

# Report 132

## **Treaties tabled on 18 September and 30 October 2012**

Agreement Establishing the African Development Fund done at Abidjan, Côte d'Ivoire on 29 November 1972 amended [2012]

Agreement Establishing the African Development Bank done at Khartoum, Sudan on 4 August 1963 as amended [2012]

Loan Agreement between Australia and the International Monetary Fund (not yet signed) [2012]

Agreement between the Government of Australia and the Government of Japan on the Security of Information (Tokyo, 17 May 2012)

2012 Amendments to Annex I of the International Convention Against Doping in Sport of 19 October 2005

Amendments, adopted at London on 24 May 2012, to the Protocol of 1988 relating to the International Convention on Load Lines, 1966, as amended (Resolution MSC.329(90))

Amendments, adopted at London on 24 May 2012, to the International Convention for the Safety of Life at Sea, 1974, as amended (Resolution MSC.325(90))

Amendment, adopted on 1 October 1999, to Article XIV.A of the Statute of the International Atomic Energy Agency (IAEA) (Resolution GC(43)/RES/8)

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## Membership of the Committee

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*(from 14/2/13)*

Mr Kelvin Thomson MP  
*(until 6/2/13)*

Deputy Chair   Senator Bridget McKenzie

Members        Mr Jamie Briggs MP *(until 9/10/12)*        Senator David Fawcett

The Hon Justine Elliot MP  
*(from 6/2/13)*                                        Senator Scott Ludlam

Mr Laurie Ferguson MP  
*(until 20/9/12)*                                     Senator the Hon Lisa Singh

Mr John Forrest MP                             Senator Dean Smith

Ms Sharon Grierson MP                        Senator Matthew Thistlethwaite  
*(until 13/2/13)*

Mr Harry Jenkins MP                            Senator the Hon Lin Thorp

Ms Kirsten Livermore MP

The Hon Robert McClelland MP  
*(from 20/9/12)*

Ms Melissa Parke MP *(until 6/2/13)*

Mrs Jane Prentice MP (*from 9/10/12*)

The Hon Dr Sharman Stone MP

Mr Mike Symon MP (*from 6/2/13*)

## Committee Secretariat

Secretary	Russell Chafer
Inquiry Secretary	Kevin Bodel
	Dr Andrew Gaczol
	Katie Ellis
Administrative Officers	Heidi Lushtinetz
	Dorota Cooley





## Resolution of Appointment

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

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



## List of recommendations

- 2 **Agreement Establishing the African Development Fund done at Abidjan, Côte d'Ivoire on 29 November 1972 as amended [2012]**

**Agreement Establishing the African Development Bank done at Khartoum, Sudan on 4 August 1963 as amended [2012]**

### Recommendation 1

The Committee supports the *Agreement Establishing the African Development Fund done at Abidjan, Côte d'Ivoire on 29 November 1972 as amended [2012]* and recommends that binding treaty action be taken.

### Recommendation 2

The Committee supports the *Agreement Establishing the African Development Bank done at Khartoum, Sudan on 4 August 1963 as amended [2012]* and recommends that binding treaty action be taken.

- 3 **Loan Agreement between Australia and the International Monetary Fund (not yet signed) [2012]**

### Recommendation 3

The Committee supports the *Loan Agreement between Australia and the International Monetary Fund (not yet signed) [2012]* and recommends that binding treaty action be taken.

**4 Agreement between the Government of Australia and the Government of Japan on the Security of Information (Tokyo, 17 May 2012)**

**Recommendation 4**

The Committee supports the *Agreement between the Government of Australia and the Government of Japan on the Security of Information (Tokyo, 17 May 2012)* and recommends that binding treaty action be taken.



## Introduction

### Purpose of the report

- 1.1 This report contains the Joint Standing Committee on Treaties' review of treaty actions tabled on 18 September 2012 and 30 October 2012.
- 1.2 These treaty actions are proposed for ratification and are examined in the order of tabling:
  - **Tabled 18 September 2012**
    - ⇒ *Agreement Establishing the African Development Fund done at Abidjan, Côte d'Ivoire on 29 November 1972 as amended [2012]*
    - ⇒ *Agreement Establishing the African Development Bank done at Khartoum, Sudan on 4 August 1963 as amended [2012]*
  - **Tabled 30 October 2012**
    - ⇒ *Loan Agreement between Australia and the International Monetary Fund (not yet signed) [2012]*
    - ⇒ *Agreement between the Government of Australia and the Government of Japan on the Security of Information (Tokyo, 17 May 2012)*
  - **Minor Treaty Actions**
    - ⇒ *2012 Amendments to Annex I of the International Convention Against Doping in Sport of 19 October 2005*
    - ⇒ *Amendments, adopted at London on 24 May 2012, to the Protocol of 1988 relating to the International Convention on Load Lines, 1966, as amended (Resolution MSC.329(90))*

- ⇒ *Amendments, adopted at London on 24 May 2012, to the International Convention for the Safety of Life at Sea, 1974, as amended (Resolution MSC.325(90))*
  - ⇒ *Amendment, adopted on 1 October 1999, to Article XIV.A of the Statute of the International Atomic Energy Agency (IAEA) (Resolution GC(43)/RES/8)*
- 1.3 The Committee's resolution of appointment empowers it to inquire into any treaty to which Australia has become signatory, on the treaty being tabled in Parliament.
- 1.4 The treaties, and matters arising from them, are evaluated to ensure that ratification is in the national interest, and that unintended or negative effects on Australians will not arise.
- 1.5 Prior to tabling, major treaty actions are subject to a *National Interest Analysis* (NIA), prepared by Government. This document considers arguments for and against the treaty, outlines the treaty obligations and any regulatory or financial implications, and reports the results of consultations undertaken with State and Territory Governments, Federal and State and Territory agencies, and with industry or non-government organisations.
- 1.6 A Regulation Impact Statement (RIS) may accompany the NIA. The RIS provides an account of the regulatory impact of the treaty action where adoption of the treaty will involve a change in the regulatory environment for Australian business. The treaties examined in this report do not require an RIS.
- 1.7 The Committee takes account of these documents in its examination of the treaty text, in addition to other evidence taken during the inquiry program.
- 1.8 Copies of each treaty and its associated documentation may be obtained from the Committee Secretariat or accessed through the Committee's website at:  
[http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=jsct/under\\_review.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/under_review.htm)

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

- 1.9 The treaty actions reviewed in this report were advertised on the Committee's website from the date of tabling. Submissions for the treaties

tabled on 18 September were requested by Friday, 19 October 2012 and submissions for those tabled on 30 October were requested by Friday, 23 November 2012 with extensions available on request.

- 1.10 Invitations were made to all State Premiers, Territory Chief Ministers and to the Presiding Officers of each Parliament to lodge submissions. The Committee also invited submissions from individuals and organisations with an interest in the particular treaty under review.
- 1.11 The Committee examined the witnesses on each treaty at a public hearing held in Canberra on Monday, 26 November 2012.
- 1.12 Transcripts of evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee's website under the treaty's tabling date, being:
  - **18 September 2012**  
<[http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=jsct/18september/hearings.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/18september/hearings.htm)>
  - **30 October 2012**  
<[http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=jsct/30october/hearings.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/30october/hearings.htm)>
- 1.13 A list of witnesses who appeared at the public hearing is at Appendix A
- 1.14 A list of submissions received and their authors is at Appendix B.





Agreement Establishing the African Development Fund done at Abidjan, Côte d'Ivoire on 29 November 1972 as amended [2012]

Agreement Establishing the African Development Bank done at Khartoum, Sudan on 4 August 1963 as amended [2012]

## Multilateral Development Banks

- 2.1 Multilateral development banks are financial institutions that provide financial support and professional advice for economic and social development activities in developing countries.<sup>1</sup>
- 2.2 The term 'multilateral development banks' typically refers to the World Bank Group and the following four Regional Development Banks:
  - the African Development Bank;
  - the Asian Development Bank;
  - the European Bank for Reconstruction and Development; and
  - the Inter-American Development Bank Group.<sup>2</sup>

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1 World Bank, *Affiliates* < <http://go.worldbank.org/CGC782MDY0> >, accessed 7 December 2012.

2 World Bank, *Affiliates* < <http://go.worldbank.org/CGC782MDY0> >, accessed 7 December 2012.

- 2.3 These financial institutions are characterised by a broad membership, including both borrowing developing countries and developed donor countries. Membership of these institutions is not limited to countries from the region in which the institution is based.<sup>3</sup>
- 2.4 Each financial institution has its own independent legal and operational status. However, given that these institutions all have a similar mandate and a considerable number of members in common, the multilateral development banks maintain a high level of cooperation.<sup>4</sup>
- 2.5 Australia has for some time been a member of the Asian Development Bank<sup>5</sup> and the European Bank for Reconstruction and Development.<sup>6</sup> The proposed treaty action being considered here will make Australia a member of the African Development Bank and its subsidiary, the African Development Fund.<sup>7</sup>

## The African Development Bank

- 2.6 The African Development Bank (the Bank) was first established in 1964 with a membership of 20 newly independent African countries. The Bank began with a capital stock of US\$250 million and a staff of ten.<sup>8</sup>
- 2.7 The objective of the Bank is to:
- ...support the economic development and social progress of African countries individually and collectively, by promoting investment of public and private capital in projects and programs designed to reduce poverty and improve living conditions.<sup>9</sup>
- 2.8 The Bank's efforts are focussed on mobilising internal and external resources to promote investment and provide technical assistance to

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3 World Bank, *Affiliates* < <http://go.worldbank.org/CGC782MDY0> >, accessed 7 December 2012.

4 World Bank, *Affiliates* < <http://go.worldbank.org/CGC782MDY0> >, accessed 7 December 2012.

5 Asian Development Bank, *Members* < <http://www.adb.org/about/members>>, accessed 7 December 2012.

6 European Bank for Reconstruction and Development, *Our shareholders* <<http://www.ebrd.com/pages/about/who/shareholders.shtml> >, accessed 7 December 2012.

7 National Interest Analysis [2012] ATNIA 23 with attachment on consultation, *Agreement Establishing the African Development Fund, done at Abidjan on 29 November 1972, as amended* [2012] ATNIF 17, and *Agreement Establishing the African Development Bank, done at Khartoum on 4 August 1963, as amended* [2012] ATNIF 18, (Hereafter referred to as 'NIA') , para 1.

8 African Development Bank (AfDB), 2012, *AfDB in Brief*, p 4.

9 AfDB, 2012, *AfDB in Brief*, p 4.

African countries. Resources are usually provided through bilateral or multilateral cooperation with other development agencies.<sup>10</sup>

2.9 The Bank's resources come from ordinary and special resources. Ordinary resources comprise:

- the subscribed shares of the authorised capital, a portion of which is subject to call in order to guarantee Bank borrowing obligations;
- funds received in repayment of Bank loans;
- funds raised through Bank borrowings on international capital markets;
- income derived from Bank loans; and
- other income received by the Bank, e.g. income from other investments.<sup>11</sup>

2.10 The Bank's special resources come from administering and managing special funds which are consistent with its purposes and functions, including:

- the African Development Fund (discussed in detail below);
- the Arab Oil Fund;
- the Special Emergency Assistance Fund for Drought and Famine in Africa;
- the Special Relief Fund.<sup>12</sup>

2.11 In December 2011, the Bank's authorised capital stood at US\$101.4 billion.<sup>13</sup> Currently, the Bank maintains a AAA credit rating.<sup>14</sup>

2.12 The Bank's institutional structure consists of a Board of Governors that issues general directives concerning the policies of the Bank. Each member country has a Governor on the Board.<sup>15</sup>

2.13 Everyday management of the Bank is conducted by the Bank's Board of Directors. The Bank has 20 Directors, 13 of whom are from African countries and seven of whom are from non-regional member countries.<sup>16</sup>

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10 AfDB, 2012, *AfDB in Brief*, p 4.

11 AfDB, *The African Development Bank*, < <http://www.afdb.org/en/about-us/african-development-bank-afdb/> > accessed 5 November 2012.

12 AfDB, *The African Development Bank*, < <http://www.afdb.org/en/about-us/african-development-bank-afdb/> > accessed 5 November 2012.

13 AfDB, 2012, *AfDB in Brief*, p 7.

14 AfDB, 2012, *AfDB in Brief*, p 5.

15 AfDB, 2012, *AfDB in Brief*, p 9.

16 AfDB, 2012, *AfDB in Brief*, p 9.

## Membership

- 2.14 For the first 19 years of its existence, only African nations were eligible for membership of the Bank. By 1982 it was clear that the bank's limited financial resources were insufficient to meet the growing demand for investment from African countries. Consequently, membership was opened to non-regional members.<sup>17</sup>
- 2.15 With a larger membership, the Bank was able to contribute to the economic and social development of its regional members countries through low interest loans. The larger membership also increased the expertise of the Bank and improved access to regional markets for companies from non-regional members.<sup>18</sup>
- 2.16 While permitting wider membership, the Bank maintains an African focus, being located in and investing only in Africa. Its President is also always an African.<sup>19</sup>
- 2.17 The Bank's *Annual Report 2011* claims a membership of 78 countries, including 53 African countries and 25 non regional countries.<sup>20</sup> Non regional members include not only most of the developed industrial economies, notably 17 Organisation for Economic Co-operation and Development (OECD) countries, but also a number of OPEC countries as well as some middle income South American and Asian countries.<sup>21</sup>
- 2.18 Since the publication of the *Annual Report 2011*, South Sudan has also become a member.<sup>22</sup>

## African Development Fund

- 2.19 To become a member of the Bank, non-regional countries must first become members of the African Development Fund (the Fund).<sup>23</sup>
- 2.20 The Fund was established in 1972, by the Bank and 13 non regional countries. The Fund emerged as the solution to the Bank's limited resources and the nature and terms of the loans the Bank made to the poorest African countries, particularly for projects with long-term maturities or non-financial returns such as roads, education and health.<sup>24</sup>

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17 AfDB, 2012, *AfDB in Brief*, p 5.

18 AfDB, 2012, *AfDB in Brief*, p 5.

19 AfDB, 2012, *AfDB in Brief*, p 5.

20 African Development Bank (AfDB), *Annual Report 2011*, pvi.

21 AfDB, 2012, *AfDB in Brief*, p 5.

22 AfDB, *Member Countries*, < <http://www.afdb.org/en/about-us/members/>>, accessed on 3 December 2012.

23 AfDB, 2012, *AfDB in Brief*, p 5.

24 AfDB, 2012, *AfDB in Brief*, p 3.

- 2.21 The Fund's primary purpose is to contribute to the promotion of economic and social development in 40 least developed African countries by providing concessional funding for projects and programs, as well as technical assistance for studies and capacity-building.<sup>25</sup>
- 2.22 No interest is charged on Fund loans; however, the loans carry a service charge of 0.75 per cent per annum on outstanding balances, and a commitment fee of 0.50 per cent per annum on undisbursed commitments. Project loans have a 50-year repayment period, including a 10-year grace period. Lines of credit have a 20-year repayment period with a five-year grace period.<sup>26</sup>
- 2.23 The Fund's resources come from:
- subscription by State Participants usually on a three year basis;
  - subscription by the Bank;
  - funds derived from operations accruing to the Fund; and
  - other resources received by the Fund.<sup>27</sup>
- 2.24 In December 2011, the fund's resources amounted to US\$27.5 billion.<sup>28</sup>
- 2.25 The Bank's Board of Governors is also responsible for the policy direction of the Fund. The Fund is run by a Board of 14 Directors, seven each from African countries and non regional member countries.<sup>29</sup>

## Overview and national interest summary

- 2.26 Between 2001 and 2010, Africa's economic growth outstripped the global average, with total Gross Domestic Product of all African nations growing by an annual average of 5.2 per cent.<sup>30</sup>
- 2.27 However, Africa is the continent with the highest proportion of people living in extreme poverty. By 2015, 40 per cent of the world's extreme

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25 AfDB, *African Development Fund* <<http://www.afdb.org/en/about-us/african-development-fund-adf/>> accessed 5 November 2012.

26 AfDB, *African Development Fund* <<http://www.afdb.org/en/about-us/african-development-fund-adf/>> accessed 5 November 2012.

27 AfDB, 2012, *AfDB in Brief*, p 7.

28 AfDB, 2012, *AfDB in Brief*, p 7.

29 AfDB, 2012, *AfDB in Brief*, p 9.

30 NIA, para 14.

poor are expected to be living in Africa. Sub-Saharan Africa is the region least likely to meet the Millennium Development Goals.<sup>31</sup>

- 2.28 According to the Australian Agency for International Development (AusAID), Australia's decision to seek membership of the Bank follows the results of four reviews:
- the Independent Review of Aid Effectiveness, which was intended to ensure that Australia's increased aid budget was delivered efficiently and effectively. The independent review recommended that Australia join the Bank to ensure aid was delivered effectively through partners that focus on Africa;
  - the Australian Multilateral Assessment, an evidence based assessment of the effectiveness of the Australian aid program's multilateral partners and their relevance to Australia's interests;
  - the 2011 United Kingdom Multilateral Aid Review, an United Kingdom equivalent of the Australian Multilateral Assessment; and
  - Multilateral Organisation Performance Assessment Network, a network of 16 donor countries with an interest in determining the most effective multilateral aid organisations.<sup>32</sup>

## **Reasons for Australia to take the proposed treaty action**

- 2.29 The following summary of the proposed treaty action and its benefits is taken from the National Interest Analysis (NIA).
- 2.30 AusAID argued that the results of the abovementioned reviews indicated that the Bank and Fund would be effective partners that focussed on areas critical to Australia's national interest.<sup>33</sup> Further, the Bank and Fund's priorities are well aligned with the aid program's strategic goals as set out in Australia's Comprehensive Aid Policy Framework<sup>34</sup> and also with Australia's current approach to delivering aid in Africa.<sup>35</sup>
- 2.31 According to AusAID, while other groups work in a similar or expanded space, such as the World Bank, simply increasing project level funding to such organisations would not advance Australia's interests to the same

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31 NIA, para 14.

32 Mr Paul Griffiths, Assistant Director-General, Multilaterals and Bilateral Partnerships Branch, AusAID, *Committee Hansard*, 26 November 2012, p. 1.

33 NIA, para 10.

34 AusAID, *Australia's Comprehensive Aid Policy Framework* <<http://www.ausaid.gov.au/makediff/Pages/capf.aspx>>, accessed 5 November 2012.

35 NIA, para 7.

extent as membership of the Bank, nor would increasing levels of project funding be likely to help Australia's reciprocal global agenda to the same degree, as these options would not provide Australia with any degree of representation or influence over policy and programming in Africa.<sup>36</sup>

2.32 Other potential partners, including civil society groups, simply cannot operate on the scale or in the range of areas that the Bank works.<sup>37</sup>

2.33 Membership would place Australia in a good position to participate in and influence Africa's development through a respected and credible regional institution. The Bank has demonstrated that it is a valuable contributor to Africa's development and, according to AusAID, Australia's own assessment supports this. The Australian Multilateral Assessment concluded that:

..the Australian Government can have a reasonably high degree of confidence that increases in the AfDB core funding will deliver tangible development benefits in line with Australia's development objectives, and that the investment will represent good value for money.<sup>38</sup>

2.34 In addition, AusAID argues that membership will also give Australia access to new networks in Africa, which can assist in pursuing Australia's multilateral interests, including free trade, climate change, human rights and peace and security.<sup>39</sup>

2.35 As a shareholder, Australia could contribute to the Bank's governance and continue to push for ongoing reforms and improvements in operational and development performance. It would also be consistent with Australia's role as a developed Group of Twenty economy and OECD member, and reinforce Australia's increased policy dialogue and practical cooperation in Africa.<sup>40</sup>

2.36 Membership will also assist in creating business opportunities for Australian companies via procurement opportunities and infrastructure development.<sup>41</sup>

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36 NIA, para 10.

37 NIA, para 10.

38 NIA, paras 8-9.

39 NIA, para 11 & 13.

40 NIA, para 11 & 13.

41 NIA, para 12.

## Obligations

### *Financial*

- 2.37 Upon becoming a member of the Fund, Australia is required to make an initial subscription. Australia would also be required to make an initial capital contribution to the Bank.<sup>42</sup>
- 2.38 As Australia is seeking to join both bodies simultaneously, and membership of the Fund is a prerequisite for membership of the Bank, the Bank has requested that a commitment be made to pay Australia's initial contribution to the Fund in full, in the form of a single promissory note (although this payment will be drawn down over eight years).<sup>43</sup>
- 2.39 This would allow Australia to join the Bank immediately on admission to the Fund instead of waiting three years, as would be the case if Australia's initial contribution were paid in annual instalments.<sup>44</sup>
- 2.40 Both the Agreements require Australia to maintain the value of its currency holdings. If, in the opinion of the Bank or Fund, the currency used by Australia to make its payments were to appreciate or depreciate significantly, Australia will either be reimbursed or be required to make further payments in order to maintain the value of its holdings.<sup>45</sup>

### *Governance*

- 2.41 Australia would be obliged to abide by the governance arrangements set out in both agreements, including (but not limited to) representation, voting rights and financial arrangements.<sup>46</sup>
- 2.42 On joining, Australia will immediately obtain a place on the Board of Governors, and will be eligible to nominate for a non regional country place on the Board of Directors of both the Bank and the Fund.

## Costs

- 2.43 The final estimate of the initial contributions are yet to be determined by the Government. The minimum and maximum amounts are outlined by the Bank and relate to Australia's economic size relative to other donors. Payments are denominated in International Monetary Fund Special

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42 NIA, para 25.

43 NIA, para 25.

44 NIA, para 25.

45 NIA, para 27.

46 NIA, para 28.



- Drawing Rights (called SDRs) and therefore subject to exchange rate movements between Australian dollars and SDRs.<sup>47</sup>
- 2.44 The Bank currently estimates a minimum initial payment to the Fund of about SDR 106 million (A\$165 million) drawn down over eight years, with the initial capital subscription to the Bank being between approximately SDR 29.6 – 59.2 million (A\$46 – A\$92 million) drawn down over eight years.<sup>48</sup>
- 2.45 Each member country is given an opportunity to make regular additional contributions to the Fund (in the form of individual subscriptions) which would allow it to maintain its relative voting power. While there is no legal obligation to make such payments, there is an expectation that Australia will make such regular additional contributions at the three-yearly replenishment meetings.<sup>49</sup>
- 2.46 The size and conditions around these payments would be decided by the Australian Government, in consultation with the Fund and its other donor countries.<sup>50</sup>
- 2.47 Similarly, in relation to the Bank, each member has the right to purchase newly issued shares (which may arise through a general or special capital increase). While there is no obligation, there is the general expectation that members will purchase such shares. Capital increases are approved by the Board of Governors.<sup>51</sup>
- 2.48 As part of its initial contribution, Australia will take on a contingent liability with the Bank of between SDR 463 – 926 million (approximately A\$721 million – A\$1.4 billion), which would be called on if the Bank is unable to meet its financial liabilities.<sup>52</sup>
- 2.49 In assessing the benefits of joining the bank, Treasury and AusAID undertook appropriate due diligence. Among other things, this found that:
- ...in the event of a default, Australia would only cover between 0.7 to 1.4 per cent of the outstanding debt (equivalent to our share of AfDB capital) - other member countries would be liable for the remainder.<sup>53</sup>

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47 NIA, para 32.

48 NIA, para 33. (May 2012 exchange rates)

49 NIA, para 33. (May 2012 exchange rates)

50 NIA, para 34.

51 NIA, para 35.

52 NIA, para 36.

53 Department of Treasury, *Submission 1*, p. 3.

- 2.50 Should the Bank require this extra capital, members will be required to contribute from their callable capital in proportion to their holding of Bank shares. The Bank has never called on this extra capital, nor has any other multilateral development bank with similar provisions for callable capital.<sup>54</sup>
- 2.51 If Australia ceased to be a Bank member, the Bank would, subject to certain conditions, arrange for the repurchase of Australia's shares at the value shown by the Bank's books on the termination date.
- 2.52 If Australia ceased to be a Fund member, the Fund and Australia would proceed to a settlement of accounts and agree on the amount to be paid to Australia on account of its subscription. If no such agreement is reached within six months from the date on which Australia ceased to be a member, or such later date as agreed, the Fund Agreement provides that, among other provisions, the Fund shall return to Australia its subscription or the principal repayments derived therefrom and held by the Fund on the date on which Australia ceased to be a member of the Fund, except to the extent that, in the opinion of the Fund, such funds will be needed by the Fund to meet its financial commitments.<sup>55</sup>

## Implementation

- 2.53 New enabling legislation is required for Australia to ratify the Fund and Bank Agreements and to make financial contributions. This legislation will prescribe the conditions under which Australia's initial and future contributions are made.<sup>56</sup>
- 2.54 According to the Department of the Treasury, the legislation will be similar to that used to ratify Australia's Asian Development Bank and Asian Development Fund subscriptions, the *Asian Development Bank (Additional Subscription) Act 2009*, and the *Asian Development Fund Act 1992* respectively.<sup>57</sup>
- 2.55 The Asian Development Bank and Fund legislation included an appropriation from the Consolidated Revenue Fund to cover the purchase of shares in the Asian Development Bank and financial contributions to the Asian Development Fund.<sup>58</sup>

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54 NIA, para 36.

55 NIA, para 37-38.

56 NIA, para 29.

57 Mr Shaun Anthony, Acting General Manager, International Finance and Development Division, Department of the Treasury, *Committee Hansard*, 26 November 2012, p. 4.

58 See for example, s.6 of the *Asian Development Bank (Additional Subscription) Act 2009*.

- 2.56 If a policy decision is taken not to deduct income tax from the salaries of Australian staff working at the Bank, legislation would be required to provide an income tax exemption under Australian domestic law. Specifically, regulations would need to be made under the *International Organisations (Privileges and Immunities) Act 1963*.<sup>59</sup>
- 2.57 Enabling legislation for all other development bank and development fund treaties is administered by the Department of the Treasury, and payments are made by the Treasurer.<sup>60</sup> The NIA indicates that the enabling legislation for the Bank and the Fund will reflect Australia's relationship with other multilateral development banks. Treasury will manage the relationship between Australia and the Board of Governors (including Governors' votes), the Board of Directors, and payment of capital to the Bank.<sup>61</sup>
- 2.58 Should the treaties be ratified, AusAID will manage the relationship on operational matters with the Fund and Bank, as well as the Fund replenishment rounds.<sup>62</sup>

## Conclusion

- 2.59 Given that Australia has been a member of the Asian Development Bank and the European Bank for Reconstruction and Development for some time now, it seems something of an oversight that Australia is not already a member of the African Development Bank.
- 2.60 Australia's developed competitors in Asia, Europe and North America have long and well established relationships with African countries.
- 2.61 The Committee hopes that, with the ratification of these treaties, Australia will form a closer relationship with African nations.

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59 NIA, para 30.

60 See for example the *Asian Development Bank (Additional Subscription) Act 2009*.

61 NIA, para 31.

62 NIA, para 31.

**Recommendation 1**

**The Committee supports the *Agreement Establishing the African Development Fund done at Abidjan, Côte d'Ivoire on 29 November 1972 as amended [2012]* and recommends that binding treaty action be taken.**

**Recommendation 2**

**The Committee supports the *Agreement Establishing the African Development Bank done at Khartoum, Sudan on 4 August 1963 as amended [2012]* and recommends that binding treaty action be taken.**

## Loan Agreement between Australia and the International Monetary Fund (not yet signed) [2012]

### Introduction

- 3.1 On 30 October 2012, the *Loan Agreement between Australia and the International Monetary Fund (not yet signed) [2012]* was tabled in the Commonwealth Parliament.

### Background

- 3.2 The International Monetary Fund (IMF) was conceived at the United Nations' Bretton Woods conference held in July 1944, where representatives of 45 countries agreed to establish institutions to govern international economic relations in the aftermath of the Second World War. The IMF came into formal existence in December 1945, when 29 members ratified its Articles of Agreement.<sup>1</sup>
- 3.3 The IMF was established to promote growth and prosperity. The IMF's purpose (set out in Article I of its Articles of Agreement) is to promote international monetary cooperation; facilitate the expansion of trade contributing to employment growth; promote exchange rate stability to avoid competitive devaluation; assist in the establishment of a multilateral

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1 'Section 2: Australia's interactions with the International Monetary Fund', <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2011/Australia-and-the-International-Financial-Institutions-2008-2009/Australia-and-the-International-Financial-Institutions-20082009-Annual-Report/Section-2-Australias-interactions-with-the-International-Monetary-Fund>>, accessed 9 November 2012.

system of payments; and make resources available to members to reduce the costs of balance of payments adjustments.<sup>2</sup>

- 3.4 Australia became a member of the IMF in 1947. The *International Monetary Agreements Act 1947*<sup>3</sup> formalised Australia's IMF membership. The Act contains provisions, which have been updated through time, to enable Australia to meet any obligations that may arise by virtue of its IMF membership.<sup>4</sup>

## Overview and national interest summary

- 3.5 The Agreement's purpose is to enhance the IMF's available resources for crisis prevention, with Australia to lend up to the equivalent of Special Drawing Rights (SDR) 4.61 billion (around A\$6.8 billion). Drawings from Australia by the IMF under the Agreement would be repayable in full and with interest. Australia has an interest in ensuring that the IMF is adequately resourced to play its global role in promoting economic growth and financial stability.<sup>5</sup>
- 3.6 The loan agreement is a temporary, voluntary credit arrangement allowing the IMF to borrow from Australia. This is the first such bilateral arrangement between Australia and the IMF which is separate to other types of lending Australia engages in with the Fund, and is not covered by other treaties.<sup>6</sup> It is in addition to Australia's existing commitments to the IMF under its quota, which itself is currently being reviewed. It will be determined whether a further permanent increase in IMF quotas is required in 2013.<sup>7</sup>
- 3.7 Australia does not need to go through a new treaty process every time additional funds are provided to the IMF. For example, any increase in Australia's quota subscription does not require a treaty process. Quota increases are covered by the IMF Articles of Agreement, a treaty to which

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2 'Section 2: Australia's interactions with the International Monetary Fund', as above.

3 *International Monetary Agreements Act 1947*, <[http://www.austlii.edu.au/au/legis/cth/consol\\_act/imaa1947360/](http://www.austlii.edu.au/au/legis/cth/consol_act/imaa1947360/)>, accessed 9 November 2012.

4 'Section 2: Australia's interactions with the International Monetary Fund', as above.

5 National Interest Analysis [2012] ATNIA 19 with attachment on consultation *Loan Agreement between Australia and the International Monetary Fund (Tokyo, 13 October 2012)*, [2012] ATNIF 22, (Hereafter referred to as 'NIA'), paras 4-5.

6 Department of the Treasury, *Submission 2*, p. 1.

7 Mr Jyoti Rahman, Manager, International Monetary System Unit, International Finance and Development Division, Macroeconomic Group, Department of the Treasury, *Committee Hansard*, 26 November 2012, p. 11.

Australia is already a party. However, under the envisaged amendment to the *International Monetary Agreements Act 1947* required to give effect to this loan agreement, a treaty process would be required if Australia were to participate in any future bilateral loan agreements with the IMF.<sup>8</sup>

## Reasons for Australia to take the proposed treaty action

- 3.8 The following summary of the proposed treaty action and its claimed benefits is taken from the National Interest Analysis (NIA).
- 3.9 The IMF achieves its mandate and advances Australia's interests by supporting stability in the global economy through: conducting surveillance over the economic policies of members, and providing policy advice to assist members in achieving key domestic objectives; providing technical assistance and training to members, enabling them to build the expertise required to implement sound economic policies; promoting international monetary cooperation, exchange stability, and orderly exchange arrangements; fostering economic growth and employment; and providing temporary financial assistance to members, thereby helping to ease balance of payments adjustment.<sup>9</sup>
- 3.10 Australia, as a small, open economy, benefits from an effective IMF that has the resources available to fulfil its mandate for global economic and financial stability. Reforms have been made in recent years to enhance the IMF's effectiveness, including: substantial permanent increases in the IMF's resources; enhancement of the IMF's lending instruments; strengthened surveillance; realigning the quota and voting shares of IMF members to better reflect changing weights in the global economy; and institutional governance reform.<sup>10</sup>
- 3.11 The Global Financial Crisis of 2008-2009 and the ongoing crisis in the Euro area highlight the importance of ensuring that the IMF is adequately resourced to fulfil its mandate.<sup>11</sup> The Treasury provided an assessment of potential future risks:

The list of risks currently facing the global economy is extensive. The banking and sovereign debt crisis in the euro area and the still unresolved fiscal cliff in the United States are well known. The

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8 Department of the Treasury, *Submission 2*, p. 1.

9 NIA, para 6. See also 'Section 2: Australia's interactions with the International Monetary Fund', as above.

10 NIA, para 7.

11 NIA, para 7.

prospect of significant slow-down in China and other major emerging economies, the difficult transitions taking place through the Arab Spring and other geo-political tensions in the Middle East all build further uncertainty into the global economic outlook. In this environment, any combination of events could combine to trigger another Lehman-like event. Should this occur, the demand for IMF financial assistance to shield members from the crisis would rise to new highs.<sup>12</sup>

- 3.12 While the IMF's current resource base is sufficient to meet expected needs, in the event of a renewed global financial crisis, potential demands for IMF lending could exceed the IMF's existing lending capacity.<sup>13</sup> Increasing the IMF's available resources is thus essential for ensuring confidence that the IMF is fully equipped for its crisis prevention and resolution role. The Agreement is Australia's contribution towards a broad round of global commitments, announced at the June 2012 G20 Leaders Summit in Los Cabos, Mexico, to temporarily increase the IMF's resources by more than US\$450 billion during a period of heightened global financial risks. Other countries who have pledged commitments to date include the United Kingdom, China, France, Germany, Japan, Russia and Indonesia.<sup>14</sup>
- 3.13 The IMF has always repaid its members in full and with interest.<sup>15</sup> The Treasury explained:
- ... interest rates (are) paid in what they call special drawing rights interest rates, which is a weighted average of various government securities (which) would be fairly low compared with market interest rates.<sup>16</sup>
- 3.14 For example in mid-November 2012 the interest rate was 0.06 per cent per annum.<sup>17</sup>

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12 Mr Jyoti Rahman, Manager, International Monetary System Unit, International Finance and Development Division, Macroeconomic Group, Department of the Treasury, *Committee Hansard*, 26 November 2012, p. 11.

13 Further information on IMF lending can be found at 'Fact Sheet: IMF Lending' <<http://www.imf.org/external/np/exr/facts/howlend.htm>>, accessed 14 November 2012.

14 NIA, paras 8-9.

15 Mr Jyoti Rahman, Manager, International Monetary System Unit, International Finance and Development Division, Macroeconomic Group, Department of the Treasury, *Committee Hansard*, 26 November 2012, p. 12, and Department of the Treasury, *Submission 2*, p. 2.

16 Mr Jyoti Rahman, Manager, International Monetary System Unit, International Finance and Development Division, Macroeconomic Group, Department of the Treasury, *Committee Hansard*, 26 November 2012, p. 13.

17 Mr Jyoti Rahman, Manager, International Monetary System Unit, International Finance and Development Division, Macroeconomic Group, Department of the Treasury, *Committee Hansard*, 26 November 2012, p. 13.



## Australia's role in IMF 'conditionality'

3.15 The IMF financing is typically provided under an 'arrangement', which stipulates specific policies and measures (known as conditionality) that are intended to resolve a borrowing country's balance of payments difficulties. Disbursements of IMF loans to a country are generally dependent on the progress made by that country in implementing the agreed measures.<sup>18</sup> The Treasury explained Australia's input into this process:

Australia participates in the approval and monitoring of IMF program conditionality, and in reviews and revision of the Fund's Conditionality Guidelines, through participation at the IMF Executive Board... Treasury and the RBA provide advice directly to the [Asia-Pacific] constituency office [of which Australia is a part] on these matters as they arise.

The design of stipulated economic policies attached to IMF lending programs, that is, policy conditionality, is undertaken by IMF staff in consultation with the borrowing country, operating under guidelines provided by the IMF Executive Board. The Conditionality Guidelines, revised by the Executive Board in 2002, require that program related conditions be either '(i) of critical importance [in] achieving the goals of the member's program or for monitoring the implementation of the program, or (ii) necessary for the implementation of specific provisions of the Articles [of Agreement] or policies adopted under them.'

Compliance with program conditionality is also assured by periodic program reviews. Staged disbursements under IMF programs can only take place upon the completion of reviews by the Executive Board. This mechanism enables the Executive Board to assess whether a program is on track and whether modifications are necessary for achieving the program's objectives.<sup>19</sup>

## Obligations

3.16 The Agreement provides for Australia to lend to the IMF up to the equivalent of SDR4.61 billion. The Agreement shall have a term of two

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18 'Recent Changes in IMF Lending' Reserve Bank of Australia, Bulletin, December Quarter 2011, <<http://www.rba.gov.au/publications/bulletin/2011/dec/pdf/bu-1211-8.pdf>> accessed 14 November 2012.

19 Department of the Treasury, *Submission 2*, p. 1.

years, extendable by the IMF for up to two additional one-year periods, for a maximum term of four years.<sup>20</sup>

- 3.17 The IMF will provide estimates of the amounts it expects to draw under the Agreement for every three-month period. Drawings under the Agreement will have a repayment maturity of three months from the drawing date, extendable at the discretion of the IMF in three-month increments up to a maximum of ten years. In exceptional circumstances the IMF, with Australia's agreement, may extend the maximum maturity of drawings by up to a further five years. The rate of interest on drawings under the proposed Agreement will be the SDR interest rate.<sup>21</sup>
- 3.18 Australia's commitment to meet drawings under the Agreement shall be terminated if Australia's balance of payments and reserve position does not justify further drawings. Australia may also obtain early repayment of all or a portion of the drawings outstanding under the Agreement if there is a need for early repayment in light of Australia's balance of payments and reserve position. Australia shall have the right to transfer all or part of any claim on the IMF resulting from outstanding drawings under the Agreement to any member of the IMF, subject to limitations set out in the Agreement.<sup>22</sup>
- 3.19 The Agreement will not affect Australia's existing rights and obligations under international law in relation to the IMF.<sup>23</sup>

### Likelihood of funds being drawn upon

- 3.20 Despite the risks to the global economy outlined above, the Treasury assessed that the likelihood of this extra external funding being drawn upon is not very high and the additional funds will only be accessed after all other resources have been exhausted.<sup>24</sup> Treasury explained:

...the temporary loan agreements and note purchases, including Australia's loan agreement, will act as a second line of defence behind the existing quota and NAB [new arrangements to borrow] arrangement. They will not be drawn upon until it is clear that the

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20 NIA, para 10.

21 NIA, para 11. The SDR interest rate is determined weekly, based on a weighted average of representative short-term money market interest rates (currently the US dollar, Euro, Pound Sterling and Yen rates). This is in accordance with Article XX of the IMF's founding multilateral treaty, the *Articles of Agreement of the International Monetary Fund (1947)*.

22 NIA, paras 12-13.

23 NIA, para 14.

24 Mr Jyoti Rahman, Manager, International Monetary System Unit, International Finance and Development Division, Macroeconomic Group, Department of the Treasury, *Committee Hansard*, 26 November 2012, p. 12.

IMF's lending commitments will exceed the available quota and NAB resources. This is considered unlikely to occur over the period of the loan agreement. Finally, these resources are provided to the IMF's General Resources Account, which means that any drawings by the IMF on the loan agreement are backed by the fund's full balance sheet.<sup>25</sup>

## Implementation

- 3.21 Amendment will be required to the *International Monetary Agreements Act 1947* to provide the authority for the Australian Government to enter into a bilateral lending agreement with the IMF. No action is required by the States or Territories to implement the Agreement.<sup>26</sup>

## Costs

- 3.22 The Agreement was included in the 2012-13 Budget as a Quantifiable Contingent Liability. The maximum amount available to be drawn under the proposed Agreement is the equivalent of SDR 4.61 billion (around A\$6.8 billion). The IMF would make drawings under the Agreement only if needed to support its lending to borrowing member countries. The Agreement is not expected to be drawn upon over the forward estimates period as the IMF's currently available resources are sufficient to cover its projected lending activities.<sup>27</sup>

## Effect of loans on the Australian Government's financial position

- 3.23 Any drawings would be financing transactions with no direct impact on the Australian Government's underlying cash balance or fiscal balance. They would have no impact on the Australian Government's net debt but would add to its borrowing requirement.<sup>28</sup>

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25 Mr Jyoti Rahman, Manager, International Monetary System Unit, International Finance and Development Division, Macroeconomic Group, Department of the Treasury, *Committee Hansard*, 26 November 2012, p. 12.

26 NIA, paras 15-16.

27 NIA, para 17.

28 NIA, para 18.

- 3.24 These indicative costs (of no impact on budget balance or net debt) for the loan proposal have been prepared by Treasury and agreed with the Department of Finance and Deregulation.<sup>29</sup>
- 3.25 The loans would have no direct impact on the Australian Government's underlying cash balance or fiscal balance because, under the accounting standards used by the Australian Government, the *Australian Accounting Standard 31: Financial Reporting by Government* issued by the Australian Accounting Standards Board, loans are classified as assets. In other words, if the IMF draws on the funds, the funds remain on the assets side of the balance sheet as a loan and consequently will have no effect on net debt.<sup>30</sup>
- 3.26 Until any drawings by the IMF have been repaid, they will have an impact on Australia's borrowing requirements as those funds will not be available to the Australian Government to meet its financial obligations. If a loan drawn by the IMF under this Agreement results in a deficit of funds available to the Australian Government, the shortfall will have to be borrowed.<sup>31</sup>
- 3.27 To prevent funds drawn under the Agreement from becoming a burden on Australia's borrowing requirements, the terms of the Agreement permit Australia to terminate the Agreement where Australia's balance of payments and reserve position does not justify further drawings. Australia can also obtain early repayment of all or a portion of the drawings outstanding under the proposed Agreement if there is a need for early repayment in light of Australia's balance of payments and reserve position.<sup>32</sup>
- 3.28 As previously discussed, the interest rate that will apply to loans under the Agreement is a weighted average of various government securities. In mid-November 2012 that interest rate was 0.06 per cent. Ninety five per cent of Australian Government debt is made up of Commonwealth Government Securities.<sup>33</sup> The indexed rate of return on Australian Government Securities at the time of writing was 1.06 per cent.<sup>34</sup>
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29 NIA, para 19.

30 Australian Accounting Standards Board, 2005, *Australian Accounting Standard 31: Financial Reporting by Government*, p 187.

31 NIA, para 18.

32 NIA, para 12.

33 The Treasury, *Debt, the Budget and the Balance Sheet*, <<http://www.treasury.gov.au/PublicationsAndMedia/Publications/2011/Economic-Roundup-Issue-4/Report/Debt-the-Budget-and-the-balance-sheet>>, Accessed 7 March 2013.

34 Reserve Bank of Australia, Statistical Tables, Capital Market Yields – Government Bonds, <[http://www.rba.gov.au/statistics/tables/index.html#interest\\_rates](http://www.rba.gov.au/statistics/tables/index.html#interest_rates)>, Accessed 7 March 2013.

- 3.29 Consequently, the Australian Government may be paying more interest on Australian Government Securities sold as a result of funds drawn by the IMF under the Agreement than the IMF will be paying on the loaned funds.
- 3.30 Funds drawn by the IMF under the Agreement are unlikely to affect Australia's credit rating. Credit ratings are determined by taking into account political risk, regulatory risk and other unique factors to determine the likelihood of a default.<sup>35</sup> As has been stated earlier, the IMF has an excellent repayment record. Funds loaned to the IMF are unlikely to increase the risk of the Australia Government defaulting on its debt.

## The IMF, its failings and its reform

- 3.31 The Committee noted the IMF's patchy record over recent years. The IMF has, by its own admission, failed to either properly assess or properly respond to:

- the Asian Economic Crisis of 1997-98

The main reason for the breakdown in the relationship was Asian countries' unhappiness with the macroeconomic and structural conditionality associated with the IMF's programs that were negotiated with Thailand (August 1997), Indonesia (November 1997, August 1998), and Korea (December 1997). The conditionality contained in these programs was seen as overly harsh and intrusive and this soured the relationship. Asian countries were convinced that the IMF had misdiagnosed the problems they were facing and had imposed excessive and inappropriate conditionality on the financing it was providing. **It is noteworthy that the IMF later acknowledged the mistakes it made...** [Emphasis added]<sup>36</sup>

- the Argentinian Crisis of 2001

The International Monetary Fund has owned up to making mistakes in dealing with Argentina's 2001 debt crisis. In a discussion paper, the IMF said its surveillance had missed

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35 International Investing, *What are sovereign Ratings*, <<http://internationalinvest.about.com/od/researchingglobalstocks/a/What-Are-Sovereign-Ratings.htm>>, Accessed 7 March 2013.

36 Op-eds "Asia: Stepping Up from Regional Influence to a Global Role", *Peterson Institute for International Economics*, <<http://www.iie.com/publications/opeds/print.cfm?ResearchId=1956&doc=pub>> accessed 14 November 2012.

warning signs and had over-estimated growth and the success of economic reforms.<sup>37</sup>

■ and the Global Financial Crisis of 2008-2009

Warning member countries about risks to the global economy and the build-up of vulnerabilities in their own economies is arguably the most important purpose of IMF surveillance. This Independent Evaluation Office (IEO) evaluation found that the IMF fell short in delivering on this key objective in the run-up to the financial and economic crisis that began to manifest in mid-2007 and that reached systemic proportions in September 2008...

The IEO found that the IMF's ability to identify the mounting risks was hindered by a number of factors, including a high degree of groupthink; intellectual capture; and a general mindset that a major financial crisis in large advanced economies was unlikely. Governance impediments and an institutional culture that discourages contrarian views also played important roles.<sup>38</sup>

3.32 Given the further funds that the Australian Government was committing under this treaty, the Committee sought further information about what had been learned by the IMF and what reform initiatives were in place to improve the organisation's performance. The Treasury responded:

Firstly, since the beginning of the [Global Financial] crisis not only have the resources of the IMF been increased and reviewed but also general working of the IMF, including its surveillance products, is being reviewed... Yes, it is a fair criticism that IMF in the lead-up to the [Global Financial] crisis perhaps did not highlight the risks as much as they should or could have, but their services and products are being reviewed...<sup>39</sup>

There was a set of reviews that were done immediately after the [Global Financial] crisis, and there was a review of the quarter formula that was agreed upon by 2010. That is still to be implemented because not every country has ratified it. The next

37 "IMF owns up to Argentina errors". <<http://news.bbc.co.uk/2/hi/business/3566699.stm>> accessed 14 November 2012. See also "We made many mistakes with Argentina in the 90s,' says ex-IMF chief", <<http://www.buenosairesherald.com/article/70966/we-made-many-mistakes-with-argentina-in-the-90s-says-eximf-chief>> accessed 14 November 2012.

38 Independent Evaluation Office of the IMF "IMF Performance in the Run-Up to the Financial and Economic Crisis IMF Surveillance in 2004-07", <[http://www.ieo-imf.org/ieo/files/completedevaluations/crisis-%20main%20report%20\(without%20moises%20signature\).pdf](http://www.ieo-imf.org/ieo/files/completedevaluations/crisis-%20main%20report%20(without%20moises%20signature).pdf)> accessed 14 November 2012.

39 Mr Jyoti Rahman, Manager, International Monetary System Unit, International Finance and Development Division, Macroeconomic Group, Department of the Treasury, *Committee Hansard*, 26 November 2012, p. 12.

one began immediately thereafter. These reviews usually happen once every three years as per course. Since the beginning of the crisis they have become a lot more urgent.<sup>40</sup>

3.33 Further, the Treasury advised that Australia was playing a significant role in this process:

Australia is playing an active role in that through our representatives on the IMF board. We have a constituency office that we share with Korea and a few other countries. Since the beginning of November we have for a two-year period an alternative executive director. Up until this year we had an executive director. They play an active role in these review processes.<sup>41</sup>

The most important thing that Australia could do and is trying to do is reform the governance structure of the IMF such that the emerging countries and dynamic countries of our region, including ourselves, will have stronger voting rights in the way the institution is run. That would allow our representatives and representatives of other countries that have hitherto been relatively less represented than their economic might would suggest to play a stronger role in approving or influencing the fund's programs and activities.<sup>42</sup>

3.34 Treasury further advised the Committee of reforms being put in place which are designed to improve the IMF's lending programs, its dealing with country authorities and governance arrangements that are essential for the ongoing legitimacy, effectiveness and relevance of the IMF.<sup>43</sup>

3.35 These reforms<sup>44</sup> include:

- the IMF Board of Governors approval of a package of 'far-reaching reforms of the Fund's quotas and governance', including:

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40 Mr Jyoti Rahman, Manager, International Monetary System Unit, International Finance and Development Division, Macroeconomic Group, Department of the Treasury, *Committee Hansard*, 26 November 2012, p. 13.

41 Mr Jyoti Rahman, Manager, International Monetary System Unit, International Finance and Development Division, Macroeconomic Group, Department of the Treasury, *Committee Hansard*, 26 November 2012, p. 12.

42 Mr Jyoti Rahman, Manager, International Monetary System Unit, International Finance and Development Division, Macroeconomic Group, Department of the Treasury, *Committee Hansard*, 26 November 2012, p. 13.

43 Department of the Treasury, *Submission 2.1*, p. 1

44 These reforms are still currently in the implementation phase with the delay largely stemming from the US elections precluding the introduction of legislation to the US Congress. Department of the Treasury, *Submission 2.1*, p. 1

- ⇒ shifts in quota shares and comprehensive review of the quotas;
  - ⇒ greater representation for emerging market and developing countries at the Executive Board; and
  - ⇒ moving towards an all-elected Board, along with a commitment to maintain the Board size at 24 chairs, and a review of the Boards composition every eight years.
- the IMF Executive Board agreement to:
    - ⇒ consider increases in Fund's precautionary balances in the medium term from SDR 15 billion to SDR 20 billion;
    - ⇒ improve data provision for surveillance purposes by improving collaboration with international agencies to fill data gaps while minimizing the reporting burden for countries; and
    - ⇒ changes in conditionality, design, and effects of IMF-supported programs.<sup>45</sup>
- 3.36 In particular, the Governance reforms aim to increase the voice and representation of the emerging market and developing countries to closer match economic realities while protecting the voice of smaller nations.<sup>46</sup>

## Conclusion

- 3.37 The Committee acknowledges the risks currently facing the global economy. The sovereign debt issues in the Euro zone and in the United States are well known. The economies of China and other major emerging economies have slowed, and the geo-political tensions in the Middle East are all contributing to uncertainty in the global economy.
- 3.38 Providing more resources to one of the key institutions capable of responding effectively should the global economy deteriorate further is both logical and practical. In that context, the Committee supports the agreement and recommends that binding treaty action be taken.
- 3.39 Nonetheless, the Committee expresses its disappointment with the IMF's previous failings and anticipates seeing positive reforms to its structures, programs and activities. Furthermore, the Committee requests that the Treasury continually monitor effectiveness and implementation of reforms with regular feedback to the Committee.

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45 Department of the Treasury, *Submission 2.1*, p. 1.

46 Department of the Treasury, *Submission 2.1*, p. 2.



### **Recommendation 3**

**The Committee supports the *Loan Agreement between Australia and the International Monetary Fund (not yet signed) [2012]* and recommends that binding treaty action be taken.**



## Agreement between the Government of Australia and the Government of Japan on the Security of Information (Tokyo, 17 May 2012)

### Introduction

- 4.1 On 30 October 2012, the *Agreement between the Government of Australia and the Government of Japan on the Security of Information (Tokyo, 17 May 2012)* was tabled in the Commonwealth Parliament.

### Background

- 4.2 Australia's security relationship with Japan has grown significantly during the past decade. The Lowy Institute observed that:

In the last decade, Australia has quietly and quickly become a close security partner to Japan, second only to the United States. For Australia, no security relationship outside the foundational alliance with the United States has deepened more in this same period. Despite changes of government and political transformations in Australia and Japan towards the end of the decade, the bilateral security relationship has quietly prospered and looks set to continue into the foreseeable future.<sup>1</sup>

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<sup>1</sup> See 'The Quiet Achiever: Australia-Japan Security Relations', <<http://www.lowyinstitute.org/publications/quiet-achiever-australia-japan-security-relations>>, accessed 7 November 2012.

- 4.3 Japan is, according to the Department of Foreign Affairs and Trade (DFAT), one of Australia's closest and most trusted security partners. The growing security and defence relationship with Japan reflects the confidence that both countries have in working with one another. This includes the establishment of a 'two-plus-two' Foreign and Defence Ministers consultation process – Australia is the only country apart from the United States to have such a process with Japan. It also includes cooperation in Iraq and on peacekeeping operations in East Timor and Southern Sudan along with a growing number of bilateral and trilateral (with the United States) defence exercises.<sup>2</sup> The fourth two-plus-two talks were held in September this year in Sydney, and at that talk ministers agreed to enhance security and defence cooperation, including strengthening information-sharing cooperation.<sup>3</sup>
- 4.4 The Department also noted the broader Australia-Japan relationship:
- The Australia-Japan security relationship has matured particularly over the past five years. In 2007 the then Prime Ministers signed a Joint Declaration on security cooperation. It provided a foundation for wide-ranging cooperation and included a specific reference to exchanges of strategic assessments and related information. Since then we have built security and strategic cooperation, and a key part of this has been putting in place the legal framework required to be able to cooperate with each other. In 2008 the Department of Defence signed a memorandum of understanding with Japan. In 2010 Australia and Japan agreed the treaty-level acquisition and cross-servicing agreement, which is essentially a defence logistics agreement. It is expected to come into force later this year or early 2013, and one of the key applications of that will make it easier to cooperate in such areas as disaster relief and peacekeeping.<sup>4</sup>

## Overview and national interest summary

- 4.5 The Agreement's purpose is to strengthen the legal framework for the exchange of classified information between the Governments of Australia and Japan, ensuring the mutual protection of exchanged classified
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2 Department of Foreign Affairs and Trade, *Submission 1*, p. 1.

3 Mr Peter Roberts, Director, Japan Section, North East Asia Branch, Department of Foreign Affairs and Trade, *Committee Hansard*, 26 November 2012, p. 7.

4 Mr Peter Roberts, Director, Japan Section, North East Asia Branch, Department of Foreign Affairs and Trade, *Committee Hansard*, 26 November 2012, p. 7.

information. The Agreement will cover all Australian government agencies and five key Japanese agencies.<sup>5</sup> It will be up to individual agencies to determine what information to share, though there are no obligations on either party to share information.<sup>6</sup>

- Counter-terrorism and intelligence are areas of possible cooperation under the proposed Agreement. Once the proposed Agreement comes into force, agencies responsible for intelligence and counter-terrorism could enter into a discussion with Japan about the sharing of such information.<sup>7</sup>

4.6 The Agreement's framework will facilitate cooperation on political and security related issues of relevance to both countries. The Agreement provides for access to, and protection of, transmitted classified material as well as procedures for facilitating visits by information security experts to ensure exchanged information is being adequately protected.<sup>8</sup>

4.7 At this stage, this is a bilateral Agreement and facilitates the sharing of information between Australia and Japan. There are, however, provisions in the Agreement that do allow sharing with third parties. Given the close security relationship both Australia and Japan share with the United States, the Agreement has the potential to help facilitate the tri-partite relationship.<sup>9</sup>

## Reasons for Australia to take the proposed treaty action

4.8 The following summary of the proposed treaty action and its claimed benefits is taken from the National Interest Analysis (NIA).

4.9 Developing closer security cooperation with Japan is a strategic priority for the Government. As that cooperation continues to develop, the need for greater information sharing with Japan will increase. The proposed Agreement affirms:

- both countries' commitment to the promotion of bilateral security cooperation through the implementation of the *Joint Declaration on Security Cooperation*, signed at Tokyo on 13 March 2007;

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5 NIA, para 4. These Japanese agencies are: Cabinet Secretariat, Defence, Foreign Affairs, National Policy Agency, and the Public Security Intelligence Agency.

6 Department of Foreign Affairs and Trade, *Submission 1*, p. 1.

7 Department of Foreign Affairs and Trade, *Submission 1*, p. 1.

8 NIA, paras 5-6.

9 Mr Peter Roberts, Director, Japan Section, North East Asia Branch, Department of Foreign Affairs and Trade, *Committee Hansard*, 26 November 2012, p. 9.

- their mutual interest in the protection of classified information; and
- their wish to ensure the reciprocal protection of classified information exchanged between the Parties.<sup>10</sup>

## Obligations

- 4.10 Australia has 12 treaties relating to mutual protection of classified information in force, including with the United States, France, New Zealand and the EU, and there have been no problems or issues with regard to these agreements in the past.<sup>11</sup> This Agreement does not oblige the Parties to exchange classified information, but provides a framework for protecting any classified information they choose to exchange. Classified information that the Australian Government passes to Japan will be afforded a degree of protection equivalent in effect to that afforded to it in Australia (and vice versa).<sup>12</sup>
- 4.11 Article 1 provides relevant definitions under the proposed Agreement, including a definition of ‘Transmitted Classified Information’ (TCI) which means Classified Information<sup>13</sup> which is transmitted directly or indirectly between the Parties.<sup>14</sup>
- 4.12 While the proposed Agreement covers the possible electronic transmission of classified material, Australia and Japan currently have no electronic connectivity of classified systems with which to transmit such information. If connectivity was ever established, then the proposed Agreement would need to be updated to reflect such a development and specifically cover the issue of the destruction of electronically transmitted classified material. The present understanding is that classified information will be transmitted in hard copy only.<sup>15</sup>

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10 NIA, para 7.

11 Mr Peter Roberts, Director, Japan Section, North East Asia Branch, Department of Foreign Affairs and Trade, *Committee Hansard*, 26 November 2012, p. 7.

12 NIA, para 8.

13 ‘Classified Information’ means all information which requires protection against unauthorised disclosure in the interest of the national security of the providing Party and which is subject to a Security Classification and generated by, or for the use of, or under the jurisdiction of, the Competent Authorities of the Government of Japan or the Government of Australia. The information may be in any form, including oral, visual, electronic, magnetic, or documentary forms, or equipment or technology, and may also include any reproductions or translations (Article 1(a)).

14 NIA, para 9.

15 Department of Foreign Affairs and Trade, *Submission 1*, p. 2

- 4.13 The underlying obligation, described in Article 2, is to protect TCI according to the Agreement's terms and subject to applicable national laws and regulations.<sup>16</sup>
- 4.14 The Attorney-General's Department is designated under Article 3 as Australia's National Security Authority responsible for coordination and liaison with regard to the implementation and interpretation of the proposed Agreement.<sup>17</sup>
- 4.15 Article 4 lists the security classifications which the Parties will use to mark TCI, and obliges the receiving Party to mark TCI at the equivalent level.<sup>18</sup>
- 4.16 Under Article 5 of the proposed Agreement, the Parties will:
- take appropriate measures to provide all TCI a degree of protection equivalent in effect to that afforded to it by the Providing Party;
  - not disclose such information to any third party unless agreed in writing between the Parties;
  - take appropriate measures to prevent unauthorised disclosure of TCI;
  - ensure that necessary inspections are carried out and relevant security policies are complied with in order to protect TCI;
  - establish procedures for the identification, location, inventory and control of TCI outlined in the Procedural Arrangement;
  - not use or permit the use of TCI for any purpose other than that for which it is provided without the prior approval of the Providing Party;
  - observe intellectual property rights such as patents, copyrights, or trade secrets applicable to TCI;
  - specify in writing additional limitations on the use, disclosure, and release of, and access to TCI and comply with any such limitations;
  - release TCI to a Third Partner<sup>19</sup> only if the Providing Party specifies that the information is releasable to the Third Partner.<sup>20</sup>
- 4.17 Article 6 provides that the Parties will prevent unauthorised access to TCI and limit access to those individuals who require access for the

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16 NIA, para 10.

17 NIA, para 11.

18 NIA, para 12.

19 "Third Partner" means the government of a third State or an intergovernmental organisation with which the Receiving Party has concluded an agreement or arrangement concerning the protection of classified information (Article 1(i)).

20 NIA, para 13.

- performance of their official duties and hold a current Personnel Security Clearance to the necessary level.<sup>21</sup>
- 4.18 Article 7 provides that the Receiving Party may release TCI to a contractor, if mutually determined in writing, and take appropriate measures to ensure the contractor's facilities have the capability to protect the TCI, including carrying out periodic security inspections.<sup>22</sup>
- 4.19 Article 8 provides that the Parties will ensure the security of all facilities where TCI is handled.<sup>23</sup>
- 4.20 Article 9 provides that the Parties will ensure that TCI is stored in a manner that prevents unauthorised access in accordance with Article 6. This includes electronic TCI.<sup>24</sup>
- 4.21 Articles 10 and 11 provide that information must be transmitted between the Parties through Government-to-Government channels. While in transit, the Providing Party remains responsible for the security of Classified Information until it is received by the Receiving Party.<sup>25</sup>
- 4.22 Article 12 provides that the Parties will notify each other if there are changes to relevant security policies that would adversely affect the protection of TCI and will consult on possible amendments to the Agreement or to the Procedural Arrangement.<sup>26</sup>
- 4.23 Articles 13 and 14 cover visit procedures, and visits by security personnel. Security personnel of one Party may visit the other Party to discuss security procedures to determine whether TCI is being adequately protected.<sup>27</sup>
- 4.24 Articles 15 and 16 require the Parties to destroy TCI by means which prevent its reconstruction, and Parties to notify each other immediately of any loss or compromise of TCI and take measures to prevent recurrence.<sup>28</sup>

## Implementation

- 4.25 Article 17(1) provides that the Parties shall make signed a Procedural Arrangement, subordinate to the Agreement, which specifies
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21 NIA, para 14.

22 NIA, para 15.

23 NIA, para 16.

24 NIA, para 17.

25 NIA, para 18.

26 NIA, para 19.

27 NIA, para 20.

28 NIA, para 21.



supplementary provisions for implementation. This Arrangement does not create legally binding rights or obligations. Article 17(2) allows the Parties to separately negotiate supplementary implementing arrangements to cover particular departmental or agency requirements.<sup>29</sup>

- 4.26 No change to domestic law is required to implement the Agreement – it will be implemented by laws and policies already in place relating to protective security. The Australian Government Protective Security Policy Framework (PSPF) requires agencies to adhere to the provisions of any international security of information agreements. The Agreement will not require any change to the existing roles of the Commonwealth Government or the State and Territory Governments.<sup>30</sup>

### Implementation under the new Protective Security Policy Framework (PSPF)

- 4.27 The PSPF<sup>31</sup> reforms were approved as the negotiation of the Agreement with Japan drew to a close. At the time, the proposed reforms were discussed in general terms with Japan during the negotiations, and the Parties agreed to proceed with the existing treaty text. It is Australia's view that these changes will not affect the Parties' ability to fulfil their obligations under the proposed Agreement.<sup>32</sup>
- 4.28 The proposed Agreement provides that Japanese information marked 'Gokuhi 極秘/Bouei Himitsu 防衛秘密' will be protected by Australia at the 'Secret/Highly Protected' level. Notwithstanding the removal of the 'HIGHLY PROTECTED' classification under the PSPF, Australia will be able to meet its obligations by ensuring that all Japanese material marked 'Gokuhi 極秘/Bouei Himitsu 防衛秘密' will be protected at the 'Secret' level in Australia.<sup>33</sup>
- 4.29 Given that the Agreement refers to most new classifications as well as those to be phased out, it will facilitate the sharing of past and future classified material. Implementation of new classification levels in

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29 NIA, paras 23-24.

30 NIA, para 25.

31 The Australian Government has introduced a new PSPF, including a revision of the Government's security classification system. The revised system reduces the number of classifications from seven to four: PROTECTED, CONFIDENTIAL, SECRET and TOP SECRET. The classifications X-IN-CONFIDENCE, HIGHLY PROTECTED and RESTRICTED will no longer be used for new material. (The RESTRICTED classification will continue to be used by the Department of Defence until August 2013.) The classification system was introduced across government from 1 August 2012, and will be implemented by 31 July 2013. Further information about the new Protective Security Policy Framework can be found at <[www.protectivesecurity.gov.au](http://www.protectivesecurity.gov.au)>.

32 NIA, para 27.

33 NIA, para 28 -29.

Australia will be staggered with all agencies except the Department of Defence implementing by 31 July 2013 – Defence has been given an additional 12 months. Article 4 enables Australia to meet its obligations both during and beyond this transition period.<sup>34</sup>

## Inspections

4.30 As discussed above, Articles 7, 13 and 14 cover inspections and other measures to ensure that classified material is being handled appropriately. The Attorney-General's Department provided further detail on how inspections would be carried out by both countries:

The issue of inspections is on a case-by-case basis. If it is government-to-government, then typically it would be someone from my area – protective security policy – who would go along with particular Australian government agencies, such as the Department of Defence, and they would jointly inspect the government facility if that was appropriate. Likewise, in respect of a private sector company, it would typically be the person from the agency sharing information with the other government agency to which the other government agency had the contract for procurement or whatever the contract was. It would typically be someone from the Australian government specific department, someone from the foreign government and possibly someone from my area – protective security policy – who would go along to look at the protective security arrangements for the actual contractor. It is a relatively common type of process, but we do make sure that to ensure the inspection hits the mark and is fit for purpose that we do not take a cookie cutter approach. We tailor each one...<sup>35</sup>

## Costs

4.31 There are no anticipated costs to the Australian Government.<sup>36</sup>

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34 NIA, para 30.

35 Mr Michael Jerks, Assistant Secretary, Critical Infrastructure and Protective Security Policy Branch, National Security Resilience Policy Division, Attorney-General's Department, *Committee Hansard*, 26 November 2012, p. 8.

36 NIA, para 31.

## Conclusion

- 4.32 The Committee is encouraged that Australia has 12 treaties relating to mutual protection of classified information in force, including with the United States, France, New Zealand and the EU, and there have been no problems or issues with regard to these agreements in the past. The Committee also notes that in the past there have not been any serious security breaches committed by Japan with regard to any information supplied by Australia.<sup>37</sup>
- 4.33 The growing security relationship between Australia and Japan is of importance to Australia. Moreover, this Agreement has the potential to strengthen the tri-partite relationship between Australia, Japan and the United States with regard to information sharing.
- 4.34 Given this, the Committee is positive about the growing Australia-Japan security relationship, and about this information sharing agreement in particular. The Committee supports the Agreement and recommends that binding treaty action be taken.

### Recommendation 4

**The Committee supports the *Agreement between the Government of Australia and the Government of Japan on the Security of Information (Tokyo, 17 May 2012)* and recommends that binding treaty action be taken.**

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<sup>37</sup> Department of Foreign Affairs and Trade, *Submission 1*, p. 1.



## Four Minor Treaty Actions

### Introduction

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

### Minor treaty actions

- 5.3 There are four minor treaty actions reviewed in this chapter. The Committee determined not to hold a formal inquiry into these treaty actions and agreed that binding treaty action may be taken for all four.

### 2012 Amendments to Annex I of the International Convention Against Doping in Sport of 19 October 2005

- 5.4 On 1 October 2012, the Director-General of The United Nations Educational, Scientific and Cultural Organization (UNESCO) notified States Parties of the intent to amend Annex I, pursuant to Article 34 of the Convention, to incorporate changes to the World Anti-Doping Agency (WADA) Prohibited List. Australia has not objected to these amendments. Accordingly, the proposed amendment will enter into force for Australia on 1 January 2013.
- 5.5 The proposed amendment of Annex I harmonises the regulation of prohibited substances and methods, in- and out-of-competition, across

certain sports globally. This provides certainty and consistency for Australian athletes, who are required to comply with WADA's Prohibited List.

- 5.6 If a discrepancy exists between the Australian Government's agreed Prohibited List (Annex I of the Convention) and WADA's Prohibited List, the Australian Sports Anti-Doping Authority would be restricted in its ability to implement its anti-doping regime in accordance with the requirements of the World Anti-Doping Code, which is overseen by WADA.

### Insulin

- 5.7 The Committee noted the changed status of insulin under the World Anti-Doping Agency's List of Prohibited Substances and Methods and was concerned about what impact the change may have on athletes who have diabetes.
- 5.8 Insulin's main action is to facilitate glucose uptake and hence build glycogen stores. It can be used by athletes to improve performance as it potentially provides more energy for muscles to use during exercise and helps with an athlete's recovery.
- 5.9 Insulin has been on the Prohibited List since the List was established in 2004. In reviewing the Prohibited List this year, WADA decided that, for technical reasons, insulin should be reclassified from S2 (Peptide Hormones, Growth Factors and Related Substances) to S4.5.a (Metabolic Modulators).
- 5.10 International anti-doping arrangements allow for athletes to seek a therapeutic use exemption when they have an illness or condition that requires them to take particular medications that fall under the Prohibited List. In Australia, the Australian Sports Drug Medical Advisory Committee (ASDMAC) is the body that gives approval for athletes to use prohibited substances for legitimate therapeutic purposes. This means that a diabetic can apply to ASDMAC for approval to use insulin for medicinal purposes without fear of being sanctioned for a doping offence. Accordingly, the change to the Prohibited List contained in Annex 1 has no impact on diabetic athletes.

### **Amendments, adopted at London on 24 May 2012, to the Protocol of 1988 relating to the International Convention on Load Lines, 1966, as amended (Resolution MSC.329(90))**

- 5.11 This proposed change will revise international regulations for the operation of ships, specifically the limits for seasonal zones that govern the draft, being how deep a ship can be loaded to.

- 5.12 The *International Convention on Load Lines, 1966* as modified by the *Protocol of 1988* (“Load Lines”) is administered by the International Maritime Organization (IMO), a specialised agency of the United Nations. The IMO committee with responsibility for Load Lines is the Maritime Safety Committee (MSC).
- 5.13 The proposed amendment to the 1988 Protocol amends Annex II of Load Lines in order to adjust the limits of the Southern Winter Seasonal Zone. Annex II defines zones, areas and seasonal periods relating to ships load drafts, taking account of the potential hazards present in different zones and different seasons.
- 5.14 The proposed amendment to the limits of the Southern Winter Seasonal Zone shifts the Zone southwards by 50 nautical miles off the southern tip of Africa. This will allow ships that are loaded to their “summer” draft (which is deeper than the “winter” draft, allowing ships to carry more cargo) to pass the southern tip of Africa while remaining further away from land, without entering the Southern Winter Seasonal Zone. The proposed amendment is intended to improve safety of shipping traffic off the South African coast and reduce the risk of a maritime incident by allowing ships to avoid a number of navigational hazards (including offshore oil and gas exploration) in this heavily-trafficked area. The amendment also simplifies the delimitation of the Southern Winter Seasonal Zone across the Pacific, between New Zealand and the American Continent, along the 33rd parallel.

### **Amendments, adopted at London on 24 May 2012, to the International Convention for the Safety of Life at Sea, 1974, as amended (Resolution MSC.325(90))**

- 5.15 The *International Convention for the Safety of Life at Sea, 1974* (1983), as modified by the *Protocol of 1988* (2000), known as SOLAS, is administered by the IMO. The IMO committee with responsibility for SOLAS is also the MSC.
- 5.16 The Treaties Committee was presented with a series of minor amendments outlined below:
- At the MSC’s 82nd session in 2006, the MSC adopted IMO Resolution MSC.216(82), which included amendments to SOLAS Chapters II-1 and II-2 regarding the construction of passenger ships built after 1 July 2010.
    - ⇒ The amendments required that for applicable vessels, after a fire or flooding casualty, basic services could be provided to all persons on board and that certain systems remain operational for a safe return to port.

- ⇒ The proposed amendment to SOLAS Chapter II-1, further amends the requirements of MSC.216(82) to assist a passenger ship to return to port after a flooding casualty. The proposed amendment will require applicable ships to have an on-board stability computer or shore-based support to provide the ship's Master with appropriate operational information.
- At its 90<sup>th</sup> session, the MSC adopted draft amendments to:
  - ⇒ Chapter III of SOLAS under IMO Resolution MSC.325(90). Chapter III concerns life-saving appliances and arrangements on ships.
    - ⇒ The proposed amendment changes the requirements of SOLAS Regulation III/20 to allow for the operational testing of free-fall lifeboat release systems to be performed either by free-fall launching or by simulated launching. Where simulated launching of a free-fall lifeboat is to be carried out it is to be in accordance with guidelines developed by the IMO.
  - ⇒ Chapter V of SOLAS under IMO Resolution MSC.325(90). The amended SOLAS Regulation V/14 requires Administrations to take into account guidance adopted by the IMO when determining safe manning levels.<sup>1</sup>
    - ⇒ This is not expected to affect minimum safe manning levels on Australian ships, as the guidance provides only general principles that the Australian Maritime Safety Authority (AMSA) must take into account when determining minimum safe manning levels; it does not specify the required crew numbers for any particular vessel type.
  - ⇒ Chapter VI of SOLAS under IMO Resolution MSC.325(90). Chapter VI concerns the carriage of cargoes on ships.
    - ⇒ The proposed amendment to SOLAS Chapter VI, contained in paragraph 4 of IMO Resolution MSC.325(90), creates a new regulation that prohibits the blending of liquid bulk cargoes on board ships and prohibits production processes on board ships where a deliberate chemical reaction takes place. The proposed amendment prohibits processes where two or more liquid cargoes are blended to achieve a cargo with a new product designation. It exempts the blending of

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1 This guidance is contained in IMO resolution A.1047(27) Principles of minimum safe manning, which supersedes earlier Resolutions A.890(21) and A.955(23).



- products and production processes that are used in the search and exploitation of seabed mineral resources.
- ⇒ This amendment is intended to prohibit some dangerous and potentially illegal practices that have been occurring in some parts of the world. Tankers are not chemical plants or refineries and therefore are not equipped to safely carry out blending operations. Blending practices are not currently prohibited under Australian law, but the Australian Maritime Safety Authority (AMSA) could take steps to ban the practice in a Marine Order once the proposed amendment enters into force. In practice, AMSA is not aware of these practices occurring in Australian waters. Consequently, AMSA does not expect the proposed amendment to have any effect on the commercial operations of any Australian companies.
  - ⇒ Chapter VII of SOLAS under IMO Resolution MSC.325(90). Chapter VII of SOLAS concerns the carriage of dangerous goods on ships.
    - ⇒ The proposed amendment changes regulations to ensure that transport information relating to the carriage of dangerous goods in packaged form, including container/ vehicle packing certificates, is in accordance with the International Maritime Dangerous Goods Code (IMDG Code).
    - ⇒ It also provides that transport information relating to the carriage of dangerous goods in packaged form is to be made available to the person or organisation designated by the port State authority on departure and arrival. Australia's *Navigation Act* currently requires the shipper of dangerous goods to give notice of intention to ship the goods to the prescribed person. The proposed SOLAS amendment will standardise the form of these reports internationally. While minor changes may be required to Australian forms and procedures to conform with the proposed amendment, these are not expected to impose any additional cost or compliance burden on vessel operators.
  - ⇒ Chapter XI-1 of SOLAS under IMO Resolution MSC.325(90). Chapter XI-1 concerns special measures to enhance maritime safety, including enhanced survey programmes for certain types of ships.
    - ⇒ The proposed amendment to SOLAS Chapter XI-1, contained in paragraph 6 of IMO resolution MSC.325(90), amends regulations to bring into force the *International Code*

*on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers, 2011 (2011 ESP Code).*

- ⇒ The 2011 ESP Code, as adopted by IMO resolution A.1049(27), will replace the existing IMO *Guidelines on the enhanced programme of inspections during Surveys of Bulk Carriers and Oil Tankers*, contained in IMO resolution A.744(18). Unlike the earlier Guidelines, compliance with the ESP Code will be mandatory for all IMO Members.
- ⇒ Australia's Marine Order 18 already requires oil tankers and bulk carriers to be surveyed in accordance with the *Guidelines on the enhanced programme of inspections during Surveys of Bulk Carriers and Oil Tankers*. This Order will be updated to refer to the 2011 ESP Code. The differences between the Guidelines and the 2011 ESP Code are minimal, meaning that any changes to the survey requirements resulting from the adoption of the 2011 ESP Code will be minor in nature. Given that the Australian Maritime Safety Authority (AMSA) already requires compliance with the Guidelines, the change to a mandatory Code will not affect AMSA's regulatory functions. Like the earlier Guidelines, the 2011 ESP Code applies to all oil tankers and bulk carriers regardless of hull type.

### **Amendment, adopted on 1 October 1999, to Article XIV.A of the Statute of the International Atomic Energy Agency (IAEA) (Resolution GC(43)/RES/8)**

- 5.17 The proposed minor treaty action amends the *Statute of the International Atomic Energy Agency (1957)* to allow the International Atomic Energy Agency (IAEA) to adopt biennial, as opposed to annual, budgeting. The practice of biennial budgeting to support biennial programming is applied throughout the United Nations system and has proved to be more effective than annual budgeting.
- 5.18 Australia contributes financially to other UN organisations which already utilise biennial budgeting; therefore the required domestic legislation is already in place to implement the proposed amendment. The proposed amendment does not affect Australia's contributions to the IAEA and therefore poses no additional financial burden on Australia. Australia's financial contributions to the IAEA would continue to be provided annually.
- 5.19 Article XIV.A of the IAEA Statute currently requires the IAEA Board of Governors (BoG) to submit budget estimates to the IAEA General

Conference annually for approval. The proposed amendment would allow the BoG to present a full program and budget document for approval every two years.

- 5.20 Given that the IAEA has been operating under a two-year programming system for some time, the proposed amendment would better align the budget cycle with the activity cycle. It would result in greater flexibility and efficiency in IAEA program delivery while not diminishing transparency and accountability standards. The current practice of adopting annual budgets draws considerable resources, both from the Secretariat and Member States, which could be utilised elsewhere.
- 5.21 Australia has long supported the activities of the IAEA and highly values the programs the Agency implements. The IAEA is an effective instrument to combat the proliferation of nuclear weapons and provides best practice standards for nuclear safety, security and research.
- 5.22 The low number of Member States which have accepted the proposed amendment to date is indicative of the low priority previously afforded to it by Member States, owing to the essentially administrative nature of the proposed amendment and, in some cases, the complex domestic processes required to amend a treaty. No Member State has raised any substantive concerns with the proposed amendment. The IAEA Secretariat has been making a renewed push to remind Member States of the importance of the amendment to efficient IAEA budget planning. With this in mind, and given Australia's prominence as a designated member of the BoG, it would be timely for Australia to take the proposed action.

**Senator Thistlethwaite**

**Chair**





## Appendix A – Submissions

### Treaties tabled on 18 September 2012

- 1 Department of Treasury
- 1.1 Department of Treasury

### Treaties tabled on 30 October 2012

- 1 Department of Foreign Affairs and Trade
- 2 Department of Treasury
- 2.1 Department of Treasury





## Appendix B – Witnesses

**Monday, 26 November 2012 - Canberra**

**Attorney-General's Department**

Mr Michael Jerks, Assistant Secretary, Critical Infrastructure and Protective Security Policy Branch, National Security Resilience Policy Division

**Australian Agency for International Development (AusAID)**

Mr Paul Griffiths, Assistant Director General, Multilateral & Donor Partnerships, International Programs & Partnerships Division

Ms Lisa Rauter, Assistant Director General, Africa, Asia

**Department of Foreign Affairs and Trade**

Mr Darren Hansen, Executive Officer, Japan Section, North East Asia Branch

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

Mr Peter Roberts, Director, Japan Section, North East Asia Branch

**Department of Treasury**

Mr Shaun Anthony, Manager, Development Banks Unit, International Finance and Development Division

Mr Nathan Pringle, Policy Analyst, International, Monetary System Unit, International Finance and Development Division, Macroeconomic Group

Mr Jyoti Rahman, Manager, International Monetary, System Unit, International Finance and Development Division, Macroeconomic Group

