed Rule of Origin amendments. On the basis of analysis of the sector's trade and revenue conducted during the 2010 Review, the DIISR had concluded that New Zealand suit imports were in decline, suggesting minor revenue impacts.²⁸
- 6.23 The Department noted, however, that the findings were not predictive of outcomes following amendments to the Rules of Origin.²⁹

Rules of Origin under SPARTECA

- 6.24 In the context of the proposed amendments to ANZCERTA Rules of Origin, Oxfam Australia raised concerns about the lack of review of the product rules governing the *South Pacific Regional Trade and Economic Co-operation Agreement*, known as SPARTECA.³⁰
- 6.25 SPARTECA is a plurilateral free trade agreement between Australia and New Zealand and the 14 island members of the Pacific Islands Forum.³¹ Signed in 1981, the agreement is conducted on a non-reciprocal basis, allowing for most Pacific exports duty free entry into Australia and New Zealand without requiring equal treatment for Australian and New Zealand products.³² As noted in the Preamble to the Agreement, this

26 Department of Foreign Affairs and Trade, *Submission 4.1*, p. [1].

27 Mr Clogstoun, Department of Foreign Affairs and Trade, *Transcript of Evidence*, Canberra, 28 February 2011, p. 3.

28 Department of Innovation, Industry, Science and Research, *Submission 4*, p.[1]

29 Department of Innovation, Industry, Science and Research, *Submission 4*, p.[1]

30 Oxfam Australia, *Submission 1*.

31 The Pacific Islands Forum is a political grouping of 16 independent and self-governing states founded in 1971 to strengthen regional co-operation and integration. Forum island members comprise Nuie, Nauru, Samoa, Fiji, Tonga, Papua New Guinea, the Solomon Islands, the Federated States of Micronesia, Vanuatu, Kiribati, Palau, the Cook Islands, Tuvalu, and the Marshall Islands, see <<http://www.forumsec.org.fj/index.cfm>> viewed 27 April 2011.

32 Oxfam New Zealand and Oxfam Australia, *PACER Plus and its Alternatives: Which Way for Trade and Development in the Pacific?* Oxfam Briefing Paper 2009, p. 6.

arrangement recognises the market isolation and developing status of the Pacific island nations.³³

- 6.26 Oxfam's Trade Adviser Mr Wesley Morgan informed the Committee that, in contrast to the regularly updated rules of ANZCERTA, the SPARTECA rules have not been revised for thirty years. As a consequence they are now so out of date, they must be broken for any trade to occur:

The SPARTECA agreement makes it very difficult for Pacific countries to become links in global supply chains and still adhere to the SPARTECA requirement that 50 per cent of the value of a product must be added in the Pacific. Both Australia and New Zealand have applied ad hoc derogations to the SPARTECA rules of origin requirements – most notably for clothing from Fiji and wire harnesses used in the manufacture of car parts from Samoa – but these are no substitute for a more dependable and transparent solution.³⁴

- 6.27 The Committee notes that SPARTECA's 50 per cent requirement had been imposed to stimulate local production, and to offset the likelihood of 'trade deflection'; the channelling of products through a Pacific Island country to gain concessional access to Australian and New Zealand markets.³⁵
- 6.28 Oxfam advised that trade deflection is no longer a practical consideration, given high trans-island transport costs in the Pacific, and recommended that the SPARTECA Rules of Origin requirements be immediately revised down to 10 per cent to restore the preferential axis.³⁶
- 6.29 DFAT's representative, however, informed the Committee that this was not an option. Instead, Pacific Island trade arrangements are currently being progressed under negotiations for the new *Pacific Agreement on Closer Economic Relations (PACER) Plus*, with the third round of negotiations scheduled for 14 and 15 March 2011. Priority items for

33 Oxfam New Zealand and Oxfam Australia, *PACER Plus and its Alternatives: Which Way for Trade and Development in the Pacific?* Oxfam Briefing Paper 2009, p. 7.

34 *Transcript of Evidence*, Melbourne, 2 February 2011, pp. 2, 3.

35 Oxfam Australia, *Submission 1*, p. [4]

36 Mr Wesley Morgan, Oxfam Australia, *Committee Hansard*, Melbourne, 2 February 2011, pp. 7, 9, 10.

negotiation at the meeting include rules of origin, trade facilitation, development assistance and regional labour mobility.³⁷

- 6.30 The Committee notes that while negotiations will continue at the next Pacific Islands Forum Trade Ministers' meeting, there is no projected end date for conclusion of the negotiations.³⁸
- 6.31 Oxfam saw this as unacceptable, and urged the Australian Government to ensure the relative disadvantage of Pacific nations is recognised under PACER negotiations in the lead up to zero tariff targets under the *Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area*.³⁹

Conclusion

- 6.32 The Committee notes that the proposed amendments to the Rules of Origin under the ANZCERTA have been endorsed by the joint review in 2010, which was conducted as a pre-condition to major reforms to the ANZCERTA Rules of Origin in 2007.
- 6.33 Since the time of the 2007 reforms, Australia and New Zealand have made commitments under other regional free trade agreements to pursue across-the-board zero duty on trade.
- 6.34 In pursuing that objective, the Committee considers that the Government has an obligation to ensure affected industries are kept abreast of policy developments and their implications. In the case of Australia's structured apparel sector, the importance of this seems to have been lost in the race to implement consistent trade arrangements, as foreshadowed under the 2007 ANZCERTA review.
- 6.35 The Committee's enquiries into the matter brought reassurances from the Department of Foreign Affairs and Trade that unintended consequences affecting Australian suit makers, resulting from 'duty drawback' and local tariff arrangements, will be addressed on implementation of the ANZCERTA amendments in 2012.

37 Mr Clogstoun, Department of Foreign Affairs and Trade, *Transcript of Evidence*, Canberra, 28 February 2011, p. 1.

38 Department of Foreign Affairs and Trade, *Pacific Agreement on Closer Economic Relations (PACER) Plus negotiations*, < <http://www.dfat.gov.au/fta/pacer/index.html> > viewed 6 April 2011.

39 Mr Morgan, Oxfam Australia, *Committee Hansard*, Melbourne, 2 February 2011, p. 5.

- 6.36 The Committee therefore supports binding treaty action being taken on the proposed amendments to Article 3 and Annex G of ANZCERTA, but also recommends the Australian Government report back on its commitments to rectify any unintended consequences on Australia's suit manufacturers in the lead up to 2012.
- 6.37 The Committee's review of the ANZCERTA amendments also highlighted concerns about the *Pacific Agreement on Closer Economic Relations (PACER) Plus*, and the need for due consideration of the impacts of trade liberalisation on the economies in island nations.
- 6.38 In view of the imminent progress towards zero tariffs targets under the ANZCERTA amendments (2012) and the wider *Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (2020)* the Committee urges the Government to conduct an early review of the issues raised by OXFAM under the *PACER Plus*.
- 6.39 The Committee will monitor progress of this matter in its ultimate review of the treaty when tabled.

Recommendation 4

The Committee supports the Exchange of Letters implementing Amendments to Article 3, and to Annex G, of the *Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)* and recommends binding treaty action be taken.

Recommendation 5

The Committee recommends the Minister of Innovation, Industry, Science and Research report to the Committee on the measures implemented to address the impact of 'duty drawback' on Australia's Structured Apparel sector under the amendments to Article 3 and to Annex G of ANZCERTA, and monitor ongoing effects on the sector after 2012.

Four International Labour Organisation Treaties

Introduction

- 7.1 On 24 November 2010, four International Labour Organisation (ILO) treaties were tabled in Parliament. While the treaties are separate documents dealing with different issues, the Committee has considered them together. For convenience and economy, they are also dealt with together in this report.
- 7.2 The four treaties are:
- *International Labour Organisation Protocol of 2002 to Convention No. 155 concerning Occupational Safety and Health and the Work Environment* (the Occupational Safety and Health Protocol);
 - *International Labour Organisation Convention No. 162: Convention Concerning Safety in the Use of Asbestos* (the Safety in the Use of Asbestos Convention);
 - *International Labour Organisation Convention No. 175: Part Time Work* (the Part Time Work Convention); and
 - *International Labour Organisation Convention No. 186: Maritime Labour Convention* (the Maritime Labour Convention).
- 7.3 All these treaties involve important protections for employees in the areas covered by the treaties. However, Australia is by and large already compliant with the treaties, so ratification is essentially an exercise in

ensuring international recognition of Australia's current practices. The exception to this is the Maritime Labour Convention, which needs to be ratified if Australian flagged vessels are to be permitted to dock in ports of other signatory states without difficulty.

Occupational Safety and Health Protocol

The Protocol and the Convention

- 7.4 The Occupational Safety and Health Protocol is a treaty that implements Articles 4 and 11 of *Convention No. 155 concerning Occupational Safety and Health and the Working Environment*, which was adopted in 1981.¹ The Occupational Safety and Health Protocol came into force in 2005, and will enter into force for Australia 12 months after Australia's ratification documents are lodged with the Director-General of the ILO.²
- 7.5 Article 4 of Convention No. 155 states the principles underlying the Convention. It states:
1. Each Member shall, in the light of national conditions and practice, and in consultation with the most representative organisations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment.
 2. The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.³
- 7.6 Article 11 of Convention No. 155 concerns the implementation of Article 4. It requires that the competent authority within each signatory country perform the following tasks:
- when the degree of hazard requires it, issue determinations concerning:
 - ⇒ the design, construction and layout of projects;

1 *National Interest Analysis (NIA)*, [2010] ATNIA 62, International Labour Organisation Protocol of 2002 to Convention No. 155 concerning Occupational Safety and Health and the Working Environment, 1981, adopted at Geneva on 20 June 2002 [2010] ATNIF 47, para. 1.

2 *Occupational Safety and Health Protocol NIA*, para. 3.

3 *Convention No. 155 concerning Occupational Safety and Health and the Working Environment*, 1981, Article 4.

- ⇒ the commencement of their operations;
 - ⇒ major alterations affecting them and changes in their purposes;
 - ⇒ the safety of technical equipment used on the projects; and
 - ⇒ the application of procedures.
- issue determinations concerning substances that are prohibited, limited or subject to authorised control;
 - establish procedures for the notification of occupational accidents and diseases by employers and, when appropriate, insurance institutions and others directly concerned, and the production of annual statistics on occupational accidents and diseases;
 - hold inquiries into cases of occupational accidents, occupational diseases and any injuries to health which arise in connection with work which reveal situations which are serious;
 - publish annual information on measures taken to implement Article 4 on occupational accidents, occupational diseases and other injuries to health which arise in the course of, or in connection with, work; and
 - introduce or extend systems to examine chemical, physical and biological agents in respect of the risk to the health of workers.⁴
- 7.7 According to the NIA, ratification will commit Australia to maintaining an occupational health and safety regime in line with international standards.⁵
- 7.8 The Protocol provides specific instructions for the implementation of Convention No. 155's Articles 4 and 11. In particular, the Protocol requires that:
- the competent authority within a signatory country establish requirements and procedures for the recording and notification of occupational safety and health accidents and diseases by employers;⁶
 - the procedures require employers to record occupational safety and health related incidents, report these to their employees, maintain

4 *Convention No. 155 concerning Occupational Safety and Health and the Working Environment, 1981, Article 11.*

5 Occupational Safety and Health Protocol NIA, para. 6.

6 *International Labour Organisation Protocol of 2002 to Convention No. 155 concerning Occupational Safety and Health and the Working Environment, 1981, adopted at Geneva on 20 June 2002 [2010] ATNIF 47 (hereafter, the Occupational Safety and Health Protocol), Article 2.*

records of these incidents, and refrain from instituting regulatory or disciplinary action against an employee for reporting an incident;⁷

- employers be responsible for reporting to competent authorities, relevant professionals (such as medical professionals), and employees, on occupational safety and health incidents;⁸ and
- national statistics on occupational safety and health incidents be collected and published.⁹

What ratification will mean for Australia

- 7.9 Implementing the Protocol will primarily be the responsibility of the State and Territory Governments, with some lesser responsibility being borne by the Commonwealth Government.¹⁰ All State and Territory Governments have formally agreed to the ratification of the protocol.¹¹
- 7.10 The NIA details a number of specific aspects of the Protocol that are of interest to Australia at present. For example, regular reporting of occupational health and safety statistics was identified as an area for national action in the *National Occupational Health and Safety Strategy 2002-2012*. According to the NIA, adoption of the Protocol will provide a direct stimulus to developing this reporting regime.¹²
- 7.11 In addition, the requirement in the Protocol for employers to record occupational accidents and diseases, notify relevant authorities of occupational accidents and diseases, and consult with their employees on occupational health and safety matters is consistent with key elements of the occupational health and safety frameworks in Australia.¹³
- 7.12 As Australian occupational health and safety laws are consistent with Australia's obligations under the Protocol, no legislative measures will be necessary to implement the Protocol.¹⁴ A combination of general and industry specific legislation already requires employers to record occupational accidents and diseases, inform their employees of the

7 The Occupational Safety and Health Protocol, 2002, Article 3.

8 The Occupational Safety and Health Protocol, 2002, Article 4.

9 The Occupational Safety and Health Protocol, 2002, Article 6.

10 Occupational Safety and Health Protocol NIA, para. 21.

11 Occupational Safety and Health Protocol NIA, para. 25.

12 Occupational Safety and Health Protocol NIA, para. 8.

13 Occupational Safety and Health Protocol NIA, para. 9.

14 Occupational Safety and Health Protocol NIA, para. 21.

recording system and notified cases, and notify the competent authority when an occupational accident or disease occurs.¹⁵

- 7.13 National statistics are collected and published by Safe Work Australia, the responsible authority at the Commonwealth level, in a manner that accords with the Protocol.¹⁶

Conclusion – Occupational Safety and Health Protocol

- 7.14 It is clear to the Committee that the basic requirements of the Protocol are already in place and are accepted by employers, employees, State, Territory, and Commonwealth Governments. This treaty action confirms that the standards in Australia have for some years met international requirements. The Committee supports ratification of the Protocol.

Recommendation 6

The Committee supports the *International Labour Organisation Protocol of 2002 to Convention No. 155 concerning Occupational Safety and Health and the Working Environment* and recommends that binding treaty action be taken.

Safety in the Use of Asbestos Convention

The Convention

- 7.15 The Safety in the Use of Asbestos Convention requires signatory states to implement national laws regulating the prevention and control of exposure to asbestos and the protection of workers against exposure to asbestos.¹⁷
- 7.16 The Convention entered into force in June 1989, and Australia would like it ratified as soon as possible. Ratification can occur 12 months after the

15 Occupational Safety and Health Protocol NIA, para. 22.

16 Occupational Safety and Health Protocol NIA, para. 22.

17 *National Interest Analysis* (Safety in the Use of Asbestos Convention NIA), [2010] ATNIA 60, International Labour Organisation Convention No. 162: Convention Concerning Safety in the Use of Asbestos, adopted at Geneva on 24 June 1986 [2010] ATNIF 48, para. 4.

date on which Australia's ratification documents are registered with the Director-General of the ILO.¹⁸

- 7.17 Asbestos is a naturally occurring fibrous mineral that has been extensively used for its fire and chemical resistant properties.¹⁹ There are three common types of Asbestos: chrysotile; crocokolite; and amosite (or white, blue, and brown asbestos respectively). Asbestos is used in two ways: it is either enclosed in a bonding compound, such as asbestos cement; or it is free (referred to as friable), such as in loose thermal insulation.²⁰
- 7.18 The Safety in the Use of Asbestos Convention requires signatory states to adopt laws or regulations to either: prohibit the use of asbestos; or control its use through regulations; and replace asbestos with less harmful materials.²¹
- 7.19 The Convention requires the outright prohibition of the use of crocokolite asbestos and the spraying of all forms of asbestos.²²
- 7.20 The Convention also requires a range of specific procedures for the handling of asbestos, including that:
- employers are responsible for notifying the responsible authorities of an asbestos related work incident;
 - producers and manufacturers must label asbestos containing products appropriately;
 - competent authorities must issue limits for exposure of workers to asbestos products and make measures to control the release of asbestos dust into the air;
 - only authorised persons may undertake the demolition of structures containing asbestos;
 - employers must provide appropriate safety clothing to employees working with asbestos;

18 Safety in the Use of Asbestos Convention NIA, para. 2.

19 Queensland Department of Justice and Attorney-General, *What is Asbestos and Where is it Found?* <<http://www.deir.qld.gov.au/workplace/subjects/asbestos/definition/index.htm>> viewed 13 April 2011.

20 Queensland Department of Justice and Attorney-General, *What is Asbestos and Where is it Found?* <<http://www.deir.qld.gov.au/workplace/subjects/asbestos/definition/index.htm>> viewed 13 April 2011.

21 Safety in the Use of Asbestos Convention NIA, para. 16.

22 *International Labour Organisation Convention No. 162: Convention Concerning Safety in the Use of Asbestos*, adopted at Geneva on 24 June 1986 [2010] ATNIF 48, Articles 11 and 12.

- employers must dispose of asbestos in a way that does not pose a health risk to workers or people living in the vicinity of the enterprise.²³
- 7.21 Exposure to asbestos must be monitored and employees exposed to asbestos must be provided with medical examinations where necessary. When employees can no longer work in an asbestos environment, every effort is to be made to find them other means of maintaining their income.²⁴

Implementation in Australia

- 7.22 Asbestos poses a health risk when the fibres become airborne and are inhaled,²⁵ and has been banned from use in Australia since 2003, after the Workplace Relations Ministers' Council agreed to amendments to the National Occupational Health and Safety Commission's *National Model Regulations for the Control of Workplace Hazardous Substances* to prohibit the use of chrysotile, crocidolite, and amosite asbestos.²⁶
- 7.23 Responsibility for the prohibition and regulation of the use of asbestos falls largely within the jurisdiction of the State and Territory Governments, with only the national reporting requirements being the responsibility of the Commonwealth Government.²⁷ All State and Territory Governments have agreed to the ratification of the Safety in the Use of Asbestos Convention, and have advised that their legislation is compliant with the Convention.²⁸
- 7.24 The amendments to the National Model Regulations that came into effect in 2003 give effect to the provisions of the Convention. In other words, Australia's regulation of asbestos already meets the requirements of the Convention.²⁹ According to the NIA, ratification of the Convention will ensure that Australians continue to enjoy the protection of a system that reflects best practice in protecting employees from the harmful effects of asbestos.³⁰

23 Safety in the Use of Asbestos Convention NIA, para. 17.

24 Safety in the Use of Asbestos Convention NIA, para. 18.

25 Queensland Department of Justice and Attorney-General, *What is Asbestos and Where is it Found?* <<http://www.deir.qld.gov.au/workplace/subjects/asbestos/definition/index.htm>> viewed 13 April 2011.

26 Safety in the Use of Asbestos Convention NIA, para. 9.

27 Safety in the Use of Asbestos Convention NIA, para. 22.

28 Safety in the Use of Asbestos Convention NIA, para. 25.

29 Safety in the Use of Asbestos Convention NIA, para. 23.

30 Safety in the Use of Asbestos Convention NIA, para. 5.

- 7.25 Notwithstanding this a process is currently underway to review legislation pertaining to asbestos as part of a national program to harmonise all Australian occupational health and safety legislation. A requirement of the review is that the outcome complies with relevant ILO conventions, including the Safety in the Use of Asbestos Convention.³¹

Conclusion – Safe Use of Asbestos Convention

- 7.26 Like the Occupational Safety and Health Protocol, Australia has effectively been compliant with the Safety in the Use of Asbestos Convention for some time. Ratification is also therefore a simple confirmation of Australia's compliance with the Convention. The Committee supports ratification of the Convention.

Recommendation 7

The Committee supports the *International Labour Organisation Convention No. 162: Convention Concerning Safety in the Use of Asbestos*, and recommends that binding treaty action be taken.

The Part Time Work Convention

The Convention

- 7.27 The purpose of the Part Time Work Convention is to ensure that part time workers receive the same treatment as comparable full time workers.³²
- 7.28 The Convention entered force in 1998. The Australian Government has indicated that it would like the Convention ratified as soon as possible.³³ The Convention will take effect 12 months in Australia after the documents of ratification are lodged with the Director-General of the ILO.³⁴

31 Safety in the Use of Asbestos Convention NIA, para. 24.

32 *National Interest Analysis* (Part Time Work Convention NIA), [2010] ATNIA 61, International Labour Organisation Convention No. 175: Part Time Work, adopted at Geneva on 24 June 1994 [2010] ATNIF 49, para. 4.

33 Part Time Work Convention NIA, para. 2.

34 Part Time Work Convention NIA, para. 1.

- 7.29 According to the NIA, the Convention requires that part time workers receive the same treatment as full time workers in respect of:
- the right to bargain collectively and organise;
 - occupational health and safety;
 - discrimination in employment and occupation; and
 - leave entitlements.³⁵
- 7.30 The Part Time Work Convention also requires signatory states to ensure part time workers receive a basic wage which, when calculated proportionately on an hourly basis, performance basis, or piece basis, is not lower than the basic wage for comparable full time workers.³⁶
- 7.31 Article 7 of the Convention requires signatory states to ensure that part time workers receive benefits comparable or equivalent to those of full time workers in the areas of:
- maternity protection;
 - termination of employment;
 - paid annual leave and public holidays; and
 - sick leave.³⁷
- 7.32 In addition, the Convention requires that states should facilitate access to freely chosen part time work by ensuring there is no systemic discouragement of part time work.³⁸ Transfer between part time and full time work should, where appropriate, be voluntary.³⁹
- 7.33 As with the other ILO Conventions and Protocols considered here, signatory states must provide annual reports to the ILO on the measures that have been taken to implement the Convention.⁴⁰

Implementation in Australia

- 7.34 The Convention is of particular relevance to Australia because part time work is a common form of employment in Australia. The latest available

35 Part Time Work Convention NIA, para. 4.

36 Part Time Work Convention NIA, para. 78.

37 *International Labour Organisation Convention No. 175: Part Time Work*, adopted at Geneva on 7 June 1994 [2010] ATNIF 49, Article 7.

38 Part Time Work Convention NIA, para. 19.

39 Part Time Work Convention NIA, para. 20.

40 Part Time Work Convention NIA, para. 21.

labour force statistics at the time of writing indicate that in March 2011, 3 351 500 Australian residents were in part time employment compared to 8 105 600 in full time employment.⁴¹ In other words, approximately 30 per cent of the Australian workforce is in part time work.

7.35 There is also a strong economic incentive to ensure part time workers are protected. Part time work enables greater participation in the workforce for people who are not in a position to take on full time employment, such as employees with family or study commitments.⁴²

7.36 The role of part time work in increasing workforce participation is also highlighted in the preamble of the Convention.

The General Conference of the International Labour Organisation...

Recognizing the importance of productive and freely chosen employment for all workers, the economic importance of part time work, the need for employment policies to take into account the role of part time work in facilitating additional employment opportunities...

Adopts... the following Convention...⁴³

7.37 Those aspects of the Convention that relate to employment entitlements will fall within the jurisdiction of the Commonwealth Government.⁴⁴ The NIA states that compliance with the Convention in Australia has been achieved through the *Fair Work Australia Act 2009*, which regulates the working conditions of 96 per cent of Australia's private sector workforce. According to the NIA:

The obligations of the Convention support the policy intentions behind the Fair Work Act, which has as one of its objects the need to assist employees to balance their work and family responsibilities by providing them with genuine flexible working arrangements.⁴⁵

7.38 State and Territory Governments continue to have responsibility for employees that have not been transferred to the Commonwealth

41 Australian Bureau of Statistics, *6202.0 - Labour Force, Australia, March 2011* <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/6202.0>> viewed 13 April 2011.

42 Part Time Work Convention NIA, para. 7.

43 *International Labour Organisation Convention No. 175: Part Time Work*, adopted at Geneva on 7 June 1994 [2010] ATNIF 49, Preamble.

44 Part Time Work Convention NIA, para. 23.

45 Part Time Work Convention NIA, para. 12.

workplace relations jurisdiction. This includes State Government employees in all States and employees of non-constitutional corporations in Western Australia.⁴⁶

- 7.39 The Commonwealth and State and Territory Governments will share responsibility for implementing the occupational health and safety aspects of the Convention.⁴⁷
- 7.40 All jurisdictions have indicated that their laws comply with the Part Time Work Convention.⁴⁸ Consequently, no legislative action will be necessary to implement the Convention.

Conclusion – Part Time Work Convention

- 7.41 Increasing workplace participation has been accepted policy for many years now with governments on both sides of the political spectrum. Part time work is proving an effective approach to including in the workforce people who would not otherwise be included, and the statistics indicate that Australian workers have embraced part time work.
- 7.42 The ratification of this Convention can only enhance the attractiveness of this employment choice. The Committee supports ratification of the Convention.

Recommendation 8

The Committee supports the *International Labour Organisation Convention No. 175: Part Time Work*, and recommends that binding treaty action be taken.

The Maritime Labour Convention

The Convention

- 7.43 The Maritime Labour Convention:

46 Part Time Work Convention NIA, para. 24.

47 Part Time Work Convention NIA, para. 25.

48 Part Time Work Convention NIA, para. 26.

...sets minimum requirements for seafarers who work on ships. Ratification will ensure decent working and living conditions for seafarers on foreign-flagged ships entering Australian ports and on Australian ships.⁴⁹

7.44 The Convention was adopted at the 94th (Maritime) Session of the International Labour Conference in February 2006. The Convention consolidates 37 separate ILO maritime labour conventions adopted since 1920 and replaces them with a single instrument. Australia has ratified 13 of the 37 conventions involved.⁵⁰

7.45 The Convention contains three parts: a statement of core principles (the Articles), the general rights of maritime labour (the Regulations), and specific details for their implementation (the Code). The matters contained in the Convention are organised into five topic areas:

- minimum conditions for seafarers to work on ships;
- conditions of employment;
- accommodation, recreational facilities, food and catering;
- health protection, medical care, welfare and social security protection; and
- compliance and enforcement.⁵¹

7.46 The Committee does not intend to detail here the basic conditions contained in the Convention except to the extent that they impact on implementation in Australia. The general obligations under each of the five topic areas have been extracted from the NIA and are included in this Report at Appendix C.

7.47 The criteria for the Convention to enter into force are somewhat more complicated than for the other ILO treaties discussed in this chapter. For the Convention to enter into force at least 30 ILO member states must ratify the Convention and a 33 per cent share of the world gross tonnage of ships must be covered. The NIA states that the tonnage requirement has already been met and, following a direction to European Union members

49 *National Interest Analysis* (Maritime Labour Convention NIA), [2010] ATNIA 58, International Labour Organisation Convention No. 186: Maritime Labour Convention, done at Geneva on 7 February 2006 [2010] ATNIF 44, para. 5.

50 Maritime Labour Convention NIA, para. 14.

51 Maritime Labour Convention NIA, para. 16.

to ratify the Convention, the convention is likely to enter into force in December 2011.⁵²

- 7.48 Entry into force of the Convention takes place 12 months after the lodgement of ratification documents with the Director-General of the ILO. The ILO has advised the Australian Government that, in an ideal situation, signatory states may be in a position to issue compliance documentation and inspect foreign flagged ships against the provisions of the Convention between the dates of lodgement of the ratification documents and the entry into force. The NIA states that this possibility is currently being explored with the Australian Government Solicitor and the Office of International Law.⁵³
- 7.49 This approach appears to be supported by the shipping community in Australia.⁵⁴

Implementation in Australia

- 7.50 Implementation in Australia will not require significant changes to Australian law and practice as Australia is already largely compliant with the Maritime Labour Convention.⁵⁵ However, it is important to note that there is a difference between an Australian flagged vessel and a vessel that has an Australian crew and uses Australian ports but is registered in a flag of convenience State. Vessels in this situation are not currently subject to compliance action in relation to the working and living conditions of seafarers.⁵⁶
- 7.51 A handful of matters contained in the Convention are worth examining in greater detail.

Article 2

- 7.52 Article 2 of the Maritime Labour Convention limits the scope and application of the Maritime Labour Convention to particular ships. Some basic categories of ships are excluded from the Convention, such as ships that navigate exclusively inland and harbour waters, ships engaged in

52 Maritime Labour Convention NIA, para. 2.

53 Maritime Labour Convention NIA, para. 4.

54 Maritime Labour Convention, Maritime Union of Australia, *Submission 5*, para. 3.7.

55 Maritime Labour Convention, Australian Institute of Marine and Power Engineers, *Submission 4*, pp. 1-2.

56 Maritime Labour Convention, Australian Institute of Marine and Power Engineers, *Submission 4*, p. 1.

fishing, ships of traditional construction, naval vessels, and ships not engaged in commercial activities.⁵⁷

- 7.53 In addition, signatory states may exclude ships of less than 200 gross tons⁵⁸ that are not engaged in international voyages. If this is the case, the Convention would cover ships of 200 gross tons or more regardless of whether they are undertaking international trade or not and ships of less than 200 gross tons that are involved in international trade. The NIA advises that Australia intends to exclude relevant ships in this way.⁵⁹

Article 4

- 7.54 Article 4 of the Maritime Labour Convention establishes a series of employment and social rights for seafarers, including rights to:

- a safe work environment;
- fair terms of employment;
- decent work and living conditions; and
- health protection and medical care.⁶⁰

- 7.55 The Australian Shipowners' Association (ASA) raised two issues pertaining to this Article.

- 7.56 The first relates to the treatment of cadets and trainees by the Convention. According to the ASA, cadets and trainees are to be considered as seafarers for the purposes of the Convention. The Convention requires that each seafarer be provided with an individual sleeping room. According to the ASA:

This could, potentially, adversely impact on the ability of vessel operators to provide cadets/trainees with appropriate sea time to gain their qualifications.⁶¹

- 7.57 The ASA states that the Australian Government is already aware of this matter and is considering a possible solution.⁶²

57 Maritime Labour Convention NIA, para. 18.

58 Note that 'tons' in this instance refers to Maritime Long Tonnes, a measure of water displacement that is different to metric tonnes and imperial tons. The spelling of 'tons' in this chapter reflects that used in the *National Interest Analysis*.

59 Maritime Labour Convention NIA, para. 19.

60 *International Labour Organisation Convention No. 186: Maritime Labour Convention*, done at Geneva on 7 February 2006 [2010] ATNIF 44, Article 4.

61 Maritime Labour Convention, Australian Ship Owners' Association, *Submission 5*, p. 3.

62 Maritime Labour Convention, Australian Ship Owners' Association, *Submission 5*, p. 3.

- 7.58 The second matter of concern to the ASA is the obligation under the Convention to provide free meals to seafarers on board vessels. The *Regulation Impact Statement* for the Convention indicates that this will simply codify current practice.⁶³ However, the ASA is concerned that this practice may now attract fringe benefits tax, which will significantly increase the costs of providing this service.⁶⁴
- 7.59 The ASA indicates that the Government should ensure that the codification process does not result in taxation consequences for ship owners.⁶⁵

Article 5

- 7.60 Article 5 of the Maritime Labour Convention requires that ships must not be placed at a disadvantage because their flag states have ratified the Convention and other flag states have not. Article 5 seeks to create a level playing field by removing incentives to operate ships with crew whose living and working conditions do not comply with the Convention.⁶⁶ The NIA argues that this means that when a ship enters the port of a signatory state, the crew will be treated in the same way as ships of signatory states, regardless of whether the flag state of the ship is signatory to the Convention or not.⁶⁷
- 7.61 The effect of this, as argued by the Maritime Union of Australia (MUA), will be:
- ... to reduce the competitive gap between domestic and international shipping, [thus] improving competitiveness in the domestic and international freight markets, and providing incentives for investment in Australian shipping.⁶⁸
- 7.62 This assessment was also made by the Australian Ship Owners' Association.⁶⁹
- 7.63 Article 5 will have serious consequences for Australian shipping if Australia does not ratify the Convention.⁷⁰ Ships of 500 gross tons or more will have to hold a Maritime Labour Certificate and a Declaration of

63 Maritime Labour Convention Regulation Impact Statement, para. 84.

64 Maritime Labour Convention, Australian Ship Owners' Association, *Submission 5*, p. 3.

65 Maritime Labour Convention, Australian Ship Owners' Association, *Submission 5*, p. 3.

66 Maritime Labour Convention NIA, para. 8.

67 Maritime Labour Convention NIA, para. 9.

68 Maritime Labour Convention, Maritime Union of Australia, *Submission 5*, para. 3.1.4.

69 Maritime Labour Convention, Australian Ship Owners' Association, *Submission 5*, pp. 1-2.

70 Maritime Labour Convention NIA, para. 6.

Maritime Labour Compliance. In the absence of ratification, Australia will not be in a position to issue these certificates to Australian flagged vessels. A consequence of this will be that Australian ship owners will be obliged to meet the costs of enforcement measures in signatory state ports.⁷¹

7.64 Shipping Australia Limited expressed some concern at the possible cost to Australian exporters and importers when a ship from a non-signatory state is detained and required to undertake work in an Australian port.⁷²

7.65 Shipping Australia Limited offered the following example:

...foreign flagged ships visiting Australia whose flagged states have not ratified the Convention, will be subject to possible detention and extra inspection in Australian ports which will incur considerable costs that will impact on Australia's exporters and importers. Hong Kong, for example, is not a member of the ILO. Vessels flagged in Hong Kong, for example, will not be carrying the necessary documentation to show prima facie compliance with the Convention.⁷³

7.66 The Australian Government believes that if Australia does not ratify the Convention, it will make it difficult for Australia to assist states in the Asia-Pacific region to become compliant with the Convention.⁷⁴

7.67 Shipping Australia Limited argued that it might be possible to use the *Asia Pacific Memorandum of Understanding on Port State Control* to establish a framework to assist non-signatory states in the Asia-Pacific region to meet the requirements of the Convention, therefore simplifying the inspection process in Australian ports and averting additional costs for Australian exporters and importers.⁷⁵

7.68 The Committee believes there would be some benefit in considering this option as part of the implementation process.

Inspection regime

7.69 Because there are no current inspections of foreign flagged vessels in respect of maritime labour conditions, issues relating to the working and living conditions of seafarers on foreign flagged vessels in Australian

71 Maritime Labour Convention NIA, para. 10.

72 Maritime Labour Convention, Shipping Australia Limited, *Submission 3*, p. 1.

73 Maritime Labour Convention, Shipping Australia Limited, *Submission 3*, p. 1.

74 Maritime Labour Convention NIA, para. 6.

75 Maritime Labour Convention, Shipping Australia Limited, *Submission 3*, p. 2.

ports are, at the moment, largely dealt with by organisations in the voluntary sector, a number of whom made submissions to the inquiry.⁷⁶

- 7.70 The Sydney Seafarers' Centre welcomed the prospect of a rigorous inspection scheme relating to seafarer working and living conditions, and described the impact its limited resources have on its ability to deal with seafarers' employment problems:

In our role as Pastoral agents/Care-givers/Volunteers, we are confronted regularly if not daily with seafarers' employment problems and issues to do with their 'social rights'. Many of these issues require assistance that is beyond our capacity. Responding appropriately can often drain our very limited welfare, financial resources and our personnel.⁷⁷

- 7.71 Marine surveyors from the Australian Maritime Safety Authority already routinely inspect foreign ships in Australian ports to ensure they comply with occupational health and safety and environmental standards. These inspections will be extended to include inspections to ensure compliance with the Maritime Labour Convention.⁷⁸

- 7.72 For ships from signatory states, this will involve a simple check of the ship's Maritime Labour Certificate and Declaration of Maritime Labour Compliance. For ships from non-signatory states, a full inspection will be required and any shortfall in compliance will be required to be rectified.⁷⁹ The costs of rectification and further inspections will be recovered from the ship.⁸⁰

- 7.73 The Australian Institute of Marine and Power Engineers (AIMPE) is the organisation that represents the industrial interests of the Australian Maritime Safety Authority's marine surveyors. AIMPE detailed some of the concerns marine surveyors have with the implementation of the Maritime Labour Convention.

- 7.74 In particular, AIMPE argued that there was a strong prospect that ships using flag of convenience states that are non-signatory to the Convention may possess fraudulent Maritime Labour Certificates and Declarations of Maritime Labour Compliance.

76 Maritime Labour Convention, Sydney Seafarers' Centre, *Submission 2*, p. 3.

77 Maritime Labour Convention, Sydney Seafarers' Centre, *Submission 2*, p. 3.

78 Maritime Labour Convention NIA, para. 26.

79 Maritime Labour Convention NIA, para. 26.

80 Maritime Labour Convention NIA, para. 32.

- 7.75 Both AIMPE and the MUA argued that the Australian Government should be prepared for situations in which crews on these ships sought the assistance of port authorities in signature states to address their non-compliant work and living conditions.⁸¹
- 7.76 Participants in the inquiry were also concerned that the Australian Government had not appropriately costed the implementation process. The NIA states that the impact in Australia will be minimal.⁸²
- 7.77 The MUA believes the Government has not recognised the actual cost of expanding the inspection and compliance functions of the Australian Maritime Safety Authority. For example, there is no acknowledgement in the treaty documents that it might be necessary to employ more marine surveyors.⁸³
- 7.78 The Mission to Seafarers discussed this issue from a different angle, arguing that the Convention specifically requires signatory states to provide seafarers with on shore welfare facilities in ports. The Mission to Seafarers argued that the best method for providing these welfare services was for the Government to start funding the current voluntary sector based welfare services for seafarers.⁸⁴
- 7.79 The Mission pointed out that there are insufficient services to meet demand currently, and the voluntary sector does not have a presence in a number of Australian ports that deal with international shipping. According to the Mission, additional funding will be needed to ensure compliance with the Convention, including increasing services in ports already serviced by the voluntary sector and expanding services to those ports that do not have such services.⁸⁵

Conclusion – Maritime Labour Convention

- 7.80 It is clear to the Committee that this Convention is of significant importance to the seafaring community in Australia.⁸⁶ The MUA stated that:

81 Maritime Labour Convention, Australian Institute of Marine and Power Engineers, *Submission 4*, pp. 1-2.

82 Maritime Labour Convention NIA, para. 47.

83 Maritime Labour Convention, Maritime Union of Australia, *Submission 5*, para. 3.11.

84 Maritime Labour Convention, Mission to Seafarers, *Submission 7*, p. 10.

85 Maritime Labour Convention, Mission to Seafarers, *Submission 7*, p. 10.

86 Maritime Labour Convention, Australian Ship Owners' Association, *Submission 5*, p. 1.

The coming into force of the Convention will represent a major watershed in international shipping, and will have profound implications for the regulation of shipping and of seafarers across the globe.⁸⁷

- 7.81 It is also clear from a number of the submissions to this inquiry that implementing the Maritime Labour Convention is going to be a complicated and possibly costly exercise. The Committee is pleased to note that in most cases the submitters have indicated that the Australian Government is in dialogue to resolve the concerns expressed. The Committee looks forward to a successful outcome for all concerned.

Recommendation 9

The Committee supports the *International Labour Organisation Convention No. 186: Maritime Labour Convention*, and recommends that binding treaty action be taken.

Regional leadership

- 7.82 One of the Australian Government's key objectives in engagement with the ILO is to provide policy leadership within the Asia-Pacific region in promoting international labour standards.⁸⁸ A common theme through the ILO treaties being considered here is the leading role Australia can play in the Asia-Pacific region in relation to improving adherence to ILO Conventions.
- 7.83 Few countries in the Asia-Pacific region are party to ILO conventions. None are party to Occupational Safety and Health Protocol,⁸⁹ the Part Time Work Convention⁹⁰ or the Maritime Labour Convention.⁹¹ Two (Japan and South Korea) are party to the Safety in the Use of Asbestos Convention.⁹²

87 Maritime Labour Convention, Maritime Union of Australia, *Submission 5*, para. 2.4.

88 Occupational Safety and Health Protocol NIA, para. 10.

89 Occupational Safety and Health Protocol NIA, para. 7.

90 Part Time Work Convention NIA, para. 6.

91 Maritime Labour Convention NIA, Annexure 1.

92 Safety in the Use of Asbestos Convention NIA, para. 6.

- 7.84 It is not clear from the National Interest Analyses for these treaties how Australia intends to encourage compliance with ILO Conventions in the Asia-Pacific region. The Maritime Labour Convention is likely to encourage compliance by non-signatory states as a result of the impact on trade of a failure to comply. It appears to the Committee, however, that it may be some time before there is widespread adoption in the Asia-Pacific region of the other treaties considered here.

Amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships

Background

- 8.1 The treaty action being considered brings into force amendments to the *International Convention for the Prevention of Pollution from Ships*, otherwise known as MARPOL. In this chapter, the amendments are referred to as the 2009 amendments to MARPOL. The amendments include the addition of a new chapter 8 to Annex I of MARPOL.¹
- 8.2 MARPOL addresses the problem of marine pollution from ships. In particular, it deals with the following pollutants:
- oil;
 - bulk noxious liquid substances;
 - harmful substances in packaged form;
 - sewage;
 - garbage; and
 - air pollution.²

1 *National Interest Analysis (NIA)*, [2010] ATNIA 59, Resolution MEPC.186(59) Amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, Adopted on 17 July 2009 [2010] ATNIF 46, para. 1.

2 NIA, para. 3.

The 2009 amendments to MARPOL

- 8.3 In 2009, the Marine Environment Protection Committee of the International Maritime Organisation (IMO) adopted the 2009 amendments to MARPOL, which add a new Chapter 8 entitled 'Prevention of Pollution during Transfer of Oil Cargo between Oil Tankers at Sea' to Annex I of MARPOL. Annex I deals with the prevention of pollution by oil.³
- 8.4 The 2009 amendments to MARPOL apply to oil tankers of 150 gross tonnage and above involved in ship to ship oil transfers at sea.⁴
- 8.5 The amendments require the adoption of techniques to minimise the risk of oil pollution at sea during ship to ship transfers.⁵ Ships involved in ship to ship transfers have to carry an on board operations plan, written in the working language of the ship. The transfer also has to be supervised by appropriately qualified persons.⁶
- 8.6 The 2009 amendments will also require the retention of records of each operation. These records will be available for inspection by any of the states signatory to MARPOL.⁷
- 8.7 Each oil tanker subject to the 2009 amendments to MARPOL that wishes to engage in a ship to ship transfer of oil within the territorial waters of a signatory state must notify the state of its intentions 48 hours before the transfer takes place. The notification should include the:
- name, flag, call sign, IMO Number and estimated time of arrival of the oil tankers involved in the operations;
 - date, time and geographical location at the commencement of the planned operations;
 - whether operations are to be conducted at anchor or underway;
 - oil type and quantity;
 - planned duration of the operations;

3 NIA, para. 4.

4 Resolution MEPC.186(59) *Amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973*, adopted on 17 July 2009 [2010] ATNIF 46, Regulation 40.

5 NIA, para. 5.

6 NIA, para. 6.

7 NIA, para. 6.

- identification of the operations service provider or person in overall control and their contact information; and
 - confirmation that the oil tanker has on board an operations plan meeting the requirements of MARPOL.⁸
- 8.8 If all of the information specified above is not available, the oil tanker discharging the oil cargo has to notify the signatory state 48 hours in advance that a transfer operation will occur and the information specified above will be provided at the earliest opportunity.⁹
- 8.9 Responsibility for ensuring the requirements of MARPOL are met lies with the flag states of the vessels involved.¹⁰
- 8.10 A number of types of operations are exempt from the application of the new chapter. In particular, the chapter does not apply to transfers:
- associated with fixed or floating platforms, such as oil rigs;
 - involving floating oil storage units;
 - related to securing the safety of ships or lives at sea;
 - associated with the removal of oil to prevent an environmental hazard; and
 - involving warships or other ships operated by a state.¹¹

Implementation in Australia

- 8.11 The *National Interest Analysis* for the proposals argues that Australia's acceptance of the 2009 amendments to MARPOL:

... is consistent with Australia's long-standing support for protection of the marine environment and Australia's active backing of, and participation in, IMO.¹²

8 Resolution MEPC.186(59) *Amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973*, Adopted on 17 July 2009 [2010] ATNIF 46, Regulation 42.

9 Resolution MEPC.186(59) *Amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973*, Adopted on 17 July 2009 [2010] ATNIF 46, Regulation 42.

10 NIA, para. 6.

11 Resolution MEPC.186(59) *Amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973*, Adopted on 17 July 2009 [2010] ATNIF 46, Regulation 40.

- 8.12 Australia's implementing legislation will apply to any such transfers in Australia's territorial sea or exclusive economic zone, as well as to transfers involving Australian flagged vessels wherever they may be located.¹³

Conclusion

- 8.13 Amendments to the MARPOL Treaty occur automatically and do not require signatory states to ratify amendments. The amendments automatically came into force on 1 January 2011.¹⁴ Because of this, the Committee is not required to make a recommendation. Nevertheless, the Committee would like to record its support for the provisions contained in the 2009 amendments to MARPOL.
- 8.14 It is possible to remove amendments to MARPOL if one-third or more of the signatory states or signatory states with a combined fleet of 50 per cent or more of the gross tonnage of the world's merchant fleet, communicate to the IMO their objection to the amendments.¹⁵
- 8.15 Signatory states wishing to object to amendments to MARPOL have approximately twelve months to do so. In this case, the period for objections closed on 1 July 2010.¹⁶
- 8.16 The Committee notes that this treaty action was tabled in Parliament on 24 November 2010, a full five months after the period during which Australia could lodge an objection to the amendments. This effectively removes an opportunity for the Parliament to express a meaningful view on the amendments. The Committee would like future amendments to MARPOL to be tabled sufficiently promptly for the Committee to express its view before the period for lodging objections expires.

12 NIA, para. 6.

13 NIA, para. 4.

14 NIA, para. 2.

15 NIA, para. 2.

16 NIA, para. 2.

Recommendation 10

The Committee recommends that all future amendments to *International Convention for the Prevention of Pollution from Ships 1973 (MARPOL)* be tabled in Parliament in sufficient time for the view of the Parliament to be taken into consideration before the period for objections to the amendments ends.

Amendments to the Convention Establishing
the Multilateral Investment Guarantee
Agency to Modernise the Mandate of the
Multilateral Investment Guarantee Agency
and
Amendment to the International Finance
Corporation Articles of Agreement

Background

- 9.1 This chapter deals with a single treaty action that amends two treaties, the *Convention Establishing the Multilateral Investment Guarantee Agency* (MIGA Convention) and *International Finance Corporation Articles of Agreement* (the IFC Agreement).¹
- 9.2 The Multilateral Investment Guarantee Agency (MIGA) and International Finance Corporation (IFC) are two arms of the World Bank Group.²

1 *National Interest Analysis* (NIA), [2011] ATNIA 6, Amendments to the Convention Establishing the Multilateral Investment Guarantee Agency, done at Seoul on 11 October 1985 and Amendment to the International Finance Corporation Articles of Agreement, done at Washington DC on 20 July 1956, [2011] ATNIF 2, para. 1.

2 NIA, para. 1.

- 9.3 The MIGA:
...provides political risk insurance or guarantees against losses caused by noncommercial risks to facilitate foreign direct investment (FDI) in developing countries.³
- 9.4 The MIGA's mission is to promote foreign investment in developing countries to support economic growth and reduce poverty.
- 9.5 Perceptions of political risk often inhibit foreign direct investment in developing countries. MIGA exists to address these concerns by providing political risk insurance for foreign investments in developing countries and dispute resolution services for guaranteed investments to prevent disruptions to beneficial projects.⁴
- 9.6 According to the IFC, it:
...fosters sustainable economic growth in developing countries by financing private sector investment, mobilizing capital in the international financial markets, and providing advisory services to businesses and governments.
IFC helps companies and financial institutions in emerging markets create jobs, generate tax revenues, improve corporate governance and environmental performance, and contribute to their local communities. The goal is to improve lives, especially for the people who most need the benefits of growth.⁵
- 9.7 The Treaty constitutes four amendments to the MIGA Convention and one amendment to the IFC Agreement.

The amendments

Multilateral Investment Guarantee Agency

- 9.8 The MIGA Board of Directors proposed four amendments to the MIGA Convention in January 2010.⁶
- 9.9 The amendments:

3 Multilateral Investment Guarantee Agency, *MIGA Annual Report 2010*, p. 5.

4 NIA, para. 9.

5 International Finance Corporation, *What We Do*, <<http://www.ifc.org/ifcext/about.nsf/Content/WhatWeDo>> viewed on 14 April 2011.

6 NIA, para. 2.

...do not alter MIGA's core mandate but are aimed at reducing transaction costs and enabling MIGA to insure political risk for projects based on actuarial qualities rather than excluding projects with particular financing structures. These changes were made to allow MIGA to more effectively pursue its development mandate and to respond to the changing demands of MIGA clients.⁷

9.10 To clarify, the four amendments permit MIGA to:

- Allow coverage for stand-alone loans, which MIGA was prohibited from doing. MIGA coverage of loans was only permitted if MIGA was covering a specific investment linked to the loan. The amendments allow MIGA to provide coverage to lenders for loans being made to eligible projects on a stand-alone basis, even when the Agency is not covering a related equity investment. Coverage of stand-alone loans will be allowed if the loan is related to, or finances, a project or investment where other direct investment is present.
- Broaden the process for investor registration. Clients of MIGA were required to file a Preliminary Application before commencing a project. Past experience has shown that clients routinely failed to file a Preliminary Application before investing funds, rendering their investment ineligible for coverage, even if they have discussed their projects with MIGA at an early stage. This amendment has broadened the registration procedure to permit other satisfactory evidence of investor intent in addition to a Preliminary Application.
- Broaden the scope of coverage to existing assets. The MIGA Convention prevented MIGA from covering existing assets. An incoming foreign investor acquiring an existing asset could only obtain MIGA political risk insurance if the acquisition was accompanied by an expansion, modernization or financial restructuring. This prevented MIGA's participation in a large part of the foreign direct investment market. This amendment has allowed MIGA to carry out its work by making investments in existing assets more attractive.
- Eliminate the need for investor and host country requirement to make a joint application to authorise coverage for specific additional non-commercial risks. In the absence of a joint application MIGA could only cover for the following four non-commercial risks: currency transfer; expropriation; war and civil disturbances; and breach of contract. This amendment has allowed the Board to authorise other

7 NIA, para. 5.

non-commercial risks by special majority vote, without the requirement of a joint application of the investor and host government.⁸

- 9.11 In July 2010, Australia voted in favour of the amendments to the MIGA Convention, which were adopted by the MIGA Council of Governors.⁹
- 9.12 The MIGA Convention provides that amendments enter into force for all members 90 days after the Vice President and Corporate Secretary of the World Bank Group certifies that 60 per cent of the total membership and 80 per cent or more of the total voting power of MIGA has accepted the amendments.¹⁰
- 9.13 The World Bank notified Australia of the adoption of the amendments on 16 August 2010 and specified that the MIGA amendments entered into force on 14 November 2010.¹¹

International Finance Corporation

- 9.14 The proposed amendment to the IFC Agreement aims to improve the participation of developing economies in the World Bank by increasing their basic votes. The voting power of each IFC member is the sum of its basic votes, fixed at 250 votes per member, and its share votes, with one vote for each share of IFC stock held.¹²
- 9.15 The principle underlying the allocation of shares in the IFC had been to reflect each new member's relative weight in shareholding at the International Bank for Reconstruction and Development (IBRD), which in turn broadly reflects members' relative position in the world economy.¹³
- 9.16 The amendment should improve the legitimacy of the World Bank by increasing the basic votes of developing economies. The proposed voting reform also allows IFC shareholders to achieve voting power adjustments in both the IBRD and the IFC, taking into account different levels of shareholder interest in and support for the different institutions.¹⁴
- 9.17 The amendment will enter into force for all members three months after the Corporation certifies, by formal communication addressed to all members, that three-fifths of the Governors, exercising 85 per cent of the

8 NIA, para. 12.

9 NIA, para. 2.

10 NIA, para. 2.

11 NIA, para. 2.

12 NIA, para. 6.

13 NIA, para. 6.

14 NIA, para. 6.

total voting power, have accepted the amendment. Since the proposed amendment was endorsed by the Board of Governors of the World Bank at the Development Committee Spring Meeting in April 2010, the Australian Government expects an affirmative vote by the member states.¹⁵

- 9.18 The amendment to the IFC Agreement must be adopted by the IFC Board of Governors, who must have cast their vote on the proposed amendment by 31 March 2011.¹⁶
- 9.19 At the time of writing, there appears to be no public indication from the IFC as to the fate of the proposed amendments.¹⁷

What ratification will mean for Australia

- 9.20 The amendments in this treaty introduce no substantive changes to Australia's obligations to either the IFC or MIGA. Australia's actual IFC shareholding will remain unchanged as a result of the increase in basic votes, while its voting share will decline marginally.¹⁸
- 9.21 According to the NIA, Australia has an interest in seeing these amendments accepted as they will likely improve the effectiveness of the IFC and MIGA in promoting economic and financial stability, international development and poverty reduction.¹⁹

Conclusion

- 9.22 While the Committee supports the changes made by this treaty, this is another example of a treaty for which it is impossible for the Committee to make a meaningful contribution because the amendments foreshadowed in the treaty will have already occurred by the time this report is tabled.
- 9.23 In relation to the MIGA amendments, there was insufficient time between when Australia was notified of the proposed changes and when voting took place on the proposed changes to allow for parliamentary

15 NIA, para. 3.

16 NIA, para. 3.

17 International Finance Corporation, website viewed 14 April 2011.

18 NIA, para. 7.

19 NIA, para. 7.

consideration. In relation to the IFC proposal, the Committee acknowledges that the 2010 Federal Election would probably have prevented the Committee from reaching a view in the available time.

- 9.24 Nevertheless, in future, amendments of this sort should be provided to this Committee before they come into force.

Recommendation 11

The Committee recommends that all future amendments to the *Convention Establishing the Multilateral Investment Guarantee Agency* and *International Finance Corporation Articles of Agreement* be tabled in Parliament in sufficient time for the view of the Parliament to be taken into consideration before the amendments come into force.

Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement

Introduction

- 10.1 The proposed agreement is part of the framework established by the *Australia New Zealand Closer Economic Relations Trade Agreement* (ANZCERTA) [1993] and is designed to remove uncertainties about the enforcement of legal rights on civil proceedings between Australia and New Zealand.¹
- 10.2 Currently, resolution of trans-Tasman legal disputes can be time consuming, expensive and complex. The Agreement aims to streamline the resolution process of civil proceedings by making consistent the civil procedure rules in Australia and New Zealand, in particular, by:
- allowing for the service and enforcement of certain specified tribunal decisions in either country;
 - permitting certain courts to grant interim relief in support of court proceedings in the other country;

¹ *National Interest Analysis* (NIA) [2011] ATNIA 3, Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement, done at Christchurch on 24 July 2008 [2008] ATNIF 12, paras 3–4.

- applying a common test when deciding whether a court in Australia or New Zealand is the most appropriate forum to resolve disputes;
 - allowing certain specified civil penalties and criminal fines to be enforced by the courts of the other country;² and
 - allowing for remote appearances and representation by local legal representatives using video and audio technologies.³
- 10.3 The Agreement is based on Australia's *Service and Execution of Process Act 1992*, which has resolved practical difficulties in resolution of court proceedings between Australian States and Territories.⁴ It is also the product of extensive consultation between the two governments and relevant agencies, which formed a Working Group for consideration in 2003, and has been scrutinised in draft form by legal experts and the public in both nations.⁵
- 10.4 The Committee was informed that this agreement can be expected to benefit businesses, and individuals, by reducing costs and improving efficiency for trade and commerce across the Tasman. Mrs Karen Moore of the Attorney-General's Department stated:
- In 2009, two-way bilateral investment between the two countries totalled \$110 billion and it continues to increase annually. The greater movement of people, assets and services across the Tasman also increases the prospects for litigation with a trans-Tasman element. The implementation of the agreement should reduce the time and costs involved in such litigation.⁶

Matters for resolution

- 10.5 Australia and New Zealand have close historic, political and economic ties, and a high inter-nation migration rate supporting frequent trans-Tasman interactions for family and business purposes. Despite this

2 Mrs Karen Moore, Attorney-General's Department, *Transcript of Evidence*, 28 February 2011, p. 10.

3 Attorney-General's Department, *Supplementary Submission 2.1*; NIA, para. 6.

4 NIA, para. 6.

5 The Working Group's discussion paper was released in 2005, and its report tabled in 2006. A draft agreement followed in 2008, and supporting legislation in 2009. See NIA Consultations, paras 25–28, 32.

6 *Transcript of Evidence*, 28 February 2011, p. 10.

strong relationship, Australia and New Zealand operate as separate nations, within distinct legal systems. This creates particular problems for those doing business, especially where disputes arise that need judicial resolution.

- 10.6 The Attorney General's representative Mr Thomas Johns advised that complications occur because Australia and New Zealand treat each other as foreign nations when negotiating legal matters, and then apply local interpretations:

...there are quite complex private international rules that would apply to these transnational litigation proceedings and tests, for example, that would apply in Australia would apply differently in New Zealand to some of the questions that arise in transnational litigation between the two countries. Service, for example, is one of the issues that we obviously address in this agreement and proceedings on that are much more complicated at the moment because there are no formal arrangements between New Zealand and Australia... in regard to service.⁷

- 10.7 The proposed agreement aims to provide a formal framework, complementary to the ANZCERTA, that will simplify and harmonise civil procedure rules so that the Australian and New Zealand legal systems can operate more seamlessly.⁸

- 10.8 A key initiative under the Agreement is the application of the common test to determine which jurisdiction should deal with a matter. At present, there are two different tests dealing with the jurisdiction of the court, and whether a court should exercise the jurisdiction over a matter. This introduces complexity and uncertainty for parties unsure how the court might find on a particular matter.⁹

- 10.9 Another matter to be addressed was mutual recognition of professional qualifications to support remote court appearances.¹⁰ The Attorney-General's Department confirmed that while legal frameworks for mutual recognition exist,¹¹ the proposed agreement would allow

7 *Transcript of Evidence*, 28 February 2011, p. 11.

8 NIA, para. 5.

9 Mr Thomas Johns, Attorney-General's Department, *Transcript of Evidence*, 28 February, 2011, p. 11.

10 Mrs Moore and Mr Johns, Attorney-General's Department, *Transcript of Evidence*, 28 February 2011, p. 12.

11 Under the *Trans-Tasman Mutual Recognition Act 1997* (Cth) and the *Trans-Tasman Mutual Recognition Act 1997* (NZ). *Supplementary Submission 2.1*, p. [3].

representatives not registered where the court is proceeding to seek leave to appear remotely if registered where their client resides, and to appear remotely without leave on stay of proceedings.¹²

- 10.10 The Agreement will also simplify processes for servicing subpoenas for civil matters, necessitating the repeal of Australia's *Evidence and Procedure (New Zealand Act) 1994* and the *Evidence Act 2006 (NZ)* to avoid duplication on commencement.¹³

Obligations

- 10.11 The Agreement builds on the existing co-operative regime between Australia and New Zealand covering the taking of evidence and associated court procedures, and applies to the land and sea of each party (except Tokelau).¹⁴
- 10.12 Each Party is to recognise the other's judicial and regulatory institutions, and commit to resolution of transnational civil disputes and regulatory corporation. Obligations are set out in five parts, containing 15 articles:
- Part 2 – deals with application of the service process and recognition and enforcement of judgments in civil proceedings. It also sets out exclusions, including on family law, child welfare matters, cases involving power of attorney, or where an order not complied with may lead to a conviction (Articles 3 to 8);
 - Part 3 – requires mutual recognition for enforcement of civil pecuniary penalty orders (Article 9) and enforcement of fines (Article 10);
 - Part 4 – covers remote appearances in civil proceedings (Article 11) and the issue and service of subpoenas (Article 12); and
 - Part 5 – covers consultation over disputes, and sets out mechanisms for treaty amendment, termination and entry into force (Articles 13 to 15 respectively).
- 10.13 With regard to the high level of travel and migration across the Tasman, the Committee established that current obligations applying to family law related matters are excluded from the purview of the Agreement.

12 *Supplementary Submission 2.1*, p. [4].

13 *Supplementary Submission 2.1*, p. [1].

14 Article.1.

10.14 Department representatives informed the Committee that co-operation between Australia and New Zealand on these matters is largely governed by international obligations, including those under the Hague Agreements on child abduction and child maintenance to which both nations are party.¹⁵

Implementation

10.15 The Agreement will enter into force 30 days after the date that the Parties have notified each other of the completion of their respective domestic procedures for compliance with this Agreement.¹⁶

10.16 Australia's *Trans-Tasman Proceedings Act 2010* and the corresponding *New Zealand Trans-Tasman Proceeding Act 2010* (NZ) which implement the Agreement have been passed in each Parliament but will not commence until after the Agreement has entered into force.¹⁷

10.17 Regulations and Orders in Council under each Act must be developed, as appropriate in each jurisdiction, and court rules amended. In Australia the costs of implementation will be met within existing resources.¹⁸

10.18 Department representatives advised the Committee that legislation to implement the Agreement is now almost finalised in both countries, with regulations and amendments to court rules currently being prepared in consultation with stakeholders.¹⁹

Conclusion

10.19 The Committee considers that the proposed agreement on court proceedings and regulatory enforcement is a proper recognition of the strong trade and other ties that exists between Australia and New Zealand. It is the product of high level negotiations between the two nations, close consultation between relevant government agencies and

15 Mr John and Mrs Moore, Attorney-General's Department, *Transcript of Evidence*, 28 February 2011, pp. 11-12.

16 Article 16, NIA, para. 2

17 NIA, para. 2.

18 NIA, para. 20.

19 Mrs Moore, Attorney-General's Department, *Transcript of Evidence*, 28 February 2011, p. 11.

authorities, and has been subject to appropriate independent scrutiny to limit possible unintended consequences.

- 10.20 The Committee notes that enabling legislation for the Agreement is largely in place. The Committee supports the ratification of the treaty as a timely development in Trans-Tasman relations.

Recommendation 12

The Committee supports the *Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement* and recommends binding treaty action be taken.

Council of Europe Convention on Cybercrime

Introduction

- 11.1 The proposed treaty action is for Australia to accede to the Council of Europe *Convention on Cybercrime* (the Convention), which opened for signature in Budapest on 23 November 2001. The Convention entered into force on 1 July 2004.¹ The Council may invite Non-Member States to accede to the Convention. On 20 September 2010 Australia was invited to do so.²
- 11.2 Cybercrime includes criminal activity involving use of computers or computer networks, such as in unlawfully accessing computer data or interfering with computer systems, or where computer use is integral to the offence, such as for the distribution of child pornography via the Internet.³
- 11.3 The *Convention on Cybercrime* is the first international treaty in this area, its main objective being to:

1 *National Interest Analysis* [2011] ATNIA 9, Accession by Australia to the Convention on Cybercrime [2011], ATNIF 5, para. 1.

2 Under Council of Europe, Article 37(1), see NIA, para. 2.

3 NIA, para. 8.

...develop a common criminal policy to combat cyber crime, in particular by adopting appropriate legislation and international co-operation.⁴

- 11.4 The Convention supplements existing agreements promoting co-operation in the penal field between the Council of Europe and other States, with specific reference to the 1989 *United Nations Convention on the Rights of the Child* and the 1999 *International Labour Organization Worst Forms of Child Labour Convention*.⁵
- 11.5 The treaty also contains provisions explicitly requiring that enforcement powers and procedures established under the Convention are to be conducted with respect for fundamental human rights, such as for free expression, the right to access information of all kinds, and the right for privacy and protection of personal data.⁶
- 11.6 To date, over 30 member states and one non-member, the United States, are party to the Convention. Seventeen other nations have signed the Convention, including non-members Canada, Japan and South Africa.⁷

Reasons to support the treaty

- 11.7 Cybercrime is a growing threat to consumers, commensurate with the value and significance of electronic communications as the most efficient, dynamic and prolific global mechanism for social, professional and business communications.⁸
- 11.8 The Committee notes advice that while Australia currently has specific laws targeting cyber crime – including such offences as unauthorised access, modification or impairment of computers, online child exploitation, copyright infringement and online fraud – law enforcers are

4 *Convention on Cybercrime* (the Convention) Budapest, 23.XI.2001, Not yet in force [2011] ATNIF 5, Preamble.

5 *Convention*, Preamble.

6 These rights are preserved under various instruments including the 1950 *Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms*, the 1966 *United Nations International Covenant on Civil and Political Rights*; and the 1981 *Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*.

7 NIA, para. 7.

8 NIA paras 8 and 9.

increasingly challenged by the transnational and dynamic nature of this type of criminal activity.⁹

11.9 Australia's accession to the Convention will complement existing mutual assistance laws, boosting capacity for international co-operation to deal with increasingly sophisticated and diverse forms of computer-related criminal activity.¹⁰

11.10 The Attorney-General's Department cited a recent successful operation against child sex abuse to illustrate the effectiveness of international co-operation against this and other areas of cybercrime, such as fraud and terrorism.¹¹ The Department's representative Mr Geoff McDonald advised:

Operation Rescue, led to the arrest of nearly 200 suspected paedophiles and rescued 230 children. Operation Rescue commenced as an investigation undertaken by the AFP alone. It then spread to a British investigation. In response, the Federal Police and British police formed a joint investigation, which involved sharing intelligence with police in Thailand and the subsequent discovery of a website publishing child abuse material. It then led to other countries: the Netherlands, the involvement of Europol, Canada, Italy, the United States, New Zealand. People were arrested in Chile, Brazil and France.¹²

11.11 The Uniting Church in Australia, Synod of Victoria and Tasmania, wrote to the Committee in support of Australia's accession to the Convention, with particular regard to the need for greater international effort to combat online child sexual abuse.¹³

11.12 The Church's Justice and International Unit suggests that Australia should utilise international co-operation under the Convention to take down notices for child sex abuse sites, noting that Cambridge University studies

9 Attorney-General's Department, Public Consultation Document: *Australia's Proposed Accession to the Council of Europe Convention on Cybercrime*, 15 February 2011, p. 1.

10 NIA, para. 10.

11 Mr McDonald, Attorney-General's Department, *Transcript of Evidence*, Canberra, 25 March 2011, p. 10.

12 Mr McDonald, Attorney-General's Department, *Transcript of Evidence*, Canberra, 25 March 2011, p. 7.

13 The submission cited findings that both commercial and non-commercial child sex abuse domains are widespread, with commercial child sex materials being accessed by two million people globally and peer to peer non-commercial networks generating an estimated 50 000 new child sex images each year. Ref. United Nations' report *The Globalisation of Crime: a Transnational Organised Crime Threat Assessment* (17 June 2010), in the Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 2*, p. 2.

have found that sites threatening commercial bank interests are taken down very quickly by comparison.¹⁴

- 11.13 The *National Interest Analysis* (NIA) to the treaty advised that to vitalise this international co-operation Australia must accept some loss of autonomy, as future policy and law reform should be consistent with that mandated under the Convention. Conversely, failure to accede to the Convention will diminish Australia's capacity to assist non-party states combat offences or processes inconsistent with it, to the detriment of international law enforcement in this area.¹⁵
- 11.14 The Attorney General's representatives emphasised in conclusion that Australia should not underestimate the strategic importance of acceding to the Convention, which has elicited strong support among the international community.¹⁶
- 11.15 The Committee notes that the thirty nations which have ratified or acceded to the Convention, and further 17 which are signatories with intention to ratify it, comprise many major treaty allies with Australia.¹⁷

Obligations

- 11.16 The Convention requires countries to criminalise offences related to computer systems and data, with a view to harmonising domestic criminal laws and reducing barriers to international co-operation.¹⁸
- 11.17 The Convention (Chapter 2, Section 1) provides for national level obligations under four titles, covering:
- Title 1 – offences against the confidentiality, integrity and availability of computer data and systems, including illegal access to computer systems, illegal interception, data interference, systems interference and the misuse of devices;¹⁹

14 T Moore and R Clayton, 'The Impact of Incentives on Notice and Take-down', Computer Laboratory, University of Cambridge, 2008 <<http://www.cl.cam.ac.uk/~rnc1/takedown.pdf>> viewed 21 March 2011.

15 NIA, para. 11.

16 Mr Geoff McDonald, Attorney-General's Department, *Transcript of Evidence*, Canberra, 25 March 2011, p. 14.

17 Ms Catherine Smith, Attorney-General's Department, *Transcript of Evidence*, Canberra, 25 March 2011, p. 13.

18 Convention Preamble.

19 Articles 1 to 6.

- Title 2 – computer-related offences, including forgery and fraud;²⁰
 - Title 3 – content-related offences, including child pornography;²¹ and
 - Title 4 – offences related to infringements of copyrights and related rights.²²
- 11.18 Title 5, Articles 11 to 13 respectively, require Parties to: establish offences for ancillary liability, such as attempting the commission of such offences; ensure that corporate liability applies to the commission of Convention offences; and, that offences are punishable by effective, proportionate and dissuasive sanctions, including imprisonment where appropriate.²³
- 11.19 Section 2 of the Agreement covers the fundamentals of Procedural law, in particular:
- Article 14 – requires parties to establish necessary powers and procedures to investigate and prosecute convention offences; and
 - Article 15 – determines that these powers must be subject to conditions and safeguards contained in applicable human rights instruments.
- 11.20 Procedures to facilitate international crime co-operation and make investigations more efficient under the Convention are at Articles 16 to 21, and enable domestic agencies to:
- order or obtain the expeditious preservation of stored computer data (including associated traffic data) for up to 90 days;
 - enable the disclosure of associated traffic data to allow the identification of service providers involved in the path of the communication;
 - order the production of specific stored computer data, or the production of subscriber information relating to such data held by a service provider;
 - search, access, seize and secure a computer, or part of it, or any computer data stored therein;
 - collect and record traffic data through technical means on a real-time basis; and
 - intercept of communications to investigate specified offences.²⁴

20 Articles 7 and 8.

21 Article 9.

22 Article 10.

23 NIA, para. 15.

24 NIA para. 19.

- 11.21 In Section 3, covering Jurisdiction, Article 22 (2) allows parties the right not to extend jurisdictional coverage of offences in certain circumstances.
- 11.22 According to the NIA for the Convention, Australia intends to make a Reservation to Article 22 (2), in relation to prosecution under Articles 7, 8 and 9 (computer related forgery, computer related fraud, and offences related to child pornography) which is effected under Commonwealth not State and Territory law.²⁵
- 11.23 Chapter 3, Articles 23 to 28 cover general obligations for international co-operation. Article 24 deems Convention Offences, where subject to a penalty of one year imprisonment, are extraditable offences in any extradition treaty between or among the Parties.
- 11.24 Articles 27 and 28, respectively, establish a framework for mutual assistance in circumstances where Parties do not have an existing mutual assistance arrangement, and provide for assurances of confidentiality and restrictions on use of information obtained under those circumstances.
- 11.25 Articles 29 to 34 detail the types of assistance that may be requested between Parties including:
- the preservation of computer data, and associated traffic data, by service providers for both domestic and foreign investigations until an instrument authorising the disclosure is issued, parties may also refuse a request to preserve data in circumstances where the condition of dual criminality cannot be fulfilled;²⁶
 - mutual assistance in the disclosure of traffic data in real time, but only to the extent permitted under applicable treaties and domestic law (Australian legislation does not allow for real-time interception by foreign countries);²⁷ and
 - establishment of a 24 hour, 7 days per week (24/7) point of contact to receive requests and provide assistance for searching and accessing computer data.²⁸

25 NIA paras 27, 36.

26 Article 29.

27 Article 34.

28 Article 35.

Implementation

- 11.26 The Convention requires that parties have appropriate domestic laws in place for criminal enforcement and interception of cybercrime. The Committee was advised that Australia is largely prepared, as domestic law has been progressively reformed to support the Convention. In particular reforms were made to the *Criminal Code Act 1995* in 2000 to address cybercrime offences.²⁹
- 11.27 Accession to the Convention will require further amendments to:
- the *Criminal Code Act 1995* (the Criminal Code) to expand the application of the Commonwealth computer offences to meet the Convention obligations;
 - the *Mutual Assistance in Criminal Matters Act 1987* and the *Telecommunications (Interception and Access) Act 1979* (TIA Act) to enable domestic agencies to preserve and collect traffic data and stored computer data at the request of a foreign country; and
 - the *Copyright Act 1968* in order to meet the Convention's extended jurisdiction obligations.³⁰
- 11.28 The NIA notes that Australia otherwise has capacity to meet international obligations for enforcement, such as in provision of the necessary 24/7 contact point to respond to international requests for assistance through the Australian Federal Police.³¹

Concerns about the Convention

- 11.29 As set out above, Australia's accession to the *Convention on Cybercrime* will require some immediate amendment to existing legislation, and the loss of a degree of autonomy in future domestic law reform to preserve agreement with treaty obligations.³²
- 11.30 A number of concerns were raised in evidence about the potential impact of ratification of this Convention on the integrity of Australia's regulation of computer communications, both in respect of individual rights and

29 Mr McDonald, Attorney-General's Department, *Transcript of Evidence*, Canberra, 25 March 2011, p. 9.

30 NIA, para.

31 NIA, para. 32.

32 NIA, para. 11.

privacy protections and on the capacity of the States and Territories to retain and implement relevant enforcement powers within their jurisdictions.

Privacy and the preservation of data

- 11.31 The Committee received submissions maintaining that the Convention does not contain sufficiently robust privacy and civil liberties protections to offset the increased surveillance and information sharing powers it implements. Of particular concern were powers governing the real-time collection and preservation of computer data.³³
- 11.32 Attorney-General's Department representative Ms Catherine Smith advised that the capacity to access and preserve data is fundamental to the new mutual assistance arrangements:
- Currently telecommunications providers delete text messages or emails after a very short period of time and so the convention has a prevention of the deletion of that information where there is to be a warrant served upon them. It is preserving that data to allow time for mutual assistance requests to go through or, in domestic cases, for the police to obtain a warrant.³⁴
- 11.33 The Department also advised that there is no domestic law supporting this obligation, so current interception legislation must be amended to support this requirement.³⁵
- 11.34 As discussed in more detail below, submissions from the Law Council of Australia and the Pirate Party Australia maintained that there has not been sufficient transparency about the Convention's obligations and procedures to determine whether any necessary legislative amendments will be consistent with Australia's existing privacy regime.³⁶
- 11.35 The Pirate Party Australia, a civil liberties advocacy organisation, had particular concerns about arrangements for mass surveillance and data retention under the Convention:

We agree with the proposition that law enforcement require[s] a coordinating mechanism to enable those agencies to tackle online

33 Articles 20 and 21.

34 Attorney-General's Department, *Transcript of Evidence*, Canberra, 25 March 2011, p. 10.

35 In particular to issue authentication certificates requiring data to be preserved in accordance with domestic or international mutual assistance requests. Ms Smith Attorney-General's Department, *Transcript of Evidence*, Canberra, 25 March 2011, pp. 10-11.

36 Law Council of Australia, *Submission 3*, p. 2 and Pirate Party Australia, *Submission 4*, p. 3.

criminal elements globally, however we should be very mindful that these mechanisms do not throw fundamental freedoms and respect for individual rights and democratic institutions to the wind. We do not accept that combating cybercrime must lead to erosion of fundamental protections of privacy and the protection of personal data.³⁷

- 11.36 Department representatives, however, maintained that these concerns are out of proportion to the actual requirements imposed by the Convention.
- 11.37 Mr McDonald and Ms Smith dispelled concerns about threats to privacy on accessing of the data content of stand-alone computers, noting that warrants would be required and that networked activity would be the principal means of surveillance for detection and enforcement.³⁸
- 11.38 Ms Smith addressed questions about real-time surveillance, emphasising that powers for mass surveillance activities, such as wire tapping or eavesdropping,³⁹ are not enhanced under the Convention as the amendments are limited to telecommunications legislation not Commonwealth or State surveillance device legislation.⁴⁰
- 11.39 Additionally, she advised, Australia would lodge a Reservation to requirements for foreign investigation of real-time data (under Article 14 (3)) to ensure they matched Australian thresholds.⁴¹ In particular, Australian law limits disclosure of real-time traffic data to investigations relating to a criminal offence punishable by at least three years' imprisonment.⁴²
- 11.40 In relation to broader concerns about the lack of appropriate civil liberties protections under the Convention,⁴³ the Committee referred to Convention Article 15, which specifically requires powers and procedures to be exercised in accordance with relevant international human rights instruments. Article 15 (3) also provides that matters be subject to judicial or other supervision:

37 Pirate Party Australia, *Submission 4*, p. 2.

38 Attorney-General's Department, *Transcript of Evidence*, Canberra, 25 March 2011, pp. 9, 10. Australia Patriot Movement, *Submission 1.1*, also raised issues about stand-alone computers.

39 Pirate Party Australia, *Submission 4*, p. 3.

40 Attorney-General's Department, *Transcript of Evidence*, Canberra, 25 March 2011, pp. 11, 15, and see NIA para. 34.

41 Ms Smith, Attorney-General's Department, *Transcript of Evidence*, Canberra, 25 March 2011, pp. 11, 15.

42 NIA paras 25 and 34.

43 Pirate Party Australia, *Submission 4*, p. 2.

To the extent that it is consistent with the public interest, in particular the sound administration of justice, each Party shall consider the impact of the powers and procedures in this section upon the rights, responsibilities and legitimate interests of third parties.

- 11.41 The Committee also acknowledges Departmental advice that further changes to the *Mutual Assistance in Criminal Matters Act 1987*, the *Telecommunications (Interception and Access) Act 1979* (TIA Act) and the *Copyright Act 1968* would be constrained by the constitutional underpinnings of these established Acts, which have strong privacy safeguards and accountability mechanisms.⁴⁴

Jurisdiction issues

- 11.42 The NIA to the Convention notes that ratification of the treaty may have an impact on the State and Territory Governments, as some State and Territory laws do not currently criminalise activity but will be bound by the proposed amendments to the cyber crime offences in the Criminal Code.⁴⁵
- 11.43 Jurisdiction issues are covered in Article 22 (2) which requires that each Party is to 'adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established' for the purposes of the Convention.
- 11.44 As noted, Australia will lodge a Reservation to the Convention with reference to Article 22 (2) to allow for compliance with these obligations under a combination of Commonwealth and State and Territory laws.⁴⁶
- 11.45 The Committee investigated jurisdictional issues raised in relation to the Reservation by the Government of Western Australia. In its submission, the West Australian Government asserted it had extra-territorial legislative competence to make constitutionally valid laws to support the Convention and wanted to be consulted about the drafting of the reservation, and any changes which might affect the State's powers in that regard.⁴⁷

44 Mr McDonald and Ms Smith, Attorney-General's Department, *Transcript of Evidence*, Canberra, 25 March 2011, pp. 9, 13.

45 NIA Consultation, para. 45.

46 NIA, para. 36.

47 Government of Western Australia, *Submission 5*, p. [1].

11.46 In particular, the submission stated:

It is important to note that accession to the Convention should not create further bureaucracy which could act to stifle established links between agencies, particularly those formed at a State level. WA Police already has strong ties with a number of overseas policing agencies and a number of service providers in attempting to tackle cybercrime. It would be detrimental if accession to the Convention were to erode these links.⁴⁸

11.47 The Attorney-General's Department undertook to answer Questions on Notice in relation to this matter. It advised that no extra level of bureaucracy would be entailed under the Convention as all requests for international information will continued to be channelled through the Federal Police's 24/7 response centre.⁴⁹

11.48 The Department also stated that the proposed reservation under Article 22 (2) will address technical issues only, but is necessary to allow for States and Territories to regulate offence obligations, such as for computer related forgery and fraud under Convention articles 7 and 8. Consultation will be undertaken with States and Territories if an impact on their laws is indicated.⁵⁰

11.49 The Attorney General also committed to write to all States and Territories in response to this and other concerns raised in submissions received during recent public consultation on the Convention.⁵¹ In a subsequent supplementary submission on this issue, the Attorney General provided advice received from the Queensland and the Victorian Attorneys-General.⁵²

11.50 The Committee notes that the Victorian Attorney General, the Hon. Robert Clark MP, did not support accession to the Convention at this time, due to concerns that State laws may be invalidated under the Commonwealth Criminal Code and Convention obligations, pending outcomes on cases currently before the High Court.⁵³

48 Government of Western Australia, *Submission 5*, p. [1].

49 Attorney-General's Department, *Submission 6*, Response to Question on Notice 3.

50 Ms Smith, Attorney-General's Department, *Transcript of Evidence*, Canberra, 25 March 2011, p. 15, and Attorney-General's Department, *Submission 6*, Response to Question on Notice 4.

51 Attorney-General's Department, *Submission 6*, Response to Question on Notice 2.

52 Attorney-General's Department, *Submission 6*. 1.

53 viz: *Dickson v The Queen* [210] HCA 30; 9210) 270 ALR1, attachment to Attorney-General's Department, *Submission 6*. 1.

- 11.51 In response, the Commonwealth Attorney General advised that Convention obligations would be substantially met under existing Commonwealth laws, although an amendment to Part 10.7 of the Criminal Code – to remove current requirements for offending to involve use of a carriage service, Commonwealth computer or data – would be necessary to close gaps in State and Territory laws.
- 11.52 The Attorney General observed that this incremental expansion of the Commonwealth offences to fully implement the Convention’s obligations would not, however, have a substantive effect on State and Territory offences, given:
- Part 10.7 of the Criminal Code contains a savings clause that explicitly provides that the commonwealth computer offences are not intended to limit or exclude the operation of any law of a State or Territory. This savings clause will continue to apply.⁵⁴

Concerns about the review process

- 11.53 Prior to the tabling of the Convention on Cybercrime in Parliament, the Attorney General the Hon. Robert McClelland MP issued a consultation paper on Australia’s accession to the Convention on 18 February 2011, asking for comment by 14 March 2011.⁵⁵
- 11.54 The document, entitled *Australia’s Proposed Accession to the Council of Europe Convention on Cybercrime* (15 February 2011), provided an introduction and background to the Convention and the treaty process, an outline of obligations (along the lines of that set out in the NIA for the treaty) and some reasons to support the accession.⁵⁶
- 11.55 On 21 February 2011 the Attorney General wrote to the Committee’s Chairman stating that he believed it would be in the national interest that enabling legislation for the treaty be introduced during the Autumn sittings, and before the Committee had an opportunity to review the Treaty. The Treaty was tabled on 1 March 2011.

54 Attorney-Generals’ Department, *Submission 6. 1*.

55 Attorney General and Minister for Home Affairs and Justice the Hon Brendan O’Connor, ‘Public Consultation on International Convention on Cybercrime’, *Joint Media Release*, 18 February 2011.

56 Attorney-General’s Department, *Proposed Accession to the Council of Europe Convention on Cybercrime* <http://www.ema.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews_ProposedAccessiontotheCouncilofEuropeConventiononCybercrime>viewed at 14 April 2011.

- 11.56 The Law Council of Australia was critical of the fact that the Committee's inquiry process overlapped with the Attorney-General Department's consultation on the Convention. It considered the overall inquiry time insufficient overall and notes that lack of detail on proposed legislative changes to support the Convention may result in changes being introduced as a *fait accompli*, without proper scrutiny.⁵⁷
- 11.57 The Committee notes that a draft of the treaty was initially released in 2000, and well in advance of Australia announcing its intention to sign the Convention in May 2010.⁵⁸
- 11.58 However, the Pirate Party of Australia criticised the drafting and formulation of the Convention which it considered was 'opaque and undemocratic', maintaining:
- Even after the release of the draft, and with public consultation, very little substantive change was made to the document and there has been very little in way of acknowledgement to the concerns of privacy and human rights organisations. To submit to a treaty, the draft of which was conducted with such disregard for the democratic and participatory process, condones this process of lawmaking.⁵⁹

Conclusion

- 11.59 The Committee recognises that cybercrime constitutes a growing threat in a century where computer-based networks have become the most vital and innovative means of communicating and doing business.
- 11.60 The global and dynamic nature of the medium necessitates a commensurate need for more sophisticated networks of communication and co-operation between nations to regulate the growth and diversification of criminal activity in cyberspace.
- 11.61 The Committee is also aware that the surveillance of computer-based communications and data storage by law enforcers raises fears about the invasion of privacy, with potential threat to human rights and civil liberties.

57 *Submission 3*, pp. 1-2.

58 'Australia to Sign Cyber Treaty', *ITNews for Australian Business* <http://www.itnews.com.au/News/173461_australia-to-sign-international-cybercrime-treaty.aspx> viewed 12 April 2011.

59 *Submission 4*, p. 5.

- 11.62 The Convention itself does, however, contain guarantees for human rights protection and judicial review, and there is reason to be confident that these protections will be enforced: the framework of domestic law effected by Australia's accession to the Council of Europe *Convention on Cybercrime* provides robust privacy safeguards and accountability mechanisms.
- 11.63 Notwithstanding these assurances, the Committee holds concerns about the lack of transparency in the review process for this important treaty, in particular, the lack of timely advice to the Committee and the lack of public exposure and certainty about necessary amendments to support Convention obligations.
- 11.64 With reference to this, the Committee supports binding treaty action being taken but also recommends the Attorney-General's Department should report to the Committee on the content and purpose of any proposed amendments.

Recommendation 13

The Committee supports Australia's accession to the Council of Europe *Convention on Cybercrime* and recommends binding treaty action be taken.

Recommendation 14

The Committee recommends that the Attorney General report to the Committee on any proposed amendments to Commonwealth or State and Territory law in support of the Council of Europe *Convention on Cybercrime*.

Kelvin Thomson MP

Chair



Dissenting Report—Coalition Members and Senators

The Coalition Members and Senators of the Treaties Committee dissent from the recommendations of the Committee majority found in the three International Labour Organisation (ILO) treaties.

- *International Labour Organisation Protocol of 2002 to Convention No. 155 concerning Occupational Safety and Health and the Work Environment (the Occupational Safety and Health Protocol);*
- *International Labour Organisation Convention No. 175: Part Time Work (the Part Time Work Convention); and*
- *International Labour Organisation Convention No. 186: Maritime Labour Convention (the Maritime Labour Convention).*

The Coalition members wish to note the undue haste displayed by the Committee to particularly have the ILO conventions ratified. There has been minimal time for members to review the report regarding such important treaties with significant ramifications in the area of labour relations. Moreover greater opportunity ought to be given for scrutiny by the relevant State Governments and employer groups.

The Occupational Safety and Health Protocol

The report is out of date when it states “all State and Territory Governments have formally agreed to the ratification of the protocol.”

Since any hearings or communications with the State Governments by the Committee there have been two new State Governments elected, namely Victoria and New South Wales. It is therefore prudent to now consult the representatives of these State Governments.

The Part Time Work Convention

The Committee had only a briefing from the Department of Education, Employment and Workplace Relations. The recommendation to ratify the treaty is narrowly based upon the single presentation before the Committee by the Department of Education, Employment and Workplace Relations. The report does not indicate the support of any of the main employer groups or the two newly elected State Governments (Victoria and New South Wales).

The Maritime Labour Convention

The Convention attracted serious concerns from the Australian Shipowners' Association in regard to their ability to properly train cadets and the increased expense in regard to training cadets under the Convention.

The Committee was informed that the Government has entered dialogue to resolve the concerns expressed therefore it would be premature to recommend that binding treaty action be taken until such dialogue has been successfully completed.

Senator Julian McGauran

Deputy Chair



Appendix A — Submissions

Treaties referred on 16 November 2010

- 1 Oxfam Australia
- 1.1 Oxfam Australia
- 3.1 Department of Infrastructure and Transport
- 4 Department of Foreign Affairs and Trade
- 4.1 Department of Foreign Affairs and Trade
- 8 Council of Textile and Fashion Industries of Australia Ltd (TFIA)
- 8.1 Council of Textile and Fashion Industries of Australia Ltd (TFIA)
- 13 Attorney-General's Department

Treaties referred on 16 November 2010 *(previously tabled on 15 & 16 June 2010)*

- 1.4 Australian Patriot Movement
- 1.6 Australian Patriot Movement
- 1.7 Australian Patriot Movement

Treaties referred on 16 November 2010 *(previously tabled on 21 June 2010)*

- 1 Australian Patriot Movement

Treaties tabled on 24 and 25 November 2010

- 1 Australian Patriot Movement
- 1.1 Australian Patriot Movement

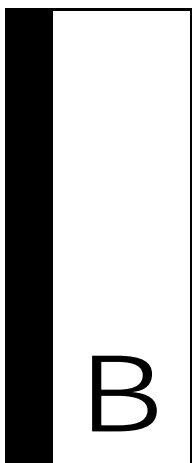
- 1.2 Australian Patriot Movement
- 1.6 Australian Patriot Movement
- 2 Sydney Seafarers Centre
- 3 Shipping Australia Ltd (SAL)
- 4 The Australian Institute of Marine and Power Engineers (AIMPE)
- 5 The Maritime Union of Australia
- 6 Australian Shipowners Association (ASA)
- 7 Australian Council of the Mission to Seafarers Inc.

Treaties tabled on 9 February 2011

- 1 Australian Patriot Movement
- 1.4 Australian Patriot Movement
- 2.1 Attorney-General's Department
- 3 Department of Treasury

Treaties tabled on 1 March 2011

- 1.1 Australian Patriot Movement
- 2 Uniting Church in Australia, Synod of Victoria and Tasmania
- 3 Law Council of Australia
- 4 Pirate Party Australia
- 5 Government of Western Australia
- 6 Attorney-General's Department
- 6.1 Attorney-General's Department



Appendix B — Witnesses

Monday, 22 November 2010 - Canberra

Department of Foreign Affairs and Trade

Mr Roy Clogstoun, Executive Officer, New Zealand Section

Wednesday, 2 February 2011 - Melbourne

Council of Textile and Fashion Industries of Australia Ltd (TFIA)

Ms Jo-Ann Kellock, Chief Executive Officer

Oxfam Australia

Mr Jeffrey Atkinson, Trade Adviser

Mr Wesley Morgan, Pacific Trade Advocacy Co-ordinator

Stafford Group Pty Ltd

Mr Peter Waddell, Chief Financial Officer

Monday, 7 February 2011 - Canberra

Attorney-General's Department

Ms Helen Daniels, Assistant Secretary, Business Law Branch, Civil Law Division

Ms Debrah Pono, Acting Principal Legal Officer, Business Law Branch

Department of Foreign Affairs and Trade

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

Friday, 25 February 2011 - Canberra

Civil Aviation Safety Authority

Ms Louise Brooks, Acting Manager, Foreign Agencies Programs, Office of the Director of Aviation Safety

Mr Rick Leeds, Manager, Airworthiness and Engineering, Standards Development and Future Technology

Mr David Villiers, Manager, Initial Airworthiness, Airworthiness and Engineering, Standards Development and Future Technology

Department of Foreign Affairs and Trade

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

Department of Infrastructure and Transport

Mr Scott Stone, General Manager, Aviation Environment Branch, Aviation and Airports Division

Monday, 28 February 2011 - Canberra

Attorney-General's Department

Mr Thomas John, Acting Principal Legal Officer, Private International Law Section, Justice Policy Branch, Access to Justice Division

Mrs Karen Moore, Assistant Secretary, Justice Policy Branch, Access to Justice Division

Department of Foreign Affairs and Trade

Mr Roy Clogstoun, Executive Officer, New Zealand Section

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

Department of Treasury

Mr Patrick Colmer, General Manager, International Finance and Development Division

Ms Lynne Thompson, Senior Adviser, Development Banks Unit, International Finance and Development Division

Monday, 21 March 2011 - Canberra

Australian Maritime Safety Authority

Mr Paul MacGillivray, Principal Officer, Seafarer and Ship Safety Management, Ship Operations and Qualifications, Maritime Operations Division

Mr Allan Schwartz, General Manager, Maritime Operations Division

Department of Education, Employment and Workplace Relations

Ms Flora Carapellucci, Branch Manager, Occupational Health and Safety Harmonisation Project Branch, Workplace Relations Implementation and Safety Group

Ms Louise McDonough, Branch Manager, International Labour and Consultation Branch, Workplace Relations Policy Group

Mr Jamie Milton, Acting Assistant Director, International Labour Standards Section, International Labour and Consultation Branch, Workplace Relations Policy Group

Ms Prudence Mooney, Assistant Director, International Labour Standards Section, International Labour and Consultation Branch, Workplace Relations Policy Group

Department of Foreign Affairs and Trade

Ms Catherine Johnstone, Acting Assistant Secretary, United States Branch, Americas and Africa Division

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

Department of Infrastructure and Transport

Mr Robert Alchin, Safety, Environment and Liner Shipping Section, Maritime Policy Reform Branch, Surface Transport Policy Division

Department of Innovation, Industry, Science and Research

Mr Alan Coleman, Manager, TCF Policy Group, Competitive Industries Branch, Manufacturing Division

Department of Sustainability, Environment, Water, Population and Communities

Ms Deb Callister, Acting Assistant Secretary, Wildlife Branch, Approvals and Wildlife Division

Friday, 25 March 2011 - Canberra

Australian Maritime Safety Authority

Mr Toby Stone, General Manager, Marine Environment Division

Department of Infrastructure and Transport

Ms Poh Aye Tan, Section Head, Maritime Safety, Environment and Liner Shipping

Attorney-General's Department

Ms Helen Daniels, Assistant Secretary, Business Law Branch, Civil Law Division

Mr Geoff McDonald, First Assistant Secretary, National Security Law and Policy Division

Ms Debrah Pono, Senior Legal Officer, Business Law Branch

Ms Catherine Smith, Assistant Secretary, Telecommunications and Surveillance Law Branch

Department of Foreign Affairs and Trade

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

Mr Peter Scott, Director, Sanctions and Transnational Crime Section, International Legal Branch, International Organisations and Legal Division



Appendix C —Maritime Labour Convention Minimum Working Conditions for Seafarers¹

Minimum requirements for seafarers to work on a ship

The minimum requirements for working on a ship are:

- no under-age persons work on a ship;
- all seafarers shall hold medical certificates attesting that they are medically fit to perform their duties at sea;
- seafarers are trained or qualified to carry out their duties on board ship; and
- seafarers have access to an efficient well regulated seafarers recruitment and placement system

Conditions of employment

Seafarers will:

- be employed under written, legally enforceable employment agreements that contain prescribed details and particulars;
- be paid for their services in accordance with their employment agreements;
- have regulated hours of work and hours of rest;
- have adequate annual and shore leave entitlements;
- be able to return home at no cost to themselves in prescribed circumstances;
- be compensated for injury, loss or unemployment when a ship is lost or has foundered; and
- work on board ships with sufficient personnel for the safe, efficient and secure operation of the ship.

¹ Information for Appendix C had been obtained from Annexure 3 of the Maritime Labour Convention *National Interest Analysis*.

Seafarers should also have access to career and skill development and employment opportunities for seafarers.

Accommodation, recreational facilities, food and catering

Seafarers will:

- have decent accommodation and recreational facilities on board; and
- have access to good quality food and drinking water provided under regulated hygienic conditions.

Health protection, medical care, welfare and social security protection

Seafarers will:

- have prompt access to adequate medical care on board ship and ashore;
- have the right to material assistance from shipowners for the financial consequences of sickness, injury or death while they are serving under an employment agreement;
- are provided with occupational health and safety protection;
- have access to shore-based welfare facilities where they exist; and
- have access to social security protection.

Compliance and enforcement

Signatory states must:

- implement their responsibilities under the Maritime Labour Convention with respect to ships that fly their flags;
- implement their responsibilities under the Maritime Labour Convention regarding international cooperation in the implementation and enforcement of Maritime Labour Convention standards on foreign ships; and
- implement their responsibilities under the Maritime Labour Convention pertaining to seafarers' recruitment and placement and the social protection of seafarers.