
The Parliament of the Commonwealth of Australia

Report 39

**Privileges and Immunities of the International Tribunal on the Law
of the Sea and the Treaties Tabled on 27 February and 6 March
2001**

Joint Standing Committee on Treaties

April 2001

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ISBN



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Recommendations

Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea

The Committee supports the proposed *Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea* and recommends that binding treaty action be taken [Paragraph 2.34].

The Government should amend its treaty development and review procedures to require that all draft legislation proposing to give domestic effect to international obligations arising from treaty actions be referred to the Joint Standing Committee on Treaties for consideration at the same time as the Committee reviews related National Interest Analyses [Paragraph 2.49]

Five Air Services Agreements

The Committee supports the *Air Services Agreement with Denmark*, the *Air Services Agreement with Norway*, the *Air Services Agreement with Sweden*, the *Air Services Agreement with Samoa* and the *Air Services Agreement with Pakistan* and recommends that binding treaty action be taken in each case [Paragraph 3.12].

Additional Protocols to the Asian-Pacific Postal Union

The Committee supports the *Second Additional Protocol to the Constitution of the Asian-Pacific Postal Union* and the *Additional Protocol to the General Regulations of the Asian-Pacific Postal Union* and recommends that binding treaty action be taken [Paragraph 4.10].

Mutual Recognition Agreement on Conformity Assessment with Singapore

The Committee supports the *Mutual Recognition Agreement on Conformity Assessment with Singapore* and recommends that binding treaty action be taken [Paragraph 5.20]

Amendment to the Constitution of the International Labour Organization

The Committee supports acceptance of the *Amendment to the Constitution of the International Labour Organization* and recommends that binding treaty action be taken [Paragraph 6.13].

Two Agreements on Protection of Classified Defence Information

The Committee supports the *Agreement with Denmark for the Reciprocal Protection of Classified Information of Defence Interest* and the *Agreement with South Africa for the Reciprocal Protection of Classified Information of Defence Interest* and recommends that binding treaty action be taken [Paragraph 7.20].

Agreement Establishing the Pacific Islands Forum Secretariat

The Committee supports the *Agreement establishing the Pacific Islands Forum Secretariat* and recommends that binding treaty action be taken [Paragraph 8.14].

Amendments to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the United States of America

The Committee supports the *Amendments to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the United States of America* and recommends that binding treaty action be taken [Paragraph 9.23].

Introduction

Purpose of the report

- 1.1 This report contains advice to Parliament on the review by the Joint Standing Committee on Treaties (the Committee) of a number of proposed treaty actions.
- 1.2 Chapter 2 reports on the proposed *Agreement on Privileges and Immunities of the International Tribunal for the Law of the Sea* (the ITLOS Agreement). This proposed treaty action was presented to Parliament, along with seven other proposed treaties, on 10 October 2000. In our *Report 37, Six Treaties Tabled on 10 October 2001* (December 2001) we noted that it not been possible, by that time, to complete our review of either the proposed ITLOS Agreement or the proposed *Statute for the International Criminal Court*. We have now completed our review of the ITLOS Agreement, although we expect our review of the *Statute for the International Criminal Court* to continue for some time yet.
- 1.3 Chapters 3 to 8 of the report comment on the 12 proposed treaty actions tabled in Parliament on 27 February 2001:
 - proposed Air Services Agreements with Denmark, Norway, Sweden, Pakistan and Samoa, in Chapter 3;
 - the proposed *Second Additional Protocol to the Constitution of the Asia-Pacific Postal Union* and the proposed *Additional Protocol to the General Regulations of the Asia-Pacific Postal Union*, in Chapter 4;
 - the proposed *Mutual Recognition Agreement on Conformity Assessment with Singapore*, in Chapter 5;

- a proposed *Amendment to the Constitution of the International Labour Organization*, in Chapter 6;
 - proposed agreements with Denmark and South Africa for the reciprocal protection of classified information of defence interest, in Chapter 7; and
 - a proposed *Agreement establishing the Pacific Islands Forum Secretariat*, in Chapter 8.¹
- 1.4 The final chapter of the report, Chapter 9 deals with *Amendments to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the United States of America*, which was tabled in Parliament on 6 March 2001.²

Availability of documents

- 1.5 The advice in this Report refers to, and should be read in conjunction with, the National Interest Analyses (NIAs) prepared for the proposed treaty actions. Copies of the NIAs for each treaty action are at Appendix B. The analyses were prepared by the Government agencies responsible for the administration of Australia's responsibilities under the treaties. The NIAs were tabled in Parliament as an aid to Parliamentarians when considering these proposed treaty actions.
- 1.6 Copies of the treaty actions and NIAs can also be obtained from the Australian Treaties Library maintained on the Internet by the Department of Foreign Affairs and Trade (DFAT). The Treaties library is accessible through our web-site at www.aph.gov.au/house/commttee/jsct.

Conduct of the Committee's review

- 1.7 Our reviews of each of the treaty actions described in this report were advertised in the national press and on our web-site.³ The submissions

1 See Senate Journal No. 170, 28 February 2001, p. 3947; House of Representatives, *Votes and Proceedings*, No 166, 28 February 2001, p. 1813

2 See House of Representatives, *Votes and Proceedings*, No 170, 6 March 2001, p. 1851

3 Our review of the ITLOS Agreement (along with our review of the seven other proposed treaty actions tabled on 10 October 2000) was advertised in *The Weekend Australian* on 14/15 October 2000, p. 9. Our review of the 12 proposed treaty actions tabled on 27 February was advertised in *The Weekend Australian* on 3-4 March 2001, p. 19. Because the tabling of the

received in response to our invitations to comment are listed at Appendix C.

- 1.8 A series of public hearings were held to take evidence on each of the proposed treaty actions:
- evidence was taken on the ITLOS Agreement at hearings on 30 October 2000; and
 - evidence was taken on the treaties tabled on 27 February and 6 March at hearings on 5 March, 26 March 2001 and 2 April 2001.
- 1.9 A list of the witnesses who gave evidence at these hearings is at Appendix D.
- 1.10 Transcripts of the evidence taken at these hearings can be obtained from the database maintained on the Internet by the Department of the Parliamentary Reporting Staff (www.aph.gov.au/hansard/joint/commtee/comjoint.htm), or from the Committee Secretariat.

proposed amendments to the Fisheries Treaty with the United States of America was delayed until 6 March 2001, it was not possible to include reference to this review in the advertisement that appeared on 3 & 4 March. Our review of the amendments was, however, advertised on our web-site in the usual manner.

Privileges and Immunities of the International Tribunal for the Law of the Sea

Proposed treaty action

- 2.1 The International Tribunal for the Law of the Sea was established by the United Nations Convention on the Law of the Sea (UNCLOS) as the preferred forum for dispute settlement under UNCLOS.¹
- 2.2 In the years since UNCLOS was established it has become apparent that the privileges and immunities of the Tribunal and of its members, officials and persons participating in proceedings are less comprehensive than those provided for other tribunals of like standing and importance (such as the International Court of Justice and the International Criminal Tribunals investigating war crimes in Rwanda and Yugoslavia). The only provisions in UNCLOS dealing with these matters are those which:
- accord diplomatic privileges and immunities to members of the Tribunal, when engaged on Tribunal business; and
 - provide that the salary, allowances and compensation payable to members of the Tribunal are free of all taxation.
- 2.3 The proposed *Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea* (the ITLOS Agreement) seeks to provide a more comprehensive regime of privileges and immunities for the Tribunal, its members, officials, counsel and witnesses – a regime

¹ Unless otherwise indicated, the material used in this section is derived from the National Interest Analysis for the *Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea* (NIA for ITLOS)

comparable to that provided for the International Court of Justice and the ad hoc international criminal courts.

- 2.4 The ITLOS Agreement contemplates a range of privileges and immunities to allow the Tribunal and persons connected with it to carry out their functions effectively and without interference. These include that:
- the Tribunal shall be granted legal personality and capacity to contract, own property and sue;
 - the property, assets and records of the Tribunal shall be inviolable;
 - the Tribunal shall be immune from suit and exempt from direct taxes, duties and currency restrictions;
 - members of the Tribunal, when engaged in Tribunal business, shall be provided privileges and immunities equivalent to those of a head of diplomatic mission;
 - officers of the Tribunal shall be accorded standard diplomatic privileges and immunities; and
 - agents, counsel, advocates and witnesses appearing before the Tribunal would be granted the privileges necessary for the independent exercise of their functions, for the duration of their functions.
- 2.5 The ITLOS Agreement provides that all persons granted privileges and immunities by virtue of their connection with the Tribunal remain under a duty to respect the laws of any State Party in whose Territory they may be on Tribunal business. It also provides that privileges and immunities may be waived in appropriate circumstances.
- 2.6 Australian citizens and permanent residents who would otherwise be covered by the ITLOS Agreement, will not receive privileges or immunities in excess of immunity from suit for words spoken or written and acts done in the discharge of their Tribunal duties. There is also provision in the Agreement for the waiver of privileges and immunities where the immunity might impede the good administration of justice.
- 2.7 It is intended that the ITLOS Agreement be given effect in domestic law by amendments to the International Tribunal for the Law of the Sea (Privileges and Immunities) Regulations 1998, made under section 13 of the *International Organisations (Privileges and Immunities) Act 1963*.
- 2.8 The ITLOS Agreement was adopted by consensus at a meeting of UNCLOS State Parties in May 1997. To date, 21 of the 135 State Parties to UNCLOS have signed the Agreement, indicating their intention to ratify

the Agreement. As at 22 September 2000, four States (Croatia, the Netherlands, Norway and Slovakia) have ratified the Agreement.²

Evidence presented

2.9 We were advised, by a witness from the Department of Foreign Affairs and Trade (DFAT), that it is unusual for the privileges and immunities relating to international bodies to be described in a separate treaty: more typically they are embedded in agreements establishing the body.³

2.10 Nevertheless, DFAT claimed that the provisions are:

... more or less standard in terms of what one would find in equivalent parts of other organisation-creating treaties ... the difference being that they are elaborated, and on the other side of the ledger, qualified, in somewhat greater detail than usual. In fact, the length of this treaty results less from extra privileges and immunities beyond the average than from the extra qualifications to which they are subject.⁴

2.11 We were also advised that, as the Tribunal is based in Germany, the ITLOS Agreement will rarely need to be applied in Australia.

... [the Tribunal] is not likely to ever want to hold hearings in Australia, although under its statute that cannot be ruled out. It is more probable, if Australia becomes involved in a dispute, that judges or counsel might wish to pay a visit to an Australian site in some way relevant to the case. But the most frequent contact with Australia that its judges or staff are likely to have is being invited to speak in their official capacity at conferences held in this country.⁵

2.12 After our hearing, we received two submissions from DFAT and one from the Minister for Foreign Affairs in response to a series of questions we had asked. Our questions, and the responses, focussed on:

- the need for and importance of the ITLOS Agreement;
- clarifying the categories of persons to whom the Agreement will extend privileges and immunities;

2 See also Department of Foreign Affairs and Trade, *Submission No.1*, p. 4

3 Andrew Serdy (DFAT), *Transcript of Evidence*, 30 October 2000, p. 33

4 Andrew Serdy (DFAT), *Transcript of Evidence*, 30 October 2000, p. 34

5 Andrew Serdy (DFAT), *Transcript of Evidence*, 30 October 2000, p. 34

- the privileges and immunities for Australian parliamentarians when travelling overseas;
- whether a State Party can object to the appointment of a Tribunal member who had previously expressed a view contrary to that Party's case;
- the regulations that have been made pursuant to the International Organisations (Privileges and Immunities) Act, extending privileges and immunities to international organisations; and
- whether the Agreement diminishes the rights of Australian citizens.

Need for the proposed Agreement

- 2.13 The policy of successive Australian governments has been to grant privileges and immunities to organisations and individuals associated with them not for their own sake but only to the extent necessary to comply with Australia's international obligations. Australian governments have followed the general practice of extending privileges and immunities only where there is a functional need to do so.
- 2.14 This practice, which is internationally accepted, results in considerable variation in the extent to which privileges and immunities are applied to different organisations. At one end of the scale, the privileges and immunities of the United Nations are regarded as a ceiling: few other organisations carry out tasks of such political sensitivity or physical danger. At the other end, some treaties establishing international organisations provide for no privileges or immunities or all, while others require parties merely to recognise their legal personality.
- 2.15 According to DFAT, the Government is of the view that the political and economic sensitivity of decisions that the Tribunal on the Law of the Sea may be called on to make justifies a place relatively high on this scale.
- 2.16 Acceptance of the ITLOS Agreement would also:
- enhance the dignity of a court to whose compulsory jurisdiction Australia is subject; and
 - clarify how Australia should treat an Australian, who may be elected as judge, or a Tribunal judge or official from another country in transit through Australia.
- 2.17 The Minister advised us that the Government's wish to ratify the ITLOS Agreement 'flows principally, and naturally, from Australia's support for

the compulsory dispute settlement system embodied in UNCLOS, of which the Tribunal is a central element.’

2.18 The Minister also noted that:

In addition, before long, it is likely that Australia will ... select ITLOS, in addition to the International Court of Justice, as its preferred forum for settling law of the sea disputes. The Government believes that some measure of privileges and immunities, as provided by the treaty, is appropriate for protecting Australians appearing before it, as well as for the institution itself.⁶

Clarifying the categories of persons

2.19 The Minister’s advice to us on this matter is reproduced in full:

Experts - Article 289 of UNCLOS provides that in a dispute ‘involving scientific or technical matters ... [ITLOS] may ... select in consultation with the parties no fewer than two scientific or technical experts ... to sit with [ITLOS] but without the right to vote.’ The role of such experts is thus to assist the judges to understand the scientific and technical arguments put to them by the parties and their advice may well significantly influence the outcome of the case. For protection from possible personal legal consequences of their advice, it is appropriate for such experts to share to some degree the functional privileges and immunities enjoyed by ITLOS judges, as provided for in the Treaty. Their equivalents in the International Court of Justice (ICJ) - known as ‘assessors’ - along with witnesses, experts and persons performing missions by order of the ICJ also enjoy such privileges and immunities where States follow the recommendations of the UN General Assembly’s Resolution 90(1) of 11 December 1946. Australia has regulations dating from 1967 implementing those recommendations.

Agents - These are the formal primary representatives of States before an international court or tribunal, typically the party’s senior governmental legal counsel appearing in a case or its Ambassador resident in the host State of the court or tribunal, and sometimes both as co-Agents. Agents must be free to present their States’ cases as well as they can and it may sometimes be necessary

⁶ This material is summarised from Department of Foreign Affairs and Trade, *Submission No.1*, pp. 2-3 and from Minister for Foreign Affairs, *Submission 1.2*, p. 1.

for an Agent to say or do things that could lead to personal liability in the opposing or a third State. Privileges and immunities are thus required in order to protect agents from such consequences. The provisions for agents appearing before ITLOS in the Treaty are thus modelled on those recommended for agents before the ICJ by General Assembly Resolution 90(1) of 1946. The ICJ Statute (Article 42) provides that agents, counsel and advocates shall have the privileges and immunities necessary for the independent exercise of their functions, but does not define these.

Counsel and advocates - There does not appear to be a systematic distinction of advocates from counsel in ITLOS practice. The reason for their separate mention in the Treaty may be that, in ICJ case reports, those who actually present oral argument to the Court are referred to as advocates. A working definition of counsel would be those legally qualified members of a party's legal team (other than the Agent) who attend the proceedings, whether or not they are government employees and whether or not they speak. The justification for privileges and immunities for counsel and advocates is thus essentially the same as those for agents. The privileges and immunities of counsel and advocates attending ICJ proceedings are set out under the previous paragraph on agents.

Persons performing missions - This is a residual category found not only in the Statutes of international courts but in the privileges and immunities provisions of other treaties creating international organisations. It covers one-off tasks performed for the court or organisation by a person not normally connected with it - for example an outside mediator may be appointed by ITLOS at a particular stage of a dispute who, in travelling to the disputant States or a third State where the mediation takes place, would be performing a mission for ITLOS. Provided the mission falls within the functions of ITLOS as an international court, the same considerations as lead to its own staff having limited privileges and immunities apply equally to such persons. Persons performing missions for the ICJ are covered by the General Assembly's 1946 Resolution.⁷

7 Minister for Foreign Affairs, *Submission 1.2*, p. 3

Privileges and immunities for Australian parliamentarians travelling overseas

- 2.20 In general, no privileges and immunities are accorded to representatives of any branch of government (executive, legislative or judicial) on a short-term mission in another country, other than the Head of State.
- 2.21 However, if parliamentarians, judges or government officials travel to a convention or conference governed by an international agreement, they may be granted privileges and immunities, depending on the terms of the agreement. For example, it is common for representatives of member States of the United Nations or the World Bank to be granted privileges and immunities when they attend conferences of these bodies.
- 2.22 In addition, the Governor-General, the Prime Minister and the Minister for Foreign Affairs are ‘internationally protected persons’ pursuant to the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons*. While this Convention does not accord any privileges and immunities it does oblige parties to provide appropriate protection to such people.⁸

Objecting to the appointment of a Tribunal member

- 2.23 UNCLOS contains a number of provisions relating to the appointment and conduct of Tribunal judges. The most relevant to the question of whether judges can be excluded from hearing matters on which they have previously expressed a view are those which require:
- members of the Tribunal to make a solemn declaration that they will exercise their powers impartially and conscientiously;
 - members of the Tribunal to stand aside from matters in which they have been involved previously;
 - the President of the Tribunal to give notice that a member should not sit in a particular case if the President considers that ‘special reasons’ exist; and
 - any disputes on these points to be resolved by decision of the majority of Tribunal members.
- 2.24 The Rules of Procedure adopted by the Tribunal also allow a State Party to bring to the attention of the President of the Tribunal facts which it

⁸ This material is summarised from Department of Foreign Affairs and Trade, *Submission No.1*, pp. 1-2

considers to be relevant to the application of the 'stand aside' provisions described above.⁹

Regulations under the International Organisations (Privileges and Immunities) Act

- 2.25 The International Organisations (Privileges and Immunities) Act allows regulations to be made to grant privileges and immunities to international organisations of which Australia is a member and to persons connected with such organisations.
- 2.26 As at 1 November 2000, regulations had been made granting privileges and immunities to 44 international organisations. A list of these regulations is at Appendix E.
- 2.27 We note that regulations proposing to give domestic effect to the proposed Agreement were made on 25 October 2000 and tabled in Parliament on 30 October 2000.¹⁰ The regulations will not come into effect until after the Minister for Foreign Affairs has made a written determination in accordance with section 13(2) of the International Organisations (Privileges and Immunities) Act, specifying a date of commencement.¹¹

Does the Agreement diminish the rights of Australian citizens?

- 2.28 The Minister for Foreign Affairs advised that the ITLOS Agreement, if ratified, would not diminish the rights of Australian citizens, particularly in circumstances where a member or official of the Tribunal were responsible for a motor vehicle accident in Australia.
- 2.29 Articles 13 and 14 of the Agreement specify that members and officials 'shall have insurance coverage against third-party risks in respect of vehicles owned or operated by them, as required by the laws of the State in which the vehicle is operated.' Additionally, other liability incurred in the course of official duties where travel is funded by ITLOS would be covered by the public liability clause of general travel insurance policies.
- 2.30 Moreover, regulation 5 of International Tribunal for the Law of the Sea (Privileges and Immunities) Regulations 2000 (No. 283) provides that:

9 This material is summarised from Department of Foreign Affairs and Trade, Submission No.1.1, Attachment p. 1

10 See International Tribunal for the Law of the Sea (Privileges and Immunities) Regulations 2000, Statutory Rules 2000 No. 283

11 See Regulation 2 of the International Tribunal for the Law of the Sea (Privileges and Immunities) Regulations.

Nothing in these Regulations confers immunity on any person from civil or criminal process:

(a) for the recovery of damages for damage, injury or death resulting from an accident involving a motor vehicle owned or driven by the person; or

(b) relating to the commission of an offence by the person under a law of the Commonwealth, a State or a Territory, relation to motor traffic, motor vehicles or the use of a motor vehicle.¹²

Conclusions and recommendation

- 2.31 We accept, as a general principle, that there are good reasons to grant privileges and immunities to international bodies exercising mandates of international economic and political sensitivity.
- 2.32 We also accept, without hesitation, that the Tribunal for the Law of the Sea is one such body. It is conceivable that Australia, as an island continent, may find itself involved in matters before the Tribunal more frequently in the future. In these circumstances, Australia would benefit directly from measures which facilitate the effective functioning of the Tribunal and which help establish the Tribunal as a body of significant standing.
- 2.33 Accordingly, having being reassured that the ITLOS Agreement does not diminish the rights of Australian citizens, we support the Agreement.

Recommendation 1

- 2.34 **The Committee supports the proposed *Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea* and recommends that binding treaty action be taken.**
- 2.35 We are, however, of the view that agreements like this would be enhanced if they defined more clearly the persons upon whom such privileges and immunities are being conferred. We consider that in any future

12 This material is summarised from Department of Foreign Affairs and Trade, *Submission No.1*, pp. 2-3 and from Minister for Foreign Affairs, *Submission 1.2*, p. 3.

negotiations on the ITLOS Agreement, or on any similar agreements, the Government should press for clearer definitions in this regard.

- 2.36 Our review has also highlighted a deficiency in the reformed treaty making process.
- 2.37 Since the treaty reforms were introduced in 1996, it has been the Government's standard practice to ensure that any necessary legislation to give domestic effect to a treaty action is put in place prior to, or at the same time as, the proposed treaty action is presented to Parliament.
- 2.38 In theory, the introduction of legislation or the presentation of regulations allows Parliament the opportunity to debate the impact on our domestic laws of the Government's international obligations.
- 2.39 In practice, doing so separately from and in advance of our review risks diminishing the role of the Treaties Committee.
- 2.40 If the Government has already made regulations or ensured the passage of legislation giving effect to the treaty action, there is little to be gained by purporting to offer the community an opportunity to consider whether a proposed treaty action is in the national interest.
- 2.41 The integrity of the reformed treaty making process would be enhanced if the Government were to ensure that any legislative proposals (be they Bills or Regulations) are presented to the Treaties Committee for consideration at the same time as we consider the National Interest Analyses for that particular treaty action. Not only would this be less presumptive, but also it would enable the Committee and the community to consider the full impact of each treaty action on our domestic law.
- 2.42 We have made this suggestion on a number of occasions in the past in relation to particular treaty actions.
- 2.43 In 1997, the Minister for Justice agreed to present to the Committee legislation giving effect to Australia's obligations under the OECD Convention on Combating Bribery. We reviewed and reported on this legislation at the same time as reviewing the Convention itself. It was widely regarded as being successful process.
- 2.44 In February 2000 this year we wrote to the Attorney-General asking that Bills giving domestic effect to certain proposed treaty actions be referred to the Committee for consideration. The Attorney replied indicating that 'the Committee's proposal has merit' and that 'it would often be useful for a Bill to be referred to the Committee at the time it is considering the related National Interest Analysis.'

- 2.45 On November 2000 we raised this matter specifically in the context of a Bill being prepared by the Government to give domestic effect to the obligations arising from the *Statute for the International Criminal Court*. We argued in our letter that if we are to report to Parliament on whether ratification of the Statute would be in the national interest, it seems essential that we also consider the impact of ratification on Australia's domestic law.
- 2.46 The Attorney-General and the Minister for Foreign Affairs replied in a joint letter, dated 17 January 2001, in the following terms:
- We agree that the Bill to implement the Statute should be considered by the Treaties Committee in conjunction with its consideration of the National Interest Analysis. To this end, the Government will move that the Bill be referred to the Committee on its introduction.
- 2.47 We are delighted with this response and acknowledge the importance of ensuring that referral of draft legislation does not delay unduly the treaty making process.¹³
- 2.48 We believe that the matter is of such significance that it should become a standard part of the treaty review process rather than being addressed on a case by case basis.

Recommendation 2

- 2.49 **The Government should amend its treaty development and review procedures to require that all draft legislation proposing to give domestic effect to international obligations arising from treaty actions be referred to the Joint Standing Committee on Treaties for consideration at the same time as the Committee reviews related National Interest Analyses.**
- 2.50 We do not intend by this recommendation to limit in any way the Government's ability to take urgent treaty action, in advance of parliamentary consideration, should the circumstances warrant such action.

13 The delays that have occurred in the Committee's consideration of the legislation giving domestic effect to the *Statute for the International Criminal Court* (which is still under-way) are not within the Committee's control – the Government has not yet completed or tabled the Bill.

Five Air Services Agreements

Proposed treaty actions

- 3.1 This chapter contains the results of our review of five separate Air Services Agreements, namely:
- an *Air Services Agreement with Denmark*;
 - an *Air Service Agreement with Norway*;
 - an *Air Services Agreement with Sweden*;
 - an *Air Services Agreement with Samoa*; and
 - an *Air Services Agreement with Pakistan*.
- 3.2 The purpose of each treaty is to allow direct air services to operate between the parties and hence to facilitate tourism and trade through freight and passenger transportation. Each agreement is aimed at providing greater options for Australian travellers. We note that only the service with Samoa is currently active while there are code share arrangements in place with the three Scandinavian countries.¹
- 3.3 The Agreements are treated together as they are all based on the Australian standard draft air services agreement which has formed the basis of 57 other air service agreements. The Australian draft agreement has been developed in consultation with aviation stakeholders.
- 3.4 Each Agreement obliges the partners to allow designated airlines to operate scheduled air services, which carry passengers and freight

¹ Unless otherwise indicated, the material used in this section is derived from the National Interest Analysis for the five Air Services Agreements (NIA for Air Services)

between party destinations. The Agreements cover areas such as safety, security, customs regulations and the ability to establish offices, and sale of fares to the public in the territory of the other party. Without these agreements in place a range of intergovernmental arrangements necessary to conduct a service would not be available and the provider would find it difficult to operate long-term.

- 3.5 The Agreements will involve no direct costs to Australia and implementation of the Agreements will be done through existing legislation including the *Air Services Act 1920* and the *Civil Aviation Act 1988*. The NIA's indicate that all major stakeholders² have been consulted during the negotiation of these Agreements and all supported the Agreements.

Evidence Presented

- 3.6 The evidence presented at our hearings covered a wide range of issues, including:
- the fact that the proposed new Agreements are based on Australia's standard draft air services agreement, which has formed the basis of the 57 similar agreements Australia currently has in place;³
 - the extent of consultation involved in developing the proposed new Agreements and the wide industry support for the Agreements;⁴
 - the nature and scope of the services that might be facilitated by the Agreements, especially those between Australia and the Scandinavian countries;⁵
 - the impact of recent political developments in Pakistan on Australia's trading relationship with Pakistan and on the stability of the air services operating environment in Pakistan;⁶

2 A table listing Stakeholders is included in Appendix F.

3 Tony Wheelens (Department of Transport and Regional Services), *Transcript of Evidence*, 5 March 2001, p. TR1

4 Tony Wheelens (Department of Transport and Regional Services), *Transcript of Evidence*, 5 March 2001, p. TR1 and TR3-4. See Appendix F for a listing of the community stakeholders consulted in the development of the proposed Agreements.

5 Tony Wheelens (Department of Transport and Regional Services), *Transcript of Evidence*, 5 March 2001, p. TR2 and TR7-9 and also comments by D Knochs, *Submission No.3, 14 March 2001, p. 1*.

6 Graeme Lade (Department of Foreign Affairs and Trade), *Transcript of Evidence*, 5 March 2001, p. TR2-3

- the Government's policy of allowing foreign airlines free access to all internationally designated regional airports in Australia, with no capacity constraints;⁷
- the fact that the Agreements cover freight as well as passenger services;⁸
- the complex network of 8 000 inter-governmental agreements that exist to facilitate and regulate international air services, and the role that third party governments can play in sanctioning the precise nature of air services between treaty partners;⁹
- the ownership structures of QANTAS and Ansett International, specifically the 49% foreign ownership limits within which both airlines operate;¹⁰ and
- the rationale behind the Government's policy of not allowing foreign airlines to operate in the Australian domestic route as part of an international journey.¹¹

3.7 We also sought advice on the relationship between air services agreements (which tightly regulate access to air services markets) and the rules of the World Trade Organisation (which seek to allow free trade in services). We were advised that the 'so-called hard rights in aviation, which are the rights that attach to the capacity, the route schedules and access to destinations, are specifically excluded from the WTO negotiations'.¹²

7 Tony Wheelens (Department of Transport and Regional Services), *Transcript of Evidence*, 5 March 2001, p. TR4-5 and TR6-7. Mr Wheelens also noted that 'in the event that an airline covered by these treaties wishes to operate in any regional centre in Australia, that access would be granted to them immediately' (see p. TR5).

8 Tony Wheelens (Department of Transport and Regional Services), *Transcript of Evidence*, 5 March 2001, p. TR5

9 Tony Wheelens (Department of Transport and Regional Services), *Transcript of Evidence*, 5 March 2001, p. TR7-8. For example, Mr Wheelens noted that while airlines operating from Scandinavia to Thailand and on to Australia would have to seek approval from the Government of Thailand to carry traffic between Thailand and Australia, the airlines would not be able to exercise that right without approval from the Australian Government (see TR8).

10 Tony Wheelens (Department of Transport and Regional Services), *Transcript of Evidence*, 5 March 2001, p. TR10-11

11 Tony Wheelens (Department of Transport and Regional Services), *Transcript of Evidence*, 5 March 2001, p. TR11

12 Tony Wheelens (Transport), *Transcript of Evidence*, 5 March 2001, p. TR10

Conclusion and Recommendation

- 3.8 The Treaties Committee has in the past supported the ratification of air services agreements with Malta, Germany, Macau, Egypt and Lebanon.¹³
- 3.9 Such agreements provide a secure legal framework within which passenger and freight services can operate between Australia and each of its treaty partners, thereby promoting trade and tourism. They also increase the air travel options for the citizens of each country.
- 3.10 While the level of traffic between Australia and the countries covered by the proposed new Agreements is likely to be relatively small for some time yet, it is reasonable to put in place arrangements that will allow the level of traffic to develop as commercial opportunities emerge.
- 3.11 Accordingly, we support each of the proposed Air Services Agreements.

Recommendation 3

- 3.12 **The Committee supports the *Air Services Agreement with Denmark*, the *Air Services Agreement with Norway*, the *Air Services Agreement with Sweden*, the *Air Services Agreement with Samoa* and the *Air Services Agreement with Pakistan* and recommends that binding treaty action be taken in each case.**

13 See JSCOT, *Treaties Tabled on 10 & 11 September 1996, 2nd Report* (October 1996), *Treaties Tabled on 15 & 29 October 1996, 4th Report* (November 1996) and *Eighth Report* (June 1997).

Additional Protocols to the Asian-Pacific Postal Union

Proposed treaty action

- 4.1 The Asian-Pacific Postal Union (APPU) represents a restricted union of the Universal Postal Union and allows for cooperation among postal administrations in the Asia-Pacific region. Members of the Union are located in Asia, Australasia, Melanesia, Micronesia or Polynesia. The term "Asia" in relation to this Agreement refers to countries in Asia east of and including Iran.
- 4.2 The *Second Additional Protocol to the Constitution of the APPU* and the *Additional Protocol to the General Regulations of the APPU* comprise a number of amendments to the Constitution of the APPU and its General Regulations aimed at restructuring the organisation and reducing budgetary outlays.
- 4.3 Australia has taken an active role in supporting the improvement of postal services. Through its involvement in the APPU Training College, Australia Post has assisted smaller nations in the Asia-Pacific region that have less developed postal services.
- 4.4 Changes incorporated in this Agreement will lead to the amalgamation of an office in Manila and the Asia-Pacific Training College in Bangkok which will become the APPU Bureau in Bangkok. The new office will incorporate Training and Administration functions. Apart from this organisational change the Protocols include a number of significant textual amendments to the Constitution and the General Regulations and reflect the new structure and the related financial management practices. The only new requirement for Australia relates to the action it considers

necessary to keep the Bureau informed of the processes it is adopting to implement this agreement.

- 4.5 The implementation of the Agreement involves no new legislation and the relevant administrative actions will be undertaken by Australia Post with portfolio supervision of the Department of Communication, Information Technology and the Arts.

Evidence Presented

- 4.6 The main issues canvassed at our hearing were:
- the postal service training activities of the APPU Bureau, which will be established in Bangkok as a result of these amendments;¹
 - the annual budget of the APPU Bureau, which is extremely modest when compared with the annual running costs of most international organisations;² and
 - the positive role played by Australia Post in sponsoring the development and reform of postal services in the Asia-Pacific region.³

Conclusions and recommendation

- 4.7 We were very pleased to discover an international organisation whose annual running costs appear to be extremely modest. The Bureau of the APPU is a rarity in the world of international organisations and ought to be regarded as a model for others to follow.
- 4.8 The additional protocols are aimed at facilitating cooperation and reform in international postal services. These are laudable objectives. As the protocols do not impose additional burdens on Australia, we support ratification.
- 4.9 We are also pleased to acknowledge that Australia Post is seen by many in both the APPU and the Universal Postal Union as being at the forefront of best practice in postal services and a leader in assisting the development of other postal services. Ratification of the protocols will further promote Australia's reputation in this area.

1 Michael Carrick (Department of Communications, Information Technology and the Arts [DCITA]), *Transcript of Evidence*, 5 March 2001, p. TR13-14

2 Michael Carrick (DCITA), *Transcript of Evidence*, 5 March 2001, p. TR14 and TR16-17

3 Michael Carrick (DCITA), *Transcript of Evidence*, 5 March 2001, p. TR13, 15 and 17

Recommendation 4

4.10 **The Committee supports the *Second Additional Protocol to the Constitution of the Asian-Pacific Postal Union* and the *Additional Protocol to the General Regulations of the Asian-Pacific Postal Union* and recommends that binding treaty action be taken.**

4.11 We note also that, on this occasion, the relevant Government agencies presented the amendments and the accompanying National Interest Analysis in a far more timely fashion than when we last reviewed amendments to the APPU.⁴

4 See JSCOT, *Eleventh Report* (November 1997), pp 32-36

Mutual Recognition Agreement on Conformity Assessment with Singapore

Proposed treaty action

- 5.1 The *Mutual Recognition Agreement on Conformity Assessment with Singapore* (the proposed MRA) aims to reduce the need for compliance procedures to be duplicated when Australian manufacturers are intending to export products to Singapore.¹
- 5.2 Under the Agreement mutual recognition of the results of conformity assessment activities required to demonstrate compliance with regulated standards in each country will be harmonised. This action will improve market access for Australian exporters by reducing or eliminating the risks, time delays and costs associated with obtaining regulatory approvals under the current regime.
- 5.3 Initially three sectors are covered by the MRA, electrical and electronic equipment, telecommunications equipment and medicinal products. However, the Agreement allows for other sectors to be added later.
- 5.4 While trade in products covered by the three Sectoral Annexes to the Agreement amounts to about \$2.1 billion, a relatively high proportion of Australia's \$9.2 billion (1999/2000) two-way merchandise trade with Singapore, is subject to regulation in both countries. This Agreement will have the effect of removing or minimising the effects on Australian

¹ Unless otherwise noted, the material in this section was drawn from the *National Interest Analysis for the Mutual Recognition Agreement on Conformity Assessment with Singapore* (MRA with Singapore).

industry of technical barriers to trade, while maintaining an appropriate level of protection for the health and safety of consumers.²

5.5 We note with interest the comments in the Regulation Impact Statement issued with this Agreement that:

The bilateral, multi-sector approach [provided by this Agreement] also provides a “balance of benefits” for each party. That is, ‘trading-off’ an increased access to one’s own market in some sectors in return for increased access to the other’s market for other sectors. Such agreements in this sense offer a “win-win” outcome for both parties.

5.6 Under Article 11 a key feature of the Agreement is the creation of a Joint Committee upon which both parties will have representation. Among other responsibilities the Committee will administer and facilitate the effective functioning of the Agreement and the Sectoral Annexes, resolve disputes and determine its own rules of procedure.³

5.7 With the potential impact of the MRA on the States and Australian industry we note the extensive consultation undertaken by the Department and the fact that a Consultative Forum exists to ensure effective information exchange on these important treaties. In this context, we also note the overall benefits of MRAs and accept the comment that these benefits would outweigh the costs.⁴

Evidence presented

5.8 At our hearings, we were advised that the proposed MRA is similar in object, form and content to the MRAs that have been established with the European Union and Iceland, Liechtenstein and Norway. The main difference being that the proposed MRA covers only three industry sectors (electrical and electronic equipment, telecommunications equipment and medicinal products), whereas the European MRAs cover eight industry sectors. It is possible that, over time, the proposed MRA will be expanded to include further industry sectors.⁵

2 MRA with Singapore, *Regulation Impact Statement*, p. 4

3 MRA with Singapore, *Treaty Text*, p. 8

4 NIA for MRA with Singapore, p. 5

5 Dr Andreas Dubs (Department of Industry, Science and Resources [DISR]), *Transcript of Evidence*, 26 March 2001, p. TR19-20

5.9 In response to questions about the financial benefits to individual companies of such agreements we were advised that some Australian companies have reported that as a result of the European MRAs they have saved ‘thousands of dollars’ and obtained ‘accelerated access to the market.’⁶ After the hearing, the Department of Industry, Science and Resources provided us with the source of this information - a series of brochures prepared to promote the benefits of the European MRAs to Australian companies. These brochures contain testimonials from some of the companies that have been involved in the conformity assessment processes sanctioned under the MRA. The testimonials include the following comments:

‘We estimate savings of at least \$10 000 during the last round of testing by using a local testing lab’ (comment by Greenspan Technology);

‘The process [of local testing] was more economical than having the tests done in Europe, and much faster ... saving \$8 000 and at least two months’ (comment by Cardio Design);

‘The EC mutual recognition agreement fast tracks CE mark [European standard] endorsement for equipment exported to French Wineries’ (Chris Grow Engineering); and

‘The EC Mutual Recognition Agreement has definitely benefited the local industry ... there have been significant savings in time and cost, especially if the product is not complying. Having a person present during the testing can lead to immediate solutions to any problems’ (Tennyson Technologies).⁷

5.10 Witnesses from the Department noted that it too early to properly assess the impact of the European MRAs and that these testimonials did not amount a full cost-benefit analysis. They did, however, indicate that they intended to keep this issue under review and use any cost-benefit information thus obtained in considering the merits of future MRAs.⁸

5.11 The following matters were also discussed at the hearing:

- the importance of actively promoting to Australian companies the existence and advantages of mutual recognition agreements;⁹

6 Dr Andreas Dubs (DISR), *Transcript of Evidence*, 26 March 2001, p. TR20

7 Extracts from *Exhibits No. 1, 2, 3 and 4*, provided by DISR.

8 Dr Andreas Dubs (DISR), *Transcript of Evidence*, 26 March 2001, p. TR20-21

9 Dr Andreas Dubs (DISR), *Transcript of Evidence*, 26 March 2001, p. TR21

- the fact that the proposed MRA does not change Australian product safety standards but provides for recognised Singaporean assessment to test products against Australia's standards and vice-versa;¹⁰
- in the case of pharmaceutical medicinal products, while the standard of manufacturing inspections in Singapore and Australia are equivalent, the costs to Australian consumers of products produced in Singapore should be less (as Australian importers will not have to pay for the Therapeutic Goods Administration to travel to Singapore to inspect Singaporean manufacturers);¹¹ and
- the obligations that rest on each party to ensure that the designated conformity assessment bodies in each country remain competent to perform assessments under the MRA.¹²

5.12 The National Association of Testing Authorities (NATA) provided a submission expressing support for the proposed MRA. It is intended that NATA be one of Australia's designating authorities under the MRA. NATA submit that:

In addition to providing easier access to the Singapore market for Australian goods in the sectors included in the MRA, the treaty will provide a valuable precedent for future conformity assessment related agreements Australia wishes to pursue.¹³

5.13 We understand that all Australian States and Territories have indicated their acceptance of the proposed MRA, with the exception of Queensland where the normal processes of government have been delayed as a result of the recent State elections. We were advised at the hearing that acceptance by Queensland is expected soon.¹⁴ On 22 March we received a submission from the Premier of Queensland which stated, in part:

Having considered these treaties [that is, the treaties tabled in Parliament on 27 February] and their respective national interest analyses, I do not consider that there are any issues arising from the proposed treaty actions that create concerns for Queensland.

10 Dr Andreas Dubs (DISR), *Transcript of Evidence*, 26 March 2001, p. TR21

11 Ms MacLachlan (DHAS), *Transcript of Evidence*, 26 March 2001, p. TR22

12 Dr Andreas Dubs (DISR), *Transcript of Evidence*, 26 March 2001, p. TR22. See also Part II, Article 7 of the proposed MRA.

13 NATA, *Submission 1 to MRA with Singapore*, 20 March 2001, p. 1

14 Dr Andreas Dubs (DISR), *Transcript of Evidence*, 26 March 2001, p. TR23

However, Queensland has not yet endorsed the MRA with Singapore. I expect to be able to make a decision on this shortly.¹⁵

Conclusions and Recommendation

- 5.14 The Treaties Committee has reported on mutual recognition agreements on three previous occasions:
- in the *Fifteenth Report* (June 1998), in which the former committee commented upon an agreement with the European Union;
 - in *Report 20, Two Treaties Tabled on 26 May 1998, the Bougainville Peace Monitoring Group Protocol and Treaties Tabled on 11 November 1998* (March 1999), in which we completed our consideration of, and supported ratification of, the agreement with the European Union; and
 - in *Report 22, Five Treaties Tabled on 11 May 1999* (June 1999), in which we supported ratification of an agreement with Iceland, Liechtenstein and Norway.
- 5.15 We remain of the general view that it is in the national interest to establish mutual recognition agreements with our major trading partners, where it is possible to do so without jeopardising the quality of our domestic assessment processes; the health and safety Australian consumers; or Australia's environment. Clearly, however, such agreements are not to be entered into lightly. It is necessary for each party to have a high degree of confidence in the integrity and reliability of the standards and assessment processes used in the other country.
- 5.16 The magnitude of Australia's two-way trade with Singapore (which in 1999/2000 amounted to \$9.2billion, including \$2.1billion in the three sectors that are subject to this Agreement) indicates that the potential advantages of the proposed MRA are significant.
- 5.17 To the extent that the proposed MRA will allow Australian and Singaporean exporters to avoid duplicative assessment procedures, it should:
- improve market access for exporters by reducing or eliminating risks, time delays and costs; and

15 Department of Premier & Cabinet (QLD), *Submission 2 to MRA with Singapore*, 21 March 2001, p. 1

- provide consumers with access to a wider range of goods at reduced prices.
- 5.18 We agree with the Government's assessment that the proposed MRA should improve existing trade and investment linkages, enhance Australia's standing as a viable trading partner and provide benefits to the Australian economy, all at relatively little cost.
- 5.19 While we support the proposed MRA with Singapore, we note that the Queensland Government has not yet indicated its acceptance of the agreement. The Commonwealth Government should not take binding treaty action until formal advice has been received from the Queensland Government.

Recommendation 5

- 5.20 **The Committee supports the *Mutual Recognition Agreement on Conformity Assessment with Singapore* and, subject to acceptance of the agreement by the Queensland Government, recommends that binding treaty action be taken**
- 5.21 As indicated during the course of our hearing, we think it important that the Department of Industry, Science and Resources Report seek to promote wide industry awareness of the benefits to be gained from participating in the conformity assessment processes provided for by the European MRA and soon to be established under the MRA with Singapore.
- 5.22 We also consider that the Department should, at an appropriate time, conduct a formal evaluation of the benefits of such agreements for Australian exporters and consumers. We will certainly expect such an evaluation to be available to the Parliament should the Government seek to establish further mutual recognition agreements or to extend any of the existing agreements.

Amendment to the Constitution of the International Labour Organization

Proposed treaty action

- 6.1 The *Amendments to the Constitution of the International Labour Organization* will enable the annual International Labour Conference to abrogate international labour conventions that have lost their purpose or no longer make a useful contribution to attaining the objectives of the ILO.¹
- 6.2 Australia has been a member of the International Labour Organization (ILO) since its establishment in 1919. The primary aim of the ILO is to improve the conditions of workers and recognise political and economic benefits that flow from improved labour standards.
- 6.3 Under this Agreement, the annual International Labour Conference will be given the power to abrogate conventions, a power not currently available.² At present, conventions in force cannot be abrogated.
- 6.4 The following five conventions have been proposed by the Governing Body of the ILO³ for consideration of abrogation by the Conference, should the amendment enter into force:

1 Unless otherwise indicated, the material used in this section is derived from the National Interest Analysis for the Interest Analysis for the *Constitution of the International Labour Organization Instrument of Amendment* [NIA for ILO]

2 The International Labour Conference has general oversight of the operation of the ILO, including the authority to adopt formal instruments establishing international labour standards. Each Member States sends four delegates to the Conference: one employer representative, one worker representative and two government representatives. (see NIA for ILO, p.1)

- minimum age: Conventions 15 and 60;
 - occupational safety and health: Convention 28;
 - hours of work: Convention 67; and
 - Seafarers: Convention 91.
- 6.5 Australia has ratified only one of these conventions – No. 15, concerning the minimum age for employment of trimmers and stokers, which was adopted by the ILO in 1921 and ratified by Australia in 1935.

Evidence presented

- 6.6 We were advised at our hearing that the acceptance of the Amendment would impose no obligations on Australia. It is simply a mechanism to allow the annual International Labour Conference to consider the abrogation of obsolete conventions that have been identified by the Governing Body of the ILO.⁴
- 6.7 We were also advised that:
- the Government supports moves to review ILO standard setting processes and that if the ILO is to retain its status as the primary body for establishing, maintaining and supervising labour standard, it is important that standards be up to date and relevant; and
 - there is wide-spread support from interested parties in Australia for this amendment, with State and Territory Governments, the Australian Council of Trade Unions and the Australian Chamber of Commerce all expressing support for acceptance of the amendment.⁵
- 6.8 By way of example of the type of labour convention that may be abrogated, a witness from the Department of Employment, Workplace Relations and Small Business referred to Convention No. 15, which establishes a minimum age for employment for trimmers and stokers. The Convention does not have any practical application in Australia (or elsewhere) because trimmers and stokers are no longer employed.

3 The Governing Body is the executive body of the ILO and comprises 28 government, 14 worker and 14 employer representatives, as well as deputy representatives. It is responsible for planning and directing the work of the ILO on a day-to-day basis (see NIA for ILO, p.2)

4 Ms Jean Ffrench (Department of Employment, Workplace Relations and Small Business [DEWRSB]), *Transcript of Evidence*, 26 March 2001, p. TR34.

5 Ms Jean Ffrench (DEWRSB), *Transcript of Evidence*, 26 March 2001, p. TR34

Trimmers and stokers used to work on board coal-fired ships – with stokers shovelling coal into the furnace and trimmers breaking large blocks of coal into smaller blocks for the furnace.⁶

6.9 In the absence of a power to abrogate obsolete conventions, they remain in force. While the ILO does not require parties to provide annual implementation reports on obsolete conventions, technically the conventions remain in force and parties could be said to be in breach of the conventions. For example, Australia does not have legislation specifying a minimum employment age for trimmers and stokers and could be said to be in breach of its obligations under the convention.⁷

6.10 In recommending the acceptance of the amendments to the ILO constitution the Council for the National Interest also suggested that Australia lodges a proposal with the ILO to:

- review all existing ILO Conventions for relevance and effectiveness;
- adopt less prescriptive and more flexible standards to achieve its core principles;
- establish evaluation procedures to test whether a Convention has achieved what it set out to do; and
- to move the focus from policing Conventions to providing training and extension services to member States.

The Council suggests that in lodging this proposal Australia should set a time limit for the review and that if the review is not completed within the timeframe, Australia should give notice of withdrawal from the ILO whilst at the same time reaffirming its willingness to pursue relevant core principles as an ongoing philosophy.⁸

Conclusion and recommendation

6.11 Acceptance of this amendment to Constitution of the ILO is a simple, sensible and no-cost treaty action.

6 Ms Jean (DEWRSB), *Transcript of Evidence*, 26 March 2001, pp. TR34-35.

7 Ms Jean Ffrench (DEWRSB), *Transcript of Evidence*, 26 March 2001, p. TR34

8 Council for the National Interest (WA), *Submission No. 4.1 to ILO Amendments*, 29 April 2001, p. .2

- 6.12 We agree with the Government that it would be useful if the ILO were able to abrogate obsolete conventions. It would help the ILO maintain up-to-date and relevant universal labour standards.

Recommendation 6

- 6.13 **The Committee supports acceptance of the *Amendment to the Constitution of the International Labour Organization* and recommends that binding treaty action be taken.**

Two Agreements on Protecting Classified Defence Information

Proposed treaty action

- 7.1 This chapter focuses on two similar agreements, the *Agreement with Denmark for the Reciprocal Protection of Classified Information of Defence Interest* and the *Agreement with South Africa for the Reciprocal Protection of Classified Information of Defence Interest*.
- 7.2 The main objective of both treaties is to put in place adequate security protection for any classified defence information shared between the parties, to allow information to be shared between the defence authorities and armed forces of the two countries, when required for cooperative activities. In negotiating these agreements both governments need to be satisfied that the security policies and standards of the treaty partner meet their security requirements.
- 7.3 Through the streamlined processes incorporated in these agreements Australian companies in the other country will be able to tender or participate in defence contracts that involve classified information. Australian industry should benefit through easier access to defence contracting and procurement processes in both South Africa and Denmark.

- 7.4 Australia has entered into a number of these bilateral Agreements.¹ These two agreements are substantially similar to those other legally binding agreements.
- 7.5 Although similar, both current agreements reflect the individual circumstances for security instruments of the countries concerned. Article 4(3) is an example of a provision that differs between parties and sets out the specific national security classifications of each party. Similarly Article 3 designates the nominated security authorities of each party.
- 7.6 A range of considerations in handling security issues are covered in the Agreement and include:
- marking of transmitted classified information;
 - protection and use of transmitted classified information;
 - access to transmitted classified information;
 - transmission of classified information;
 - details of security standards;
 - compliance and security inspections;
 - visits by general and security personnel;
 - provisions which minimise any risk of damage through the loss or compromise of exchanged classified material; and
 - dispute resolution mechanisms.²
- 7.7 Neither agreement requires changes to Australian legislation as they will be implemented through Defence Security Manuals, nor will there be any direct cost incurred as a result of binding treaty action. While States and Territories were notified of the agreements their cooperation is not required for domestic implementation.³

1 Australia cooperates on defence matters with Canada, France, Germany, New Zealand, Singapore, and Sweden. NIA for Denmark, p. 2

2 NIA for South Africa, P. 3

3 Unless otherwise indicated, the material used in this section is derived from the National Interest Analysis for the *Agreement with Denmark for the Reciprocal Protection of Classified Information of Defence Interest* and the *Agreement with South Africa for the Reciprocal Protection of Classified Information of Defence Interest* (NIA for South Africa or NIA for Denmark)

Evidence presented

7.8 We were advised that both proposed Agreements were ‘initiatives of the Australian Government, at the behest of Defence and defence industries, to streamline the process for information sharing in the context of growing defence relationship(s).’⁴

7.9 In the case of South Africa, we were told that:

... there have been several instances that have arisen [since 1997] that have required Defence to release classified information to South Africa. These occurrences include government to government discussions, acquisition project-specific requirements and marketing of defence systems by Australian industry.⁵

7.10 In the case of Denmark, classified information has been released on several occasions since 1969:

The most recent releases have been in association with requests for tender for acquisition projects and marketing by Australian Defence Industries of a mine countermeasures system.⁶

7.11 There was some discussion at the hearing about the relationship between agreements, like these, which seek to protect classified information and the protection of intellectual property. We were advised that the proposed Agreements deals only with classified information, not with intellectual property rights:

... if there are intellectual property rights, a separate licence or contract or other agreement is required to protect that – even if the information is only being passed between governments.⁷

7.12 In this regard, it was said that Article VIII of the proposed Agreements is intended to make it clear that anyone seeking to protect intellectual property rights needs to separately enter into appropriate arrangements to do so.⁸

7.13 On the question of what remedies might be available if intellectual property rights were breached, we were advised that:

...if intellectual property rights were breached, it should be that there is a contractual mechanism, and, under Australian domestic

4 NIA for South Africa, p.2 and NIA for Denmark, p.2

5 John Wilshire (Defence), *Transcript of Evidence*, 2 April 2001, p. TR40

6 John Wilshire (Defence), *Transcript of Evidence*, 2 April 2001, p. TR40

7 David Lloyd (Defence), *Transcript of Evidence*, 2 April 2001, p. TR43

8 David Lloyd (Defence), *Transcript of Evidence*, 2 April 2001, p. TR43

law or the domestic law of the other country, there should be the standard contractual remedies that you have to prove for the breach.⁹

7.14 A number of other matters were also raised at our hearing, including:

- the fact that similar agreements are currently being negotiated with Spain and Korea and that the existing agreement with the United States of America is being revised;¹⁰
- the importance of agreements like these for Australian companies seeking to export defence products and tender for international contracts;¹¹
- the penalties that may be imposed on an individual or company in the event of unauthorised disclosure of classified information;¹²
- the security audit procedures that are undertaken if a company wishes to be involved in defence contracts (involving audits every six months for companies dealing with information classified as 'top secret' and audits every 12 months for companies dealing with 'secret' information;¹³ and
- the processes followed when a company seeks a patent for a device that may be of defence interest.¹⁴

Conclusion and recommendation

7.15 The Treaties Committee has expressed its support for classified defence related information agreements on two previous occasions:

- in *Treaties Tabled on 10 & 11 September 1996, Second Report* (October 1996), in relation to an agreement with Canada; and
- in *Treaties Tabled on 15 & 29 October 1996, 4th Report* (November 1996), in relation to an agreement with Singapore.

7.16 We note that similar agreements have been concluded with France, Germany, New Zealand, and Sweden. The proposed Agreements with

9 David Lloyd (Defence), *Transcript of Evidence*, 2 April 2001, p. TR43

10 John Wilshire (Defence), *Transcript of Evidence*, 2 April 2001, p. TR40

11 John Wilshire (Defence), *Transcript of Evidence*, 2 April 2001, p. TR40

12 John Wilshire (Defence), *Transcript of Evidence*, 2 April 2001, p. TR41

13 John Wilshire (Defence), *Transcript of Evidence*, 2 April 2001, p. TR41

14 John Wilshire (Defence), *Transcript of Evidence*, 2 April 2001, p. TR45

South Africa and Denmark closely follow, in form and content, what has become a standard template agreement.

- 7.17 The principal advantage of these Agreements is that any future exchanges of such information between the governments and defence industries in each country will be conducted within a streamlined and legally binding framework, rather than being negotiated on a case by case basis.
- 7.18 Exchanges of classified information between defence partners are in the national interest and we accept the Government's judgement that our defence relationships with South Africa and Denmark warrant such exchanges.
- 7.19 The arrangements will also make it possible for Australian-based defence companies to tender for acquisition projects in South Africa and Denmark and for South African and Danish companies to tender for Australian defence projects. Provided appropriate standards of security are established, audited and enforced, this too is in the national interest.

Recommendation 7

- 7.20 **The Committee supports the *Agreement with Denmark for the Reciprocal Protection of Classified Information of Defence Interest* and the *Agreement with South Africa for the Reciprocal Protection of Classified Information of Defence Interest* and recommends that binding treaty action be taken.**

Agreement Establishing the Pacific Islands Forum Secretariat

Proposed treaty Action

- 8.1 The *Agreement establishing the Pacific Islands Forum* was negotiated following the decision by Forum leaders at their meeting in Palau in 1999 to change the name of the South Pacific Forum to the Pacific Islands Forum. This Agreement reflects the wider geographic spread of Forum members, some of which are located in the North Pacific.¹
- 8.2 Australia was a founding member of the South Pacific Forum, together with the Cook Islands, Fiji, Nauru, New Zealand, Samoa and Tonga. The proposed agreement removes all references to the "South Pacific Forum" and the "South Pacific Forum Secretariat" in the 1991 Agreement although the substance of the terms and provisions of the 1991 Agreement continue to be reflected in the new Agreement.
- 8.3 A number of minor changes are incorporated in the Agreement including the inclusion of Palau as a member, the creation of a single Deputy Secretary General position and all references to 'Western Samoa' have been replaced with 'Samoa'.
- 8.4 The aim of the Agreement is to facilitate and enhance regional cooperation in trade and economic development and the Pacific Islands Forum Secretariat has the primary role in coordinating this cooperation. Australia as a founder member of the earlier body has played an ongoing and key

1 Unless otherwise indicated, the material used in this section is derived from the National Interest Analysis for the *Agreement establishing the Pacific Islands Forum* (NIA for PIF).

role in the forum by contributing financially to the operating costs of the Secretariat and to providing the Secretariat, its officials and staff with specified privileges and immunities. The privileges and immunities accorded to the Forum officials and staff remain the same as in the 1991 Agreement. This Agreement will continue Australia's role with the Secretariat.

- 8.5 For Australia the Agreement will incur costs for operating the Secretariat for which Australia currently contributes an amount equivalent to 37.16% of the annual budget.² Some consequential amendments will be required to legislation relating to the Agreement.

Evidence presented

- 8.6 We were advised by witnesses from the Department of Foreign Affairs and Trade (DFAT) that, broadly speaking, the proposed Agreement contains 'nothing new, but simply implements the necessary changes to the 1991 agreement to reflect the name changes and makes a few other housekeeping type amendments.'³
- 8.7 I was said that the ultimate aim of the treaty is to:
- ... facilitate and enhance regional cooperation in trade, economic development and security, giving the Pacific Islands Forum Secretariat a central coordinating role in pursuit of such cooperation.⁴
- 8.8 We also discussed the role of the Forum in managing regional security. It was reported that the most recent meeting of leaders held last year in Kiribati, an agreement on security cooperation was concluded. The Agreement provides that, in the event of a regional crisis affecting its member countries, there would be a mechanism brought into place to allow the Forum to address issues arising from the crisis. The intent of the declaration is that the Forum would 'counsel the parties involved in the crisis to move back to the path of democracy'.⁵

2 We received a submission from Mrs D Knochs questioning 'why Australian taxpayers should be forced to support people when services for Australians are going down', *Submission 1*, p. 1

3 Rick Nimmo (DFAT), *Transcript of Evidence*, 22 April 2001, p. TR46

4 Rick Nimmo (DFAT), *Transcript of Evidence*, 22 April 2001, p. TR47

5 Rick Nimmo (DFAT), *Transcript of Evidence*, 22 April 2001, p. TR47

- 8.9 Additionally, Forum members regularly cooperate on smaller scale security issues, such as the regional conference on small arms soon to be hosted by Australia.⁶
- 8.10 The following matters were also raised at the hearing:
- the Pacific Islands Forum Secretariat is based in Suva, Fiji and that Australia contributes around \$3million per annum to the operation of the Forum;⁷ and
 - a committee of officials from each of the Forum countries meets annually, immediately before the annual leaders meeting, to advise the Secretary-General on operational and budgetary priorities.⁸

Conclusion and recommendation

- 8.11 As a founding member of the South Pacific Forum, as an economic partner, and as a substantial aid donor, Australia plays a prominent role in Pacific region affairs.
- 8.12 It is undoubtedly in the national interest for the Government to take all reasonable steps to promote political stability and encourage trade, investment and economic self-sufficiency in the region. The proposed Agreement is one such step and we are pleased to offer our support.
- 8.13 Early ratification will send a clear message that Australia remains committed to working in partnership with the countries of the region.

Recommendation 10

- 8.14 **The Committee supports the *Agreement establishing the Pacific Islands Forum Secretariat* and recommends that binding treaty action be taken.**

6 Rick Nimmo (DFAT), *Transcript of Evidence*, 22 April 2001, p. TR47

7 Rick Nimmo (DFAT), *Transcript of Evidence*, 22 April 2001, p. TR48

8 Rick Nimmo (DFAT), *Transcript of Evidence*, 22 April 2001, p. TR49

Amendments to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the United States of America

Proposed treaty action

- 9.1 The proposed treaty action concerns the acceptance of the 1999 amendments to the 1987 *Treaty on Fisheries between the Governments of Certain Pacific Island States and the United States of America*. It establishes a regional fisheries access arrangement for United States flagged fishing vessels in a defined area of the Pacific Ocean.¹
- 9.2 Australia and other Pacific Island parties will gain financial and economic benefits as well as the provision of a valuable forum for the advancement of the efficient management of the fisheries resources across the Pacific. Australia will play an important role in this process. Over the twelve years of operation of the Treaty Australia has received approximately US\$2.3m and currently receives US\$148 446 per annum, while overall US\$183.8m has been paid under the US treaty to the region since its inception in June 1988.²
- 9.3 The proposed treaty action includes a number of amendments:

1 Unless otherwise stated the information included in this section is drawn from the National Interest Analysis for the *Amendments to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the United States of America* [NIA for Fisheries Agreement]

2 Regulation Impact Statement to Fisheries Treaty, p. 4

- an amendment to allow US longline fishing vessels to fish in the high seas in the treaty area;
 - an amendment excluding US vessels from fishing in archipelagic waters claimed by Papua New Guinea;
 - an amendment to expand the area of Solomon Islands EEZ available to be fished by US; and
 - an amendment to remove a fishing effort limitation applying US purse seine fishing vessels operating in the Solomon Islands EEZ.
- 9.4 The involvement of the US as a longline fishing nation in the Pacific under this Agreement may assist Australia in its efforts to encourage other distant water fishing nations to fish more responsibly in the region. The US Pacific longline fleet currently comprises 114 vessels and it is based primarily in Hawaii. As longline fishing around Hawaii has better catch rates and proximity to markets it is not likely that US longline activity will have any impact on Australian longline fishers or on game fishers in eastern or north eastern Australian waters.³
- 9.5 This Agreement represents one regional agreement in the Pacific region which along with others like the *Convention for the Conservation of Southern Bluefin Tuna* (WCPO Convention) are aimed at effectively managing Pacific fisheries. Australia has been actively involved in these Agreements and latterly, as a member of a multilateral high level commission has been involved in the negotiation of WCPO Convention.
- 9.6 The US and a number of other Pacific nations also have been active in the negotiation of this Convention and are signatories to it. Arising from the Convention, Australia will participate in one of the first preparatory conferences to develop the Western and Central Pacific Tuna Commission, which will have a management responsibility for fish stocks in the region. The issue of effective management measures for the fish stocks has been of ongoing interest to the Committee in our reviews of a number of other fisheries treaties.⁴
- 9.7 The remaining amendments affect Papua New Guinea and the Solomon Islands. In the case of the former, the inclusion of its claimed archipelagic waters would significantly increase the area of PNG waters closed to fishing by US fishing vessels.⁵ In the case of the Solomon Islands,

3 Regulation Impact Statement to Fisheries Treaty, p. 4

4 The Committee reviewed and made recommendations on fisheries issues in its 3rd and Eighth Reports (on Southern Bluefin Tuna), and in Report 28 it reported on a Migratory Fish Stocks Agreement.

5 NIA for Fisheries Agreement, p. 5

amendments would have the effect of increasing the area of the Solomon Islands EEZ open to fishing by US fishing vessels and remove the restriction on US fishing vessels that under the current agreement may not collectively/cumulatively fish for more than 500 fishing days or part days in any given year in the EEZ of the Solomon Islands.⁶

Evidence presented

- 9.8 We were advised that, from Australia's perspective, the most significant of the proposed amendments is that which removes a restriction on US longline vessels fishing in the high seas areas of the central and western Pacific that form part of the Treaty area (known as the Forum Fisheries Agency area). Specifically, the amendment would allow US vessels to fish in the high seas waters between Australia and New Zealand. At present these waters are fished by Japanese, Korean and Taiwanese longline vessels and by some of the longline vessels based on Australia's east coast.
- 9.9 This amendment, which has been proposed by the US, would return to the US its right at international law to high seas longline access within the Treaty area.⁷
- 9.10 The other amendments are intended to facilitate the development of the fishing industries in Papua New Guinea and the Solomon Islands, and, while they are of interest to Australia, they are of more direct benefit to the countries involved.⁸

Impact on Australian fisheries

- 9.11 We were particularly interested in exploring the potential impact on fish stocks in the high seas areas adjacent to Australian waters.
- 9.12 We were advised that it was unlikely that US longline vessels would relocate to fish in the high seas between Australia and New Zealand. In the early 1990s the US fleet negotiated longline access to Fijian waters on a trial basis but:

[they] found it to be a non-profitable exercise. They just did not make enough money out of the process. Most of the longline fleet

6 NIA for Fisheries Agreement, p. 5

7 Glenn Hurry (Department of Agriculture, Fisheries and Forests [AFFA]), *Transcript of Evidence*, 26 March 2001, p. TR24-5 and TR27-28

8 Glenn Hurry (AFFA), *Transcript of Evidence*, 26 March 2001, p. TR24

is still based in and fishes out of Hawaii. For that reason I think that it is unlikely that it will come over and try and target fish in the high seas off the Australian coast. They have already flagged that, if they were interested in the future in coming across, they would negotiated with all countries in the region ... before they actually came over to fish.⁹

9.13 Witnesses from the Department of Agriculture, Fisheries and Forest did note, however, that if the US longline fleet were to fish in the Treaty area, its management practices (which are widely acknowledged as being environmentally sensitive) would provide a benchmark against which to assess the performance of distant water fishing nations, such as Japan, Korea, Taiwan and China.¹⁰

9.14 It was noted, in particular, that:

- the US fleet has a very good reputation for introducing by-catch reduction methods;¹¹
- the US fleet has just moved to a 100 per cent observer coverage on their long-line fleet in Hawaiian waters;¹² and
- under the Fishing Treaty arrangements all catches in the Treaty area are reported and all fishing efforts are recorded.¹³

Other matters

9.15 Various other matters were also discussed at our hearing, including:

- the financial benefit that the 16 members of the Forum Fisheries Agency derive from US access to the waters covered by the Fisheries Treaty (Australia receives \$US148 000 per annum in access fees from the US, a total of about \$US2.3million in fees since 1987);¹⁴
- the only access to the Australian Fishing Zone allowed by the Fisheries Treaty is that the US purse seine fleet is allowed to fish in a small area of the Coral Sea (however, no catches have been taken in this area since the Treaty was negotiated);¹⁵

9 Glenn Hurry (AFFA), *Transcript of Evidence*, 26 March 2001, p. TR29

10 Glenn Hurry (AFFA), *Transcript of Evidence*, 26 March 2001, pp. TR26, TR27, TR28, TR29 & TR30

11 Peter Ward (AFFA), *Transcript of Evidence*, 26 March 2001, p. TR30

12 Glenn Hurry (AFFA), *Transcript of Evidence*, 26 March 2001, p. TR26

13 Glenn Hurry (AFFA), *Transcript of Evidence*, 26 March 2001, p. TR26

14 Glenn Hurry (AFFA), *Transcript of Evidence*, 26 March 2001, p. TR25

15 Glenn Hurry (AFFA), *Transcript of Evidence*, 26 March 2001, p. TR25

- the impact of longline fishing on non-target species and the techniques that have been introduced to minimise such impacts;¹⁶ and
- the acceptance of the proposed amendments by State and Territory Governments, the fishing industry and environmental groups.¹⁷

Conclusions and recommendation

- 9.16 We have reported on the importance of carefully managing fish stocks on a number of occasions:
- reviewing a longline fishing agreement with Japan in *Two International Agreements on Tuna, 3rd Report* (November 1996);
 - commenting briefly on the agreement with Japan in our *First Report* (September 1996) and *Eight Report* (June 1997);
 - reviewing the Convention on the Conservation of Migratory Species in our *Fifteenth Report* (June 1998); and
 - reviewing the Agreement relating to the Conservation and Management of Straddling Fish Stocks and highly Migratory Fish Stocks in *Report 28, Fourteen Treaties Tabled on 12 October 1999* (December 1999).
- 9.17 In all of these reports we have supported measures which seek to ensure the long-term conservation and sustainable use of fish stocks. In our view, multilateral agreements which seek to regulate and control fishing on the high seas are especially valuable. To the extent that it requires Members to report their fishing effort and catch details, the Fisheries Treaty is one such agreement.
- 9.18 Although, generally speaking, the proposed amendments to the Fisheries Treaty expand the opportunities for longline fishing in the central and western Pacific Ocean, they do so in a reasonable and measured fashion.
- 9.19 It allows two small Pacific island nations, Papua and New Guinea and the Solomon Islands, an opportunity to enhance the capacity of their domestic fishing operations. We consider that it is in Australia's interest to support industry development opportunities like these for members of the Forum

16 Glenn Hurry (AFFA), *Transcript of Evidence*, 26 March 2001, p. TR27 and Peter Ward (AFFA), *Transcript of Evidence*, 26 March 2001, pp. TR29-30

17 Glenn Hurry (AFFA), *Transcript of Evidence*, 26 March 2001, pp. TR30-31 & TR33

Fisheries Agency. For many Pacific island countries, a thriving fishing industry is one of their few hopes for economic self-sufficiency.

- 9.20 The amendments also restore to the United States its right at international law to fish using longlines in the high seas within the Treaty area. It would be unreasonable to seek to deny such access to the US when distant water fishing countries with less environmentally sensitive fishing records (such as Japan, Taiwan, China and Korea) have unfettered access to the high seas in this area.
- 9.21 Allowing the US fleet longline access to the Treaty area may enable reliable baselines to be established for information about fishing effort, catch types and quantities and by-catch levels. Such data may make a significant contribution to monitoring the impact of all fleets on fish stocks in the area and in improving general management practices.
- 9.22 Noting the broad support these amendments have attracted among the Members of the Fisheries Treaty and among government and non-government organisations in Australia, we too support the proposed amendments.

Recommendation 9

- 9.23 **The Committee supports the *Amendments to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the United States of America* and recommends that binding treaty action be taken.**

ANDREW THOMSON MP

Committee Chairman

5 April 2001



Appendix A - Extract from Resolution of Appointment

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



Appendix B - National Interest Analyses

Agreement on Privileges and Immunities on the International Tribunal for the Law of the Sea

NATIONAL INTEREST ANALYSIS

Date of Proposed Binding Treaty Action

The proposed treaty action is ratification of the *Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea* (the Treaty), which Australia signed on 26 May 1999. It is proposed that Australia's instrument of ratification be deposited by 31 December 2000. By Article 30, the Treaty will enter into force generally 30 days after the deposit of the tenth instrument of ratification or accession. As at 22 September 2000 four States – Croatia, the Netherlands, Norway and Slovakia - had ratified it.

Date of Tabling of the Treaty Action

10 October 2000

Reasons for Australia to take the Proposed Treaty Action

The International Tribunal for the Law of the Sea (the Tribunal) was established by Annex VI to the United Nations Convention on the Law of the Sea (UNCLOS), which entered into force generally and for Australia on 16 November 1994. The occupies an important place in the dispute settlement regime under UNCLOS. Under Article 287 of UNCLOS, a State Party is entitled to nominate the Tribunal as its preferred forum, or one of its preferred fora, for the compulsory settlement of disputes concerning UNCLOS. Such a nomination would become effective as between Australia and any other State Party to UNCLOS which had likewise elected to use the Tribunal. In addition, by Article 290(5) the Tribunal has the function of dealing with urgent applications for binding provisional measures by parties to a dispute, including those to be heard by *ad hoc* arbitral panels under Annexes VII or VIII which have not yet been constituted. Since Annex VII panels are the default mode of compulsory dispute settlement, the Tribunal is as a consequence the default forum for provisional measures applications.

In the years since UNCLOS was negotiated it has become apparent that its treatment of the privileges and immunities of the Tribunal and of its members, officials, counsel and witnesses appearing before it is inadequate by comparison with other international tribunals of like standing and importance (such as the International Court of Justice, the International Criminal Tribunals for the Former Yugoslavia and Rwanda, and the proposed International Criminal Court). The only provisions of Annex VI touching on this matter are Article 10 of Annex VI, under which States Parties are obliged to accord to members of the Tribunal, when engaged on Tribunal business, diplomatic privileges and immunities, and Article 18(8) which provides for their salaries, allowances and compensation to be free of all taxation.

To remedy this deficiency, the States Parties to UNCLOS negotiated this Treaty. Once it enters into force, the Treaty will fill the gaps left by UNCLOS by providing for a more comprehensive treatment of the privileges and immunities of the Tribunal, its members and officials, and persons participating in proceedings before it. Australia, as a user of the Tribunal, would benefit from the more solid underpinning to the work of the Tribunal that the Treaty will provide.

It is possible that Australia will decide to exercise in future its right to nominate the Tribunal as its preferred forum, or one of its preferred fora, for the compulsory settlement of disputes concerning UNCLOS. In these circumstances, it would be appropriate for Australia to have conferred on the Tribunal privileges and immunities equivalent to those that it confers on other international courts and tribunals.

Obligations

The privileges and immunities that would be granted under the Treaty are those necessary for the Tribunal and persons connected with it to carry out their functions effectively and without interference.

The Treaty would grant to the Tribunal legal personality and capacity to contract, own property and sue (Article 2). It also provides that the property, assets, archives and communications of the Tribunal shall be inviolable (Articles 3, 5, 6 and 8). Of the remaining privileges and immunities it confers on the Tribunal, the principal ones are immunity from suit (Article 5), exemption from direct taxes and from customs duties on goods imported or exported by the Tribunal for its official use (Article 9) and exemption from currency restrictions (Article 12).

The Treaty would provide for privileges and immunities equivalent to those of a head of a diplomatic mission by international law to be accorded to the members of the Tribunal (Article 13). Officials of the Tribunal, such as its Registrar, would be granted the standard range of diplomatic privileges and immunities (Article 14). Agents, counsel, advocates and witnesses appearing before the Tribunal, as well as experts and other persons performing missions by order of the Tribunal, would enjoy more limited privileges and immunities for the duration of their functions (Articles 15 to 17). Within Australia, Australian citizens and permanent residents who are otherwise covered by the Treaty would have no privileges or immunities under it except immunity from suit for words spoken or written and acts done in discharge of their duties (Article 18).

Without prejudice to the privileges and immunities granted by the Treaty, all persons enjoying such privileges and immunities by virtue of their connection with the Tribunal would remain under a duty to respect the laws of any State Party in whose territory they may be on Tribunal business (Article 19). There is provision in the Treaty for the waiver of privileges and immunities in appropriate circumstances (Article 20).

Costs

There are no direct foreseeable financial costs to the Commonwealth, the States and Territories or Australian industry from taking the proposed treaty action.

Future Protocols, Annexes or other legally binding instruments

No provision is made in the Treaty for the conclusion of further legally binding instruments of any kind.

Implementation

The International Tribunal for the Law of the Sea (Privileges and Immunities) Regulations 1998 (Statutory Rules 1998 No 41) made under section 13 of the International Organisations (Privileges and Immunities) Act 1963 (the Act) give effect in Australian law to Australia's obligations under Articles 10 and 18(8) of Annex VI to UNCLOS. Prior to Australia taking the proposed treaty action, new regulations will need to be made under section 13 of the Act to enable Australia to give domestic effect to its obligations under the treaty.

Consultation

The States and Territories have been advised of the proposed treaty action through the Standing Committee on Treaties and have not raised any queries or objections. The intention to ratify the Treaty was also raised and comments invited by a senior official of the Commonwealth Attorney-General's Department at the June 2000 annual meeting of the Australia-New Zealand Society of International Law, attended by a wide variety of international law academics and practitioners as well as government officials.

No comments have been received on the proposed treaty action and the Government is not aware of objection to the Treaty from any other source.

Withdrawal or denunciation

By Article 33 a Party may denounce the Treaty by written notification to the Secretary-General of the United Nations (the depositary of the treaty). Such denunciation would take effect one year after the date of receipt of the notification.

Contact Details

Sea Law, Environmental Law and Antarctic Policy Section
International Organisations and Legal Division
Department of Foreign Affairs and Trade

Air Services Agreement between the Government of Australia and the Government of the Kingdom of Denmark

Air Services Agreement between the Government of Australia and the Government of the Kingdom of Norway

Air Services Agreement between the Government of Australia and the Government of the Kingdom of Sweden

NATIONAL INTEREST ANALYSIS

Proposed Binding Treaty Action

1. The treaty action proposed is to bring into force the Air Services Agreement between the Government of Australia and the Government of the Kingdom of Denmark, the Air Services Agreement between the Government of Australia and the Government of the Kingdom of Norway and the Air Services Agreement between the Government of Australia and the Government of the Kingdom of Sweden (hereafter collectively referred to as “the Agreements”). The texts of the Agreements are in all practical respects identical and shall be discussed collectively throughout this National Interest Analysis.

2. Article 24 of each Agreement provides for the Agreement to enter into force on the date of its signature.

Date of Proposed Binding Treaty Action

3. The Government proposes to make arrangements with each of the treaty partners to sign the respective Agreements as soon as possible following the conclusion of the fifteen sitting days from the date the Agreements were tabled in both Houses of Parliament.

Date of Tabling of the Treaty Action

4. 27 February 2001.

Purpose of the proposed treaty action and why it is in the national interest

5. The Agreements provide for the airlines of the treaty partners to operate passenger and freight services between Australia and Scandinavia. This will facilitate tourism and trade through freight and passenger transportation and provide greater air travel options for Australian consumers.

Reasons for Australia to take the Proposed Treaty Action

6. Consultations with Scandinavia were undertaken following requests from Qantas and Ansett for the inter-governmental arrangements that are required to facilitate their entry to the Australia/Scandinavia air travel market. The provisions reached in the Agreements meet the commercial needs of airlines of all Parties and provide additional capacity to allow for further market growth. The Agreements reached are consistent with the policy of the Australian Government in seeking liberal outcomes.

Obligations

The Agreements oblige the Government of Australia and the Governments of Denmark, Norway and Sweden to allow the designated airlines of each country to operate scheduled air services carrying passengers and cargo between the two countries and impose reciprocal obligations on the Parties on a range of matters relating to international air transportation. The remainder of this section highlights the more important rights and obligations under the Agreements.

8. The Agreements contain no significant deviations from the standard text for Air Services Agreements.

9. Article 3 of the Agreements provides that each Party may designate as many airlines as they wish to operate the services agreed.

Under Article 2 of the Agreements, each Party grants to the designated airlines of the other Party the aviation rights necessary to establish and operate scheduled air services. Scheduled air services are to be operated only in accordance with the Route Schedule at the Annex to the Treaty. The Agreements also provide for other non-designated airlines of the Parties the right to overfly its territory and to make stops in its territory for non-traffic purposes. The Agreements do not allow the domestic transportation of domestic passengers or freight by a designated airline of the other Party.

11. Article 4 of the Agreements provides that either Party may revoke or limit authorisation of an airline's operations if the airline does not comply with certain laws and regulations that are consistent with the Chicago Convention on International Civil Aviation. This provision also applies if either Party is not satisfied that substantial ownership and effective control of an airline are vested in nationals of the Party designating the airline, or if airline operations are not in accordance with the Agreements.

12. Under Article 5, each Party is required to recognise certificates of airworthiness, competency and licences issued by the other Party provided such documents conform with the standards established by the International Civil Aviation Organization (ICAO). ICAO was established following the entry into force of the multilateral Convention of International Civil Aviation. ICAO sets standards and practices for the safe and efficient conduct of international aviation.

13. Article 17 allows each Party to request consultations concerning safety standards maintained by the other Party. Each Party may take appropriate action essential to safety of airline operations if it considers such actions to be necessary.

14. Under Article 18, Parties are required to protect the security of civil aviation against acts of unlawful interference and, in particular, to act in conformity with multilateral Conventions relating to aviation security. Parties must require operators of aircraft to act in accordance with the aviation security provisions applicable to the Parties to the Agreements.

15. Article 7 provides that Parties are required to exempt equipment and stores used in the operation of agreed services specified in the Agreements from customs and excise duties and other related charges.

16. Under Article 13, the Parties are obliged, with a view to preserving and enhancing competition, to apply agreed provisions for the approval of fares to be charged by airlines for carriage between each country and the other.

17. Article 11 provides that each Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the designated airlines of the other Party.

Article 21 sets out a process for the settlement of disputes relating to the application or interpretation of the Agreements.

Implementation

19. The Agreements are to be implemented through existing legislation including the Air Navigation Act 1920 and the Civil Aviation Act 1988 on matters such as route licensing, aircraft configuration, safety and environmental protection. No amendments to these Acts are required for the implementation of the Agreements.

Costs

20. There will be no costs to the Australian Government associated with the implementation of the proposed Agreements.

Consultation

21. Information on the Agreements has been provided to the States and Territories through the Commonwealth-State-Territory Standing Committee on Treaties. Consultations were held with relevant government departments, state and national tourism authorities and with members of the Australian aviation industry, prior to and during, the negotiations with the Scandinavian aeronautical authorities on the Agreements.

22. All major stakeholders supported the Agreements.

23. Members of the Australian delegation at the negotiations with the Scandinavian aeronautical authorities included representatives from Qantas and Ansett.

Future treaty action: protocols, annexes or other legally binding instruments

24. Under Article 20, any amendments to the Agreements, agreed in writing by the Contracting Parties shall come into force when approved in accordance with the constitutional requirements of both Contracting Parties and as confirmed by an exchange of diplomatic notes.

25. Under Article 20, if a multilateral Convention concerning air transport comes into force in respect of both Contracting Parties, the Agreements shall be deemed to be amended so far as is necessary to conform with the provisions of that Convention.

26. Any future amendments to these Agreements are likely to involve further deregulation of air service arrangements between the Contracting Parties.

Withdrawal or Denunciation

27. Article 23 of the Agreements provides arrangements to be followed for termination. Either Contracting Party may give notice to the other Contracting Party of its decision to terminate the Agreement. The Agreement shall terminate one year after the date of receipt of the notice by the other Contracting Party.

Contact Details

International Branch
Aviation Division
Department of Transport and Regional Services

Air Services Agreement between the Government of Australia and the Government of the Islamic Republic of Pakistan relating to Air Services, done at Islamabad on 7 February 1998

NATIONAL INTEREST ANALYSIS

Proposed Binding Treaty Action

1. The treaty action proposed is to bring into force the Agreement between the Government of Australia and the Government of the Islamic Republic of Pakistan relating to Air Services (hereafter “the Agreement”).
2. Article 22 specifies that the Agreement will enter into force when the Parties have notified each other in writing that their respective requirements for its entry into force have been satisfied.

Date of Proposed Binding Treaty Action

3. The Government proposes to notify the Government of the Islamic Republic of Pakistan in the terms of Article 22 as soon as possible following the conclusion of fifteen sitting days from the date the Agreement was tabled in both Houses of Parliament.

Date of Tabling of the Treaty Action

4. 27 February 2001.

Purpose of the treaty and why it is in the national interest

5. The purpose of the treaty is to allow direct air services to operate between Australia and Pakistan, which will facilitate tourism and trade through freight and passenger transportation between the two countries and provide greater air travel options for Australian consumers.

Reasons for Australia to take the Proposed Treaty Action

6. The Agreement provides a framework for the operation of scheduled air services between Australia and Pakistan by the designated airlines of both countries.

Obligations

7. The Agreement obliges Australia and Pakistan to allow the designated airlines of each country to operate scheduled air services carrying passengers and cargo between the two countries. To facilitate these services, the Agreement also includes reciprocal provisions on a range of aviation-related matters such as safety, security, customs regulation, and the commercial aspects of airline operations, including the ability to establish offices in the territory of the other Party and to sell fares to the public.
8. Australia has a standard draft air services agreement which has been developed in consultation with aviation stakeholders. The Agreement does not differ in substance from the standard Australian draft at the time the Agreement was negotiated.
9. The following paragraphs highlight the key provisions of the Agreement.
10. Article 2 of the Agreement provides that each Party may designate as many airlines as they wish to operate the services agreed.
11. Under Article 3 of the Agreement, each Party grants to the designated airlines of the other Party the aviation rights necessary to establish and operate agreed services, and to all other airlines of that Party, the right to overfly its territory and to make stops in its territory for non-traffic purposes.
12. Article 5 of the Agreement provides that either Party may revoke or limit authorisation of an airline’s operations if the airline does not comply with certain laws and regulations that are consistent with the Chicago Convention on International Civil Aviation. This provision also

applies if either Party is not satisfied that substantial ownership and effective control of an airline are vested in nationals of the Party designating the airline, or if airline operations are not in accordance with the Agreement.

13. Under Article 7, each Party is required to recognise certificates of airworthiness, competency and licences issued by the other Party provided such documents conform with the standards established by the International Civil Aviation organisation (ICAO). If the consultations are not successful, then the Party concerned about safety may set out the steps required for the other Party to comply with the minimum standards deemed acceptable by the Chicago Convention on International Civil Aviation. A failure to take the necessary steps to meet those minimum standards will allow the to withhold authorisation for the air services.

14. Article 8 allows each Party to request consultations concerning safety standards maintained by the other Party. Each Party may take appropriate action essential to safety of airline operations if it considers such actions to be necessary.

15. Under Article 9, both Parties are required to protect the security of civil aviation against acts of unlawful interference and, in particular, to act in conformity with multilateral Conventions relating to aviation security. Both Parties must require operators of aircraft to act in accordance with the aviation security provisions applicable to the Parties to the Agreement.

16. Under Article 11, both Parties are obliged to ensure that there is a fair and equal opportunity for airlines of both Parties to operate services on the route. The supply of aircraft capacity to be operated is expected to be similar to the demand for services from traffic originating in Pakistan and destined for Australia, and vice versa.

17. Article 13 provides that both Parties are required to exempt equipment and stores used in the operation of agreed services specified in the treaty from customs and excise duties and other related charges.

18. Under Article 14, the Parties are obliged, with a view to preserving and enhancing competition, to apply agreed provisions for the approval of fares to be charged by airlines for carriage between each country and the other.

19. Articles 15 and 16 provide a framework that allows airlines to establish themselves in the territory of the other Party. The framework includes provisions allowing designated airlines to establish offices, maintain staff, the ability to sell tickets to the public and to convert currency freely. In addition, each Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the designated airlines of the other Party.

20. Article 19 sets out a process for the settlement of disputes relating to the application or interpretation of the Agreement.

21. The Agreement allows scheduled air services to be operated only in accordance with the Route Schedule at the Annex to the Treaty. The Agreement does not allow the transport of domestic passengers or freight by a designated airline of the other Party.

Implementation

22. The Agreement is to be implemented through existing legislation including the Air Navigation Act 1920 and the Civil Aviation Act 1988 on matters such as route licensing, aircraft configuration, safety and environmental protection. No amendments to these Acts are required for the implementation of the Agreements.

Costs

23. There will be no direct costs to the Australian Government associated with the implementation of the Agreement.

Consultation

24. Information on the Agreement has been provided to the States and Territories through the Commonwealth-State-Territory Standing Committee on Treaties. Consultations were held with relevant Government Departments and with members of the Australian aviation industry prior to the negotiations with the aeronautical authorities of Pakistan on the Agreement. Parties consulted included the Departments of Treasury, Primary Industries and Energy, Industry, Science and Resources, the Australian Customs Service, the International Air Services Commission, State

Government Tourism Authorities, tourism industry bodies, Australian international airports, Qantas Airways Ltd and Ansett International Ltd.

25. All major stakeholders supported the Agreement.

26. Members of the Australian delegation at the negotiations with the Pakistani aeronautical authorities included representatives from Qantas and Ansett.

Future treaty action: protocols, annexes or other legally binding instruments

27. Article 18 of the Agreement provides for amendment or revision by agreement of the Parties.

28. Any amendment to the Agreement shall enter into force when the two Parties have notified each other, through an exchange of diplomatic notes, of the fulfilment of their constitutional procedures relating to the conclusion and entry into force of international agreements.

29. If a multilateral Convention concerning air transport comes into force in respect of both Parties, the Agreement shall be deemed to be amended so far as is necessary to conform with the provisions of that Convention.

30. Any future amendments to the Agreement are likely to involve further deregulation of air services arrangements between the Parties.

Withdrawal or Denunciation

31. Article 20 of the Agreement provides arrangements to be followed for termination. Either Party may give notice in writing through the diplomatic channel to the other Party of its decision to terminate the Agreement. Such notice shall be communicated simultaneously to the International Civil Aviation organisation (ICAO). The Agreement shall terminate one year after the date of receipt of notice by the other Party.

32. In default of acknowledgment of a receipt of a notice of termination by the other Party, the notice shall be deemed to have been received 14 days after the date on which ICAO acknowledged receipt thereof.

Contact Details

International Branch

Aviation Division

Department of Transport and Regional Services.

Agreement between the Government of Australia and the Government of Samoa relating to Air Services, done at Apia on 11 August 2000

NATIONAL INTEREST ANALYSIS

Proposed Binding Treaty Action

1 The treaty action proposed is to bring into force the Agreement between the Government of Australia and the Government of Samoa relating to Air Services (hereafter “the Agreement”).

2 Article 22 specifies that the Agreement will enter into force when the Parties have notified each other in writing that their respective requirements for its entry into force have been satisfied.

Date of Proposed Binding Treaty Action

3 The Government proposes to notify the Government of Samoa in the terms of Article 22 as soon as possible following the conclusion of fifteen sitting days from the date the Agreement is tabled in both Houses of Parliament.

Date of Tabling of the Treaty Action

4 27 February 2001

Purpose of the treaty and why it is in the national interest

5 The purpose of the treaty is to allow direct air services to operate between Australia and Samoa, which will facilitate trade and tourism between the two countries through freight and passenger transportation and provide greater air travel options for Australian consumers.

Reasons for Australia to take the Proposed Treaty Action

6 The Agreement provides a framework for the operation of scheduled air services between Australia and Samoa by the designated airlines of both countries.

Obligations

7 The Agreement obliges Australia and Samoa to allow the designated airlines of each country to operate scheduled air services carrying passengers and cargo between the two countries. To facilitate these services, the Agreement also includes reciprocal provisions on a range of aviation-related matters such as safety, security, customs regulation, and the commercial aspects of airline operations, including the ability to establish offices in the territory of the other Party and to sell fares to the public.

8 Australia has a standard draft air services agreement which has been developed in consultation with aviation stakeholders. The Agreement does not differ in substance from the standard Australian draft at the time the Agreement was negotiated.

9 The following paragraphs highlight the key provisions of the Agreement.

10 Article 2 of the Agreement allows each Party to designate as many airlines as they wish to operate the services agreed.

11 Under Article 3 of the Agreement, each Party grants to the designated airlines of the other Party the aviation rights necessary to establish and operate agreed services, and to all other airlines of that Party, the right to overfly its territory and to make stops in its territory for non-traffic purposes. Access to airways, airports and related facilities is to be given on a non-discriminatory basis.

12 Under Article 5 of the Agreement, either Party may revoke or limit authorisation of an airline's operations if the airline does not comply with certain laws and regulations that are consistent with the Chicago Convention on International Civil Aviation. This provision also applies if either Party is not satisfied that substantial ownership and effective control of an airline are vested in nationals of the Party designating the airline, or if airline operations are not in accordance with the Agreement.

13 Under Article 7, each Party is required to recognise certificates of airworthiness, competency and licences issued by the other Party provided such documents conform with the standards established by the International Civil Aviation organisation (ICAO). If the consultations are not successful, then the Party concerned about safety may set out the steps required for the other Party to comply with the minimum standards deemed acceptable by the Chicago Convention on International Civil Aviation. A failure to take the necessary steps to meet those minimum standards will allow the Party concerned about safety to withhold authorisation for the air services.

14 Article 8 provides that each Party may request consultations concerning safety standards maintained by the other Party. Each Party may take appropriate action essential to the safety of airline operations if it considers such actions to be necessary.

15 Under Article 9, both Parties are required to protect the security of civil aviation against acts of unlawful interference and, in particular, to act in conformity with multilateral Conventions relating to aviation security. Both Parties must require operators of aircraft to act in accordance with the aviation security provisions applicable to the Parties to the Agreement.

16 Under Article 11, both Parties are obliged to ensure that there is a fair and equal opportunity for airlines of both Parties to operate services on the route. The supply of aircraft capacity to be operated is expected to be similar to the demand for services from traffic originating in Samoa and destined for Australia, and vice versa.

17 Article 13 provides that both Parties are required to exempt equipment and stores used in the operation of agreed services specified in the treaty from customs and excise duties and other related charges.

18 Under Article 14 the Parties are obliged, with a view to preserving and enhancing competition, to apply agreed provisions for the approval of fares to be charged by airlines for carriage between each country and the other.

19 Articles 15 and 16 provide a framework that allows airlines to establish themselves in the territory of the other Party. The framework includes provisions allowing designated airlines to establish offices, employ and maintain staff, and the abilities to sell tickets to the public and to convert currency freely. In addition, each Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the designated airlines of the other Party.

20 Article 19 sets out a process for the settlement of disputes relating to the application or interpretation of the Agreement.

21 The Agreement allows scheduled air services to be operated only in accordance with the Route Schedule at the Annex to the Treaty. The Agreement does not allow the transport of domestic passengers or freight by a designated airline of the other Party.

Implementation

22 The Agreement is to be implemented through existing legislation including the Air Navigation Act 1920 and the Civil Aviation Act 1988 on matters such as route licensing, aircraft configuration, safety and environmental protection. No amendments to these Acts are required for the implementation of the Agreements.

Costs

23 There will be no direct costs to the Australian Government associated with the implementation of the Agreement.

Consultation

24 Information on the Agreement has been provided to the States and Territories through the Commonwealth-State-Territory Standing Committee on Treaties. Consultations were held with relevant Government Departments and with members of the Australian aviation industry prior to the negotiations with the aeronautical authorities of Samoa on the Agreement. These included the Departments of Treasury, Primary Industries and Energy, Industry, Science and Resources, the Australian Customs Service, the International Air Services Commission, State Government Tourism Authorities, tourism industry bodies, Australian international airports, Qantas Airways Ltd and Ansett International Ltd.

25 Prior to approval by Executive Council and subsequent signature, the treaty text was submitted to and received approval from the Prime Minister, the Treasurer, the Attorney-General and the Ministers for Immigration and Multicultural Affairs and for Justice and Customs.

26 All major stakeholders supported the Agreement.

Future treaty action: protocols, annexes or other legally binding instruments

27 Article 18 of the Agreement provides for amendment or revision by agreement of the Parties.

28 Any amendment to the Agreement shall enter into force when the two Parties have notified each other, through an exchange of diplomatic notes, of the fulfilment of their constitutional procedures relating to the conclusion and entry into force of international agreements.

29 If a multilateral Convention concerning air transport comes into force in respect of both Parties, the Agreement shall be deemed to be amended so far as is necessary to conform with the provisions of that Convention.

30 Any future amendments to the Agreement are likely to involve further deregulation of air services arrangements between the Parties.

Withdrawal or Denunciation

31 Article 20 of the Agreement provides arrangements to be followed for termination. Either Party may give notice in writing through the diplomatic channel to the other Party of its decision to terminate the Agreement. Such notice shall be communicated simultaneously to the International Civil Aviation organisation (ICAO). The Agreement shall terminate one year after the date of receipt of notice by the other Party.

32 In default of acknowledgment of a receipt of a notice of termination by the other Party, the notice shall be deemed to have been received 14 days after the date on which ICAO acknowledged receipt thereof.

Contact Details

International Branch
Aviation Division
Department of Transport and Regional Services.

Asian-Pacific Postal Union: Second Additional Protocol to the Constitution of 4 December 1985, as amended and the Additional Protocol to the General Regulations, done at Tehran on 18 September 2000.

NATIONAL INTEREST ANALYSIS

Proposed Binding Treaty Action

1. The proposed binding treaty action is ratification of the Second Additional Protocol to the Constitution of the Asian-Pacific Postal Union as amended ("Second Additional Protocol – APPU Constitution") and approval of the Additional Protocol to the General Regulations of the Asian-Pacific Postal Union ("Additional Protocol – General Regulations").

Date of Proposed Binding Treaty Action

2. It is proposed that the binding treaty action be taken for Australia as soon as practicable after 5 April 2000.

3. Both Additional Protocols will come into force on 1 July 2002 in accordance with Article XX, Second Additional Protocol to the APPU Constitution and Article XX, Additional Protocol, General Regulations and will remain in force indefinitely.

Date of Tabling of the Proposed Treaty Action

4. The proposed date of tabling is 27 February 2001.

Purpose of the Proposed Treaty Action and why it is in the National Interest

5. The 8th Congress of the APPU, held in Tehran from 12 to 18 September 2000, considered proposals to restructure the APPU to better reflect its status as a Restricted Union of the Universal Postal Union (UPU) and to reduce annual budgetary outlays. The Protocols comprise a number of amendments to the Constitution of the APPU and to the General Regulations reflecting those objectives. Member countries of the UPU have the right to form restricted unions for the purpose of further advancing cooperation among postal administrations and to improve postal services on a regional basis. They may also conclude special agreements among themselves toward the same end. Any arrangements of this type must not, however, contain provisions that are less favourable to the public than those provided for by the Acts of the UPU.

6. Australia Post is considered by many member countries not only to be at the forefront in the pursuit of best practice in postal service delivery but also in the application of postal service technologies. Accordingly, Australia's continued membership of the APPU provides a strong basis for influencing the regional postal service reform agenda. Ratification of the Additional Protocols would clearly indicate Australia's commitment not only to the APPU but also more broadly to the Asia Pacific region. Non-ratification could be construed as an indication of regional disengagement which may have negative consequences in other more strategically relevant fora.

Reasons for Australia to take the proposed Treaty Action

7. The APPU was founded in 1961 with the purpose of extending, facilitating and improving postal relations between member countries and to promote cooperation in the field of postal services (Article 1, APPU Constitution). The APPU is one of eight Restricted Unions of the UPU with membership comprising those countries stretching from Iran in the west to Japan and the Pacific island states in the East. Australia has played a pivotal role in the UPU since 1907 and it is appropriate that it continue its regional engagement through the APPU (of which it is a foundation member). While the UPU remains the principal international agency responsible for development of the universal postal service and its regulation, the APPU provides a unique regional point of reference and one in which Australia is able to demonstrate its regional identification and commitment.

8. The Constitution and General Regulations of the APPU have treaty status and govern the policy and operations of the APPU. They comprise generally the rules that may be applied in relation to postal services as between the regional grouping of countries represented by the APPU. Article 122 (1) provides that the General Regulations and the International Service Rules (ISR) established by the Executive Council “regulate all matters and services relative to letter post items” between member countries. Matters upon which the General Regulations and the ISR are silent are held to be subject to the Acts of the UPU (Article 122(2)).

9. Prior to the 2000 Tehran Congress the APPU comprised two offices – the Central Office located in Manila and the Asian-Pacific Postal Training College located in Bangkok. At Tehran it was agreed that both offices should be amalgamated and that a single APPU Bureau be established and located at Bangkok. It was also agreed that the Bureau should comprise two sections, Administration and Training. The Bureau will continue to be headed by a Director, selected by Congress or the Executive Council. The Administration and Training Sections will be headed by Managers. The Governing Board established under Article 111 of the General Regulations will continue to direct general training policy.

10. Article 14(2), formally Article 15(2), of the Constitution requires that a signatory country shall ratify, accept or approve the Additional Protocols to the Constitution (in this case the Second Protocol) and the other Acts of the APPU. Article 19(2), formally Article 20(2), of the Constitution requires that amendments of the General Regulations shall form the subject of an Additional Protocol (the Additional Protocol to the General Regulations) which shall be ratified, accepted or approved, in accordance with the constitutional requirements of the signatory country (in Australia’s case, treaty action in the form of ratification is required). Article 14(3), formally Article 15(3), of the Constitution stipulates that “the Additional Protocols of the Constitution and those of the General Regulations are the Acts of the Union”.

11. Ratification of the Protocols will facilitate further cooperation between the postal administrations of member countries and support the continued improvement of postal services within the region. It will also send positive signals to postal administrations within the Asia-Pacific region regarding Australia’s continuing desire for enhanced postal market competitiveness.

Obligations

12. Both the Constitution and the General Regulations provide the basis for co-operation in postal related matters between member countries within the denoted region. The General Regulations also address the international letter post service between member countries in a manner that generally serves to underscore the universal postal rules and regulations that flow from the Acts of the Universal Postal Union.

13. The Protocols incorporate a significant number of textual amendments to both the Constitution and the General Regulations which resulted from the decision to reform the organisational structure of the APPU. Changes made reflect both the newly adopted structure and concomitant changes to financial management practises. The Protocols impose few substantial obligations on Australia with the only additional requirement included at Article V(1), Additional Protocol to the General Regulations (Article 104, amended), whereby member-countries “shall take such action considered appropriate to implement resolutions of the Congress and shall undertake to inform the Bureau from time to time of action taken and progress to date”.

Implementation

14. No legislative measures are required for Australia to implement the obligations under the Protocols to the Constitution of the APPU and the General Regulations. Implementation is effected by way of administrative action by Australia Post as required, with portfolio supervision of the Department of Communications, Information Technology and the Arts (DCITA).

15. In its operations, Australia Post is subject to the provisions of the Australian Postal Corporation Act 1989. Section 14 of the Act requires Australia Post to “supply postal services within Australia and between Australia and places outside Australia.” Section 18 of the Act empowers Australia Post to supply postal services for Australia’s external territories and foreign countries and to supply any services other than postal services to or on behalf of the Commonwealth, the States and Territories and foreign countries. Section 32C of the Act requires Australia Post to carry and deliver within Australia letters received from a country outside Australia in compliance with charging regimes that would apply by virtue of the provisions of a convention to which Australia is a party.

16. In light of its statutory obligations and the provisions of the Acts of the APPU (as amended by the Protocols) to which Australia is a party, Australia Post seeks to ensure that the provision of Australian postal services and associated practices and procedures are in conformity with international postal standards. Accordingly, such administrative action considered necessary to reflect those standards is undertaken by Australia Post (in consultation with DCITA as necessary).

Costs

17. Article 13 (formally Article 14) of the Constitution of the APPU states that “the contribution units of each member country shall be determined on the basis of that member country’s Universal Postal Union contribution class as prescribed in the General Regulations of the APPU.” Under this scheme, Australia is accorded five Contribution Units. Of the agreed annual APPU budget of \$US63,000 for the year 2001, Australia will be required to contribute some US\$4311.30. This amount is paid by Australia Post.

18. The proposed treaty action will not impose any additional contribution costs on Australia although the budget ceiling of the APPU for the period from the date of entry into force of the Acts will be US\$80,000 (Article XVIII, Additional Protocol to the General Regulations, Article 117 amended). However, Australia Post also makes a voluntary annual contribution of A\$50,000 to the Asian Pacific Postal College and a further voluntary annual contribution of US\$50,000 to the Asia Pacific Postal Cooperative (the membership of which comprises national postal operators).

Consultation

19. The States and Territories were advised of the proposed treaty action through the Commonwealth-State Standing Committee on Treaties.

20. The Australian Delegation to the Congress comprised representatives from Australia Post.

Future treaty action: protocols, annexes or other legally binding instruments

21. The APPU Congress meets every five years. Amendments to the APPU Constitution resulting from Congress meetings are recorded in Additional Protocols to the Constitution, which are subject to the process of ratification, acceptance or approval in accordance with each member states’ constitutional requirements. Amendments to the General Regulations are also recorded in Additional Protocols and likewise, are subject to ratification, acceptance or approval by member states.

Withdrawal or Denunciation

22. Article IV (Article 7 amended) of the APPU Constitution provides for the voluntary withdrawal of any member country from the union. Withdrawal is effected by means of a notice of renunciation of the Acts of the Union given by the Government of the country concerned to the Director of the Bureau of the UPU and by the Director to the Governments of member countries. Withdrawal takes effect one year after the day on which the Director receives the notice of renunciation.

Contact Details

Postal Policy Section
Enterprise and Radiocommunications Branch
Department of Communications, Information Technology and the Arts

Mutual Recognition Agreement on Conformity Assessment with Singapore.

NATIONAL INTEREST ANALYSIS

Proposed Binding Treaty Action

1. The treaty action proposed is to bring into force the Mutual Recognition Agreement on Conformity Assessment between the Government of Australia and the Government of the Republic of Singapore ('the Agreement') and three Sectoral Annexes to the Agreement (the Sectoral Annex on Electrical and Electronic Equipment, the Sectoral Annex for Telecommunications Equipment and the Sectoral Annex on Medicinal Products (Good Manufacturing Practice (GMP) Inspection)).

Date of Proposed Binding Treaty Action

2. The Government intends to sign the Agreement as soon as possible but by the end of March 2001. Pursuant to Article 14, paragraph 1, the Agreement would enter into force on the first day of the second month following the date on which the Parties have exchanged notes confirming the completion of their respective procedures for its entry into force. Each Sectoral Annex contains its own provision for entry into force. The Sectoral Annexes on Electrical and Electronic Equipment and for Telecommunications Equipment provide that they will enter into force on the same day as the Agreement (paragraph 7 in both Annexes). The Sectoral Annex on Medicinal Products (GMP) provides that it will enter into force on the first day of the second month following the date on which the Parties have exchanged notes confirming the completion of their respective procedures for its entry into force or the day on which the Agreement enters into force, whichever is the later (paragraph 6.1 of this Annex). The Government will exchange notes with Singapore as soon as possible following the expiration of fifteen sitting days from tabling.

Date of Tabling of the Proposed Treaty Action

3. 27 February 2001.

Purpose of the proposed treaty action and why it is in the national interest

4. The Agreement provides for the mutual recognition of the results of conformity assessment activities, initially in three sectors (electrical and electronic equipment, telecommunications equipment and medicinal products (good manufacturing practice)). The Agreement allows for other sectors to be added later, if required, after appropriate consultation. The purpose of the Agreement is to reduce the need for duplicative assessment procedures required to demonstrate compliance with regulated standards. As such it will improve market access for Australian exporters by reducing or eliminating the risks, time delays and costs associated with obtaining regulatory approvals for entering their products into Singapore. It will also preserve Australia's ability to maintain its standards to protect the health and safety of its people and its environment.

Reasons for Australia to take the Proposed Treaty Action

5. A relatively high proportion of Australia's \$9.2 billion (1999/2000) two-way merchandise trade with Singapore is subject to regulation in both countries. Trade in products covered by the three Sectoral Annexes to the Agreement that are subject to regulation amounted to \$2.1 billion. Traded goods subject to mandatory technical regulations in the country of import often need to be tested and/or certified for compliance with those requirements by a body located in that country. For example, electrical and electronic equipment manufactured in Australia may not be sold in Singapore unless the Singapore Productivity and Standards Board (PSB) and/or the Singapore Public Utilities Board approve it for sale. Obtaining a test report and Certificate of Approval from PSB typically costs \$200 per new product line. Importers of similar equipment into Australia may need to pay fees ranging from \$105 to \$600 to Australian regulatory authorities to approve each new product line for sale in Australia. This adds to the cost of exporting, to the cost of imported inputs to production and to prices paid by consumers in Australia.

6. Having considered a number of options to address the problem of technical and regulatory barriers to trade, and their impediment to Australia's trade and economic performance, the Government decided that a Mutual Recognition Agreement on Conformity Assessment with Singapore would improve the existing bilateral trade and investment linkages, enhance Australia's standing as a viable trading partner in the region and provide benefits to the Australian economy, all at relatively little cost.

7. The Agreement will enable conformity assessments (ie testing, inspection and certification) of products and of manufacturers of products intended for export to the other Party's territory to be undertaken *in the country of export*. This would generate substantial reductions in non-tariff barriers by enabling Australian producers to have their products and/or manufacturers fully assessed in Australia for conformity to Singapore's standards and legal requirements and acceptability to the Singapore regulatory body prior to export. Australian industry has indicated that there are good prospects for enhanced growth in trade if regulatory barriers to entry, such as those mentioned above, can be reduced or removed.

8. Additional benefits to Australia in relation to the sectors included in the Agreement, include:

- deriving economies of scale where products are assessed, and conformance documentation issued, by the same conformity assessment body for both the Australian and Singapore markets at the one time. These lower costs provide the potential for consumers to benefit from lower prices and a wider range of choice in domestic markets;
- reducing time delays for product testing and certification, thus substantially improving the marketability of products with a relatively short market life, such as information technology products;
- giving Australian exporters of products covered by the Agreement a competitive advantage over exporters seeking to access the Singapore market from States without an equivalent agreement in place with Singapore;
- preventing the importing Party from applying its domestic conformity assessment regime in a discriminatory or protectionist manner, or invoking new regulations to restrict acceptance of test results, (thereby removing conformity assessment as an instrument of industry policy).

9. Australia has already concluded similar agreements with the European Community and the European Economic Area/European Free Trade Association, States of the Republic of Iceland, the Principality of Liechtenstein and the Kingdom of Norway. There is already evidence to suggest that the Agreement with the EC has benefited Australian firms by way of reduced costs and increased exports.

10. The provisions of the Agreement are consistent with the approach to conformity assessment taken in the World Trade Organization Agreement on Technical Barriers to Trade ('TBT Agreement'), to which Australia is a party.

Obligations

11. The Agreement deals with two kinds of conformity assessment: the conformity of *products* with a Party's mandatory requirements (Part II); and the conformity of *manufacturers* of products with a Party's mandatory requirements (Part III). "Mandatory requirements" mean legislative,

regulatory and administrative requirements (Article 1(1)). Each Sectoral Annex must specify which kind of assessment it applies to. Of the present Sectoral Annexes, those on Electrical and Electronic Equipment and for Telecommunications Equipment relate to Part II of the Agreement, or conformity assessment of *products*. The Sectoral Annex on Medicinal Products (GMP) relates to Part III of the Agreement, or assessment of the *manufacturers* of products. Each Sectoral Annex then elaborates in greater detail how the general obligations in the Agreement apply to the mutual recognition of conformity assessment of the products or the manufacturers covered by the Annex.

12. The basic mutual recognition obligation of both Parts II and III is the same. Each Party binds itself to accept an assessment of conformity with *that Party's Mandatory Requirements* when that assessment is undertaken by the regulatory authorities of the *other Party* (Part II, Article 5(2) and (3); Part III, Article 10(1) and (2)). In the case of *products* (Part II), the body that assesses conformity (the "conformity assessment body") of the exporting Party must be designated by competent authorities of that Party (Article 6(1)) in accordance with the requirements set out in the relevant Sectoral Annex (Article 7(1)). The Parties are bound to ensure that their respective conformity assessment bodies remain qualified to carry out assessments and must keep each other informed of any changes relating to the accreditation of such bodies (Article 7(3) and (5)). Parties have a right, in exceptional circumstances only, to challenge the technical competence of each other's conformity assessment bodies with expert evidence and consequently must make sure their conformity assessment bodies are available for verification of their competence (Article 8(1) and (2)). In the case of *manufacturers* (Part III), conformity assessment is carried out by inspection services appointed by the assessing Party (Article 10). For both products and manufacturers, the Parties are required to base their mandatory requirements on international standards where they exist or when their completion is imminent, unless those standards are ineffective or inappropriate (Article 5(4) and Article 10(3)).

13. Article 2 limits the application of the Agreement to the respective territories of the Parties (paragraph 1). While this restriction applies to conformity assessments conducted in either Party, the products or manufacturers assessed under the Agreement may originate from any country unless otherwise stated in the relevant Sectoral Annex (Articles 4(2) and 9(2)). The Electrical and Electronic Equipment Annex (clauses 8.1, 8.2) restricts its application to products exported from the territory of either Party for 18 months from the date of entry into force of the Annex. The Medicinal Products (GMP) Annex (clause 1.1) also restricts its application to assessments of manufacturers carried out in the territory of either Party, with no time limit.

14. Article 2 also clarifies that the Agreement does not require the Parties to mutually *accept* each other's mandatory requirements, or mutually recognise that their mandatory requirements are *equivalent*. It does, however, commit the Parties to consider increasing the degree of harmonisation or equivalence of their respective Mandatory Requirements, where appropriate and where consistent with good regulatory practice. Once the Parties agree that their standards or technical regulations are in fact harmonised or established as equivalent, then an assessment by one Party that the relevant product complies with *its own* mandatory requirements must be deemed acceptable by the other Party (paragraph 3). If one Party has a similar mutual recognition agreement with a third State, the other Party is not bound to accept that third State's conformity assessment results unless it expressly agrees to do so (paragraph 2).

15. Article 13 makes clear that each Party retains all authority under its laws to interpret and implement its own mandatory requirements. The Agreement does not limit the authority of a Party either to determine the level of protection it considers necessary with regard to health, safety and the environment or to take all appropriate measures whenever it ascertains that products may not conform with its Mandatory Requirements. These measures can include withdrawing products from the market, prohibiting their placement on the market, restricting their free movement, initiating a product recall, initiating legal proceedings or otherwise preventing the recurrence of such problems, including through a prohibition on imports. If a Party takes such measures, it shall notify the other Party within fifteen calendar days of taking the measures, providing its reasons.

16. Article 3 provides for other relevant forms of information exchange while Article 7(6) obliges the Parties to exchange information on procedures used to ensure the technical competence of their conformity assessment bodies. Article 6(2) obliges the designating authorities of each Party

to consult with their counterparts in the other Party to maintain confidence in each other's processes.

17. Article 11 establishes a Joint Committee composed of equal numbers of senior representatives from both Parties with relevant expertise to administer and facilitate the effective functioning of the Agreement and the Sectoral Annexes, which includes facilitating the extension of the Agreement and resolving any questions or disputes relating to the application of this Agreement and its Sectoral Annexes. The Parties are obliged to bring into effect the relevant decisions of the Joint Committee.

18. Article 12 provides that Parties are not obliged to disclose confidential proprietary information to the other Party unless necessary to demonstrate the competence of its designated Conformity Assessment Bodies and conformity with the relevant stipulated requirements. The Parties must protect, in accordance with their applicable laws, the confidentiality of any proprietary information disclosed in connection with conformity assessment activities and/or designation procedures.

Implementation

19. Most rights and obligations established by the Agreement can be accommodated within existing administrative procedures. Electrical safety regulatory authorities in each State and Territory have advised that no changes to legislation are necessary. The Australian Communications Authority advises that existing legislation provides for the acceptance of conformity assessments for telecommunications equipment covered by the Agreement conducted by bodies designated by the National Association of Testing Authorities, Australia (NATA) Mutual Recognition Agreement partners - which includes the Singapore Laboratory Accreditation Service. The relevant legislation is the *Telecommunications Labelling (Customer Equipment and Customer*

Labelling) Notice No 2 of 1997 [Cth].

20. The one exception is the *Therapeutic Goods Act 1989 [Cth]* which needs to be amended to enable acceptance of medicinal products (Good Manufacturing Practice (GMP)) inspection reports conducted by Singapore Conformity Assessment Bodies. It is anticipated that the required amendment may be introduced in the Autumn 2001 sittings of Parliament. If this amendment is not passed by the time the treaty is approved, the treaty and the Sectoral Annexes for Telecommunications Equipment and Electrical and Electronic Equipment may still be implemented, and the Medicinal Products (GMP) Annex may be implemented later, once the amending legislation is passed.

21. An inter-governmental cooperation agreement between the Commonwealth and the States and Territories, relating to their respective roles in the implementation and administration of this Agreement, will be signed by all States and Territories in advance of the Agreement's entry into force. The operation of the mutual recognition regime established by the Agreement between Australia and Singapore and the cooperation agreement between the Federal Government and the States and Territories will be monitored by a Consultative Forum to which officials from each State and Territory and the Commonwealth are invited for purposes of exchanging information and opinions about matters relating to the Agreement. Clause 5.2 of the cooperation agreement indicates the agreement of the State and Territory Parties to participate, as appropriate, in the exchange of information (Article 3 of the Agreement), the verification of Singapore's designation procedures (Article 8 of the Agreement) and the operation of the Joint Committee (Article 11 of the Agreement).

Costs

22. It will be difficult to estimate the likely costs of the Agreement until this and similar bilateral mutual recognition agreements have been in operation long enough to allow "before and after" comparison. However, the results of the sectoral analyses and other investigations undertaken by the Department of Industry, Science and Resources indicate that the overall benefits of a mutual recognition agreement including the identified sectors would outweigh the costs. The Department is in the process of gathering further information that will provide indicative results of the costs and benefits over time.

23. Australian conformity assessment bodies may stand to lose some revenue as a result of the reduced need, under the Agreement, for testing in Australia of imports from Singapore. Such costs, however, are likely to be minimal because the results of Singaporean tests are already accepted by Australia for a wide range of goods under the Agreement. Furthermore, these bodies are likely to gain increased revenue through Australian firms taking advantage of the Agreement to have their products tested in Australia prior to export.

24. Any additional costs incurred in attending meetings at the Joint Committee established under the Agreement will largely be incorporated with other similar work being conducted by agencies such as the Department of Industry, Science and Resources.

Consultation

25. The Commonwealth Department of Industry, Science and Resources consulted widely with principal Federal, State and Territory regulatory agencies and Australian industry representatives (full names and acronyms are listed in ATTACHMENT 1). State and Territory representatives were advised of the Agreement through the Commonwealth-State-Territory Standing Committee on Treaties and through the Council of Australian Governments' Committee on Regulatory Reform. Their views and agreement were also sought at various stages in developing the Agreement with regard to their areas of regulatory responsibility. Consultation consisted of seeking and giving consideration to comments on the draft text of the treaty, Regulation Impact Statement and Cooperation Agreement. Representatives were also invited to the negotiations with Singapore officials. On the whole, the regulatory agencies and industry representatives have indicated their support for the Agreement, with Australian Electrical and Electronic Manufacturers Association (AEEMA), Australian Industry Group (AIG), Electrical Regulatory Authorities Council (ERAC) and National Association of Testing Authorities, Australia (NATA) stating that they anticipate easier access to the Singapore market for Australian goods as a result of including the nominated sectors in the Agreement.

Electrical, Electronic and Telecommunications equipment

26. The Department of Communications, Information Technology and the Arts and the Australian Communications Authority indicated their general support for the Agreement and underlined the value of including, in the one Agreement, electrical safety, EMC and energy efficiency requirements, and telecommunications requirements, to ensure complete coverage of the requirements that apply to particular products. There was further support from the AIIA and AEEMA for the Agreement to encompass computing equipment, white goods, and other electrical equipment subject to electromagnetic compatibility, safety and low voltage regulations.

27. ERAC, which represents all the State and Territory electrical regulatory authorities and which was directly involved in negotiating the Sectoral Annex on Electrical and Electronic Equipment, noted in particular that the Agreement would oblige Singapore's regulatory authorities to recognise batch testing carried out in Australia prior to export, to meet Singapore requirements, as well as existing regulatory approvals based on Australian requirements. AEEMA anticipated similar benefits and said that as such, the electrical and electronic equipment annex goes beyond conformity assessment and provides a basis for regulatory harmonisation.

28. The Western Australian Office of Information and Communications, Department of Commerce and Trade advised that an Agreement with Singapore as proposed could be quite beneficial for a number of Australian information and communications applications (eg IT hardware, terminal adaptors, modems, PABX units).

Medicinal Products (GMP Inspection)

29. The Australian Pharmaceutical Manufacturers Association (APMA) (prescription medicines), the Australian Self Medication Industry (ASMI) (non-prescription medicines) and the Medical Industry Association of Australia (MIAA) all supported including the Medicinal Products (Good Manufacturing Practice (GMP)) Annex to the Agreement with Singapore since that country has been accepted into the Pharmaceutical Inspection Co-operation Scheme (PIC/S), an international arrangement which provides for the acceptance of inspection reports and certificates and the development of guideline documents on GMP inspections. However, they recommended that this aspect of the Agreement should not go beyond the recognition of GMP at this stage.

These views concurred with the views of the Therapeutic Goods Administration (TGA), which is the Australian regulatory authority for medicinal products. On the basis of these consultations, only Good Manufacturing Practice is proposed for inclusion in the medicinal products (for human use) annex. The Complementary Healthcare Council of Australia also said it had no objection to the Agreement. We were also able to satisfy some concerns raised by the medicinal products industry, in relation to the accountability of the Joint Committee, a manufacturer's rights of appeal if subjected to an inquiry and the protection of proprietary information gathered during factory inspections.

State and Territory Issues

31. Tasmania sought the inclusion of the mandatory requirements of each Party for electrical and electronic equipment in the Annex to the Agreement. These requirements are in fact listed in the analysis for the Regulation Impact Statement, but not in the Annex itself since the requirements are subject to frequent amendment. Tasmania also sought confirmation that Australian consumers would be able to recover damages due to faulty products that had been tested in Singapore. They were advised that the importer would remain liable for compensation claims, and the chain of liability would extend back to the manufacturer if necessary. Tasmania agreed that their concerns had been addressed.

32. Consultations with the South Australian Office of Energy Policy and Department of Administrative and Information Services led to some changes to Clauses 6.2, 7.2(b) and 7.3 of the cooperation agreement, at their suggestion. A proposal from the NSW Department of Industrial Relations for a reference to compliance with labour standards in the Agreement could not be accepted, as labour standards are not covered by such agreements, and both Australia and Singapore are already bound to comply with existing international provisions relating to labour standards.

Future treaty action: protocols, annexes or other legally binding instruments

33. Article 15(2) provides for the Parties to conclude Sectoral Annexes providing for the implementing arrangements for this Agreement. Sectoral Annexes are treaty-status instruments, each providing for its own entry into force, that supplement the obligations of the Agreement with respect to the specific products or manufacturers that they cover. Three such Sectoral Annexes have already been concluded and are annexed to the Agreement as tabled. Proposals for new Sectoral Annexes and their negotiation is a responsibility of the Joint Committee (Article 11(3)(a)(i)) with the Parties being responsible for bringing the outcome of such negotiations into effect (Article 11(5)).

34. Article 15(1) provides for the Agreement to be amended by mutual agreement of the Parties. Amendments to the Sectoral Annexes will be agreed to by the Parties through the Joint Committee established under the Agreement (Article 15(3)) after gaining the unanimous agreement of the States and Territories (Clause 3.3 of the cooperation agreement).

Withdrawal or Denunciation

35. Article 14(2) provides that either Party may terminate the Agreement in its entirety or any one or more of the Sectoral Annexes by giving the other Party six months' advance notice in writing. Following termination of the Agreement or any Sectoral Annex, a Party must continue to accept the results of conformity assessment activities performed by designated Conformity Assessment Bodies or Inspection Services prior to termination, unless that Party decides otherwise based on health, safety and environmental protection considerations (Article 14(3)).

Contact Details

Technical and Regulatory Barriers to Trade Section,
Business Competitiveness and Development Division,
Department of Industry, Science and Resources

ATTACHMENT 1**Government Organisations and Industry Representatives consulted during the negotiation of the Agreement with Singapore****Industry Associations**

Australian Electrical and Electronic Manufacturers Association (AEEMA)
Australian Industry Group (AIG)
Australian Information Industries Association (AIIA)
Australian Pharmaceutical Manufacturers Association (APMA) (prescription medicines)

Australian Self Medication Industry (ASMI) (non-prescription medicines)
Complementary Healthcare Council of Australia
Heavy Engineering Manufacturers' Association (HEMA) (no longer exists)
Joint Accreditation System Australia and New Zealand (JAS-ANZ)
Medical Industry Association of Australia (MIAA) (medical devices)
National Association of Testing Authorities, Australia (NATA)

Commonwealth Regulatory Agencies

Regional Cooperation Section, Department of Communications, Information Technology and the Arts (DCITA)
Australian Communications Authority (ACA)
Joint Accreditation System Australia and New Zealand (JAS-ANZ)
Conformity Assessment Branch, Therapeutic Goods Administration (TGA)

State Government representative agencies

NSW Cabinet Office, New South Wales
Department of Premier and Cabinet, Victoria
Department of State Development, Queensland
Department of Premier and Cabinet, Tasmania
Department of the Premier and Cabinet, South Australia
Ministry of the Premier and Cabinet, Western Australia
Department of the Chief Minister, Northern Territory
Chief Minister's Department, Australian Capital Territory

Other

Coordinating Chairperson, Electrical Regulatory Authorities Council (ERAC)

Amendment to the Constitution of the International Labour Organization

NATIONAL INTEREST ANALYSIS

Proposed Binding Treaty Action

1. The proposed treaty action is acceptance of the amendment to Article 19 of the Constitution of the International Labour Organization (ILO). Australia's instrument of acceptance would be deposited with the Director-General of the ILO in Geneva.
2. The amendment has not yet entered into force. Article 3, paragraph 2 of the instrument of amendment provides the amendment "will come into force in accordance with the provisions of Article 36 of the Constitution of the International Labour Organization". Thus the amendment "shall take effect" (i.e. enter into force) once it has been accepted by two-thirds of the members of the ILO, including five of the ten designated members of "chief industrial importance" (i.e. Brazil, China, France, Germany, India, Italy, Japan, Russian Federation, the UK and the USA).
3. There are currently 175 members of the ILO. As at 31 January 2001, 64 acceptances of the 1997 amendment had been lodged with the ILO, including four from members of chief industrial importance (China, Italy, India and the UK). There must be 117 acceptances before the amendment can enter into force. A list of acceptances is at [Attachment A](#).

Date of Proposed Binding Treaty Action

4. As soon as practicable after 5 April 2001.

Date of Tabling of the Proposed Treaty Action

5. 27 February 2001.

Purpose of the proposed treaty action and why it is in the national interest

6. The ILO is a specialised agency of the United Nations. It works to promote social justice and internationally recognised human and labour rights. The ILO establishes and supervises international labour standards which are embodied in either Conventions and Recommendations (the latter are not legally binding). Australia has been a member of the ILO since its establishment in 1919, and has ratified 57 out of 183 ILO Conventions, 50 of which are in force. At present, Conventions which are in force cannot be abrogated. Australia believes that abrogation of outdated Conventions is essential if international labour standards are to command respect and have universal relevance.
7. The amendment to the ILO Constitution, when it enters into force, will enable the annual International Labour Conference (ILC) to abrogate international labour Conventions that have lost their purpose or no longer make a useful contribution to attaining the objectives of the ILO. The ILC has general oversight over the operation of the Organization, including approval of its budget. One of its principal functions is the adoption of formal instruments establishing international labour standards. It also reviews the action taken by member States to ensure the application of ratified Conventions. Each Member sends four delegates to the ILC, comprising one employer, one worker and two government representatives.

Reasons for Australia to take the Proposed Treaty Action

8. The ILO was established in 1919 (Australia was a founding member), with the objective of promoting and raising labour and social standards with a view to advancing social justice and ensuring world peace. The Declaration of Philadelphia (annexed to the ILO's Constitution in 1944)

broadened the ILO's mandate, stressing the right of all people, irrespective of race, creed or sex to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, economic security and equal opportunity. The objectives of the ILO are pursued through:

- the adoption of international labour standards (i.e. Conventions and Recommendations);
- a supervisory system and advisory services to assist member States in the application of its labour standards;
- international technical cooperation programmes to assist governments to meet labour standards; and
- training and research programmes, and publishing of reports and other information to help advance these efforts.

9. The ILO is unique within the United Nations system in that it has a tripartite structure which enables employers and workers of each member country to participate in its activities in their own right, as equal partners with governments. Member States are required to include employer and worker representatives in their delegation to the ILC; and employers and workers have equal representation to governments on the Governing Body of the ILO. Employer and worker organisations may make representations or complaints to the ILO supervisory machinery in relation to the implementation by the Member State of ratified Conventions or freedom of association principles. This tripartite involvement is significant because it not only establishes a formal mechanism for dialogue between the three groups on international labour issues, but also for the authority it gives to decisions on these issues reached in the ILO context.

10. The 85th Session of the ILC adopted the amendment to Article 19 of the ILO Constitution in June 1997, with 381 votes in favour, 3 against and 5 abstentions. All four Australian delegates (including one employer, one worker and two government representatives) voted for the amendment. The amendment to Article 19 will enable the ILC to "abrogate any Convention adopted in accordance with the provisions of [Article 19] if it appears that the Convention has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organization." Article 19 of the Constitution sets out, amongst other things, the process for the adoption of Conventions, Recommendations and other decisions by the ILC and the obligations of members with regard to these.

11. At present, Conventions which have come into force cannot be abrogated. The Governing Body of the ILO may decide to "shelve" a Convention, which means that the International Labour Office does not encourage ratification, limits publication of the text and does not request reports on its application. Shelving of a Convention does not, however, negate the obligations of State Parties under it. At international law, States which have become party to Conventions remain bound by their terms until, and then only if the terms of the particular convention permit, action is taken to denounce the obligations. In addition, the right of employer and worker organisations and member States to make representations and complaints about implementation of the shelved Convention remains intact. (The Governing Body is the executive body of the ILO and comprises 28 government, 14 worker and 14 employer representatives, as well as deputy representatives. It is responsible for the planning and direction of the work of the ILO on a day-to-day basis. It has general oversight of the operation of the International Labour Office, and appoints the Director-General. It prepares the budget for approval by the ILC, and sets the agenda for the ILC.)

12. A Convention may cease to be open to ratification upon the coming into force of a revising Convention. However, only the denunciation of a Convention by the member States party to it, under the conditions set out in that Convention, can terminate its legal effects.

13. Australia has long supported moves to review the ILO's standard setting process. If the ILO is to retain its status as the primary body for establishing, maintaining and supervising international labour standards, then it must ensure that both the standards and the process for adopting standards are up-to-date and relevant.

14. The acceptance and entry into force of the 1997 amendment will go some way toward achieving this goal.

Obligations

15. The amendment itself does not impose any obligations on Australia. Rather, it is designed to amend the ILO Constitution to enable the International Labour Conference to abrogate outdated Conventions.

Implementation

16. Acceptance of the amendment will not require domestic implementation.

17. Under the proposed amendment, abrogation of a Convention to which Australia is a party would generally have the effect of terminating Australia's legal obligations under that Convention. In the event that the constitutional validity of any Commonwealth law depended on an abrogated Convention (i.e. via the external affairs power), Australia may have to consider repealing or amending that law. The Australian Government does not anticipate that any Conventions which are presently relied on for constitutional validity of Commonwealth legislation will be candidates for abrogation in the foreseeable future.

18. Should Australia be a party to a Convention that is proposed for abrogation, consideration may need to be given to whether denunciation prior to abrogation would be appropriate. The following five Conventions have been proposed by the Governing Body for consideration of abrogation by the Conference, after the Amendment enters into force:

- Minimum age: Conventions 15 and 60;
- Occupational safety and health: Convention 28;
- Hours of work: Convention 67; and
- Seafarers: Convention 91.

19. Australia has ratified only one of these. Convention 15 concerning minimum age for employment of trimmers and stokers, which was adopted by the ILO in 1921, was ratified by Australia in June 1935. The Australian Government is presently considering the denunciation of this Convention because trimmers and stokers are no longer employed on Australian ships and the Convention does not have any practical application to Australia (or elsewhere). Australia does not have any laws implementing Convention 15.

Costs

20. There would be no direct or indirect costs to Australia arising from acceptance of this amendment.

Consultation

21. The Department of Employment, Workplace Relations and Small Business (DEWRSB) has long-established arrangements for consulting with the State and Territory Governments on ILO matters. As a matter of course, in March 1998 DEWRSB sought the views of the State and Territory Departments of Labour in relation to the proposal to accept the amendment, following receipt of the official text of the amendment from Geneva. All replies were received by March 2000.

22. All those consulted either supported or had no objections to the acceptance of the amendment.

23. In accordance with the spirit of ILO Convention 144, Tripartite Consultation (International Labour Standards), 1976 (which was ratified by Australia in 1979 and requires governments to consult with the representative employer and worker organisations concerning international labour standards), DEWRSB also sought the views of the Australian Chamber of Commerce and Industry (ACCI), and the Australian Council of Trade Unions (ACTU), in March 1998.

24. The ACCI advised that "... it is our strong view that Australia should ratify the Instrument to amend the ILO Constitution ... Employers have supported this initiative from the beginning and look forward to the amendment becoming effective as soon as possible". The ACTU advised that "the Australian Government should support the ratification of the Instrument which allows the abrogation of Conventions or Recommendations which are effectively obsolete".

Future treaty action: protocols, annexes or other legally binding instruments

25. There are no current plans for further amendments to the ILO Constitution. Any such future amendments would be considered on a case-by-case basis, and would come into force in accordance with Article 36 of the ILO Constitution.

Withdrawal or Denunciation

26. The amendment will enter into force for all members of the ILO following its acceptance by two-thirds of the members of the ILO, including five members of chief industrial importance. At that time, it will form part of the ILO Constitution. Withdrawal or denunciation will then only be possible by withdrawal from the ILO as a whole (Article 1.5 of the ILO Constitution).

Contact Details

International (ILO) Section
Workplace Relations Policy and Legal Group
Department of Employment, Workplace Relations and Small Business

Agreement between the Government of Australia and the Government of the Republic of South Africa for the Reciprocal Protection of Classified Information of Defence Interest, done at Canberra on 11 May 2000

NATIONAL INTEREST ANALYSIS

Proposed Binding treaty Action

1. This Agreement is a new Treaty and does not replace any existing Treaty. The Treaty was signed on 11 May 2000. It will enter into force when the Parties notify each other in writing that their respective requirements for the entry into force of the Agreement have been satisfied. It is proposed that Australia provide such advice to South Africa following approval by JSCOT and tabling in Parliament.

Date of Proposed Binding Treaty Action

2. It is proposed that Australia's advice allowing for entry into force be provided in April 2001.

Date of Tabling of the Proposed Treaty Action

3. The Treaty is to be tabled on 27 February 2001.

Purpose of the proposed treaty action and why it is in the national interest

4. The purpose of the Treaty is to put in place adequate security protection for any classified defence information shared between Australia and South Africa. The Treaty will allow such information to be shared between the defence authorities and armed forces of the two countries, when required for cooperative activities. It will also benefit industry in both countries, by enabling companies to tender or participate in defence contracts in the other country which involve classified information.

Reasons for Australia to take the Proposed Treaty Action

5. The Agreement sets out security procedures and practices for the exchange of classified information between the Parties, for the protection of transmitted classified information and for visits.

6. The Agreement has come about as an Australian initiative, at the behest of defence and defence industries, to streamline the process for information-sharing in the context of a growing defence relationship between Australia and South Africa.

7. Australia currently exchanges a limited amount of classified information with South Africa, on an activity specific basis. The information exchanged includes details of defence acquisition projects (allowing the other country's industry to tender or participate), and information related to cooperation between the two countries' armed forces. There are further cooperative activities in the defence sector currently under development between Australia and South Africa. This Treaty, by providing the necessary protocols and security assurances to facilitate all exchanges of classified defence information, will obviate the lengthy process currently required for each individual exchange.

8. Australia will benefit under this Agreement through an increased exchange of information, including classified information, with a streamlined and more efficient process to ensure that the information is protected by legally binding obligations. The Agreement will facilitate future defence cooperation and assist in strengthening the maturing relationship between the Australian

and South African Governments and their armed forces. Australian industry can also benefit through easier access to South African defence contracting and procurement processes.

9. The Agreement is not controversial in nature and is substantially similar to other legally binding agreements concluded with a range of countries with which Australia cooperates on defence matters: Canada, France, Germany, New Zealand, Singapore, and Sweden. In addition, the Department of Defence has several bilateral security arrangements (non-legally binding instruments).

Obligations

10. Each of the bilateral security instruments that Australia has concluded is different due to the individual circumstances of the countries concerned. Nevertheless, they all largely follow a standard scheme of coverage for the reciprocal protection of classified information. The provisions in this Agreement are substantially similar to the other bilateral security treaties Australia has concluded.

11. The underlying obligation placed on the Parties is to protect each other's classified information in a similar manner as protection of their own classified information. Having examined each other's security policy and standards both Parties are satisfied that this underlying obligation can be met.

12. The provisions of the Agreement include the following matters:

- a) *Marking of transmitted classified information* (Article 4)
 - The Originating Party must assign all classified information with one of its national security classifications before transmission to the Recipient Party.
 - Both Parties must mark information with the prefix AUST/SOUTH AFRICA or SOUTH AFRICA/AUST followed by the appropriate national security classification on anything produced by one Party that contains Transmitted Classified Information provided by the other Party.
- b) *Protection and use of transmitted classified information* (Article 5)
 - Both Parties must accord classified information, or anything containing classified information, received from the other Party a standard of physical and legal protection no less stringent than that which it provides to its own classified information of corresponding classification.
 - The Recipient Party cannot disclose, release or provide access to classified information received from the other Party, to any third party, including any third country government, any national of a third country, or any contractor, organisation or other entity without the consent of the Originating Party.
 - Duty of the Recipient Party to return or destroy Transmitted Classified Information that is no longer required for the purpose for which it was provided.
- c) *Access* (Article 6)
 - Access to Transmitted Classified Information limited to personnel of a Party who meet certain criteria.
- d) *Transmission of classified information* (Article 7)
 - Transmission between the Parties must be in accordance with the national laws, security regulations and procedures of the transmitting Party.
 - Normal means of transmission shall be through military or diplomatic channels.
- e) *Details of security standards* (Article 9)
 - On request each Party must provide information concerning security standards, practices and procedures for the safeguarding of classified information, including those relating to industrial operations.

- Each Party must inform the other Party in writing of any changes that affect the manner in which classified information is protected.
- f) Compliance and security inspections (Article 10)
- Obligation to ensure that establishments, facilities and organisations that handle transmitted classified information protect such information in accordance with the Agreement.
- g) Visits - general (Article 11)
- Details, particularly security clearance details, of personnel of one Party requiring access to classified information held by the other Party must be forwarded to the host Party at least four weeks prior to the commencement of a visit. The Agreement provides for multiple visits and extension of visits for periods in excess of one year. All visitors are required to comply with the appropriate security regulations and relevant establishment instructions of the host Party.
- h) Visits by security personnel (Article 12)
- Each Party must permit authorised security personnel of the other Party to undertake visits to establishments, facilities and organisations within its territory, including access to the visiting Party's classified information and to discuss security practices and procedures for protection of classified information.
- i) Loss or compromise (Article 14)
- To minimize any risk of damage through the loss or compromise of exchanged classified material the receiving Party shall immediately inform the originating Party of any loss of, or known or suspected compromise of, such material. The receiving Party shall then investigate the circumstances of such loss or compromise and, without delay, inform the originating Party of the finding of the investigation and corrective action taken or to be taken.
- j) Disputes (Article 15)
- Any disputes shall be resolved amicably and expeditiously and not referred to any tribunal or Third Party.

Implementation

13. No legislation is required to give effect to Australia's obligations under the Agreement. The Agreement can be implemented through the Defence Security manuals, which set out the procedures covered by the Agreement. The Agreement will not effect any change to the existing roles of the Commonwealth and the States and Territories.

14. Article 3 of the Agreement provides that unless otherwise advised in writing, the Security Authorities responsible for implementing the Agreement are the Assistant Secretary Security, Defence Security Branch, Australian Department of Defence, and the Chief of Defence Intelligence, South African National Defence Force.

Costs

15. The Agreement imposes no foreseeable direct financial costs on Australia. The Agreement provides for each Party to be responsible for meeting its own costs incurred in implementing the Agreement (Article 16).

Consultation

16. The States and Territories were advised about the proposed Agreement through the Standing Committee on Treaties' Schedule of Treaty Action. The Agreement does not require State or Territory cooperation for its domestic implementation.

Future treaty action: protocols, annexes or other legally binding instruments

17. The Agreement does not provide for the negotiation of any future legally binding instruments. The Agreement may be amended at any time by the mutual agreement of the Parties expressed in writing (Article 18(2)).

18. The Agreement can be reviewed at any time at the request of either Party. Unless otherwise mutually determined by the Parties, the Agreement shall be reviewed every five years from the date of signature. The reviews will ensure that national security classifications of the Parties continue to correspond and will examine any changes to the Agreement which may be necessary to ensure that comparable standards for the protection of classified material are maintained (Article 17).

Withdrawal or Denunciation

19. The Agreement may be terminated at any time by mutual agreement in writing or by either Party giving the other written notice of its intention to terminate it in which case it shall terminate six months after the giving of such notice (Article 18(3)).

20. If the Agreement is terminated, the responsibilities and obligations of the Parties in relation to the protection, disclosure and use of transmitted classified information shall continue to apply irrespective of termination of the Agreement (Article 18(4)). This provision ensures the ongoing protection of classified material including its destruction or return to the originator when no longer required for the purpose for which it was exchanged.

Contact Details

21. Directorate of Security Intelligence and Protective Policy
Inspector-General's Division
Department of Defence

Agreement between the Government of Australia and the Government of the Kingdom of Denmark for the Reciprocal Protection of Classified Information of Defence Interest, done at Copenhagen on 27 September 1999

NATIONAL INTEREST ANALYSIS

Proposed Binding Treaty Action

1. This Agreement is a new Treaty and does not replace any existing Treaty. The Treaty was signed on 27 September 1999. It will enter into force when the Parties notify each other in writing that their respective requirements for the entry into force of the Agreement have been satisfied. It is proposed that Australia provide such advice to Denmark following approval by JSCOT and tabling in Parliament.

Date of Proposed Binding Treaty Action

2. It is proposed that Australia's advice allowing for entry into force be provided in April 2001.

Date of Tabling of the Proposed Treaty Action

3. The Treaty is to be tabled on 27 February 2001.

Purpose of the proposed treaty action and why it is in the national interest

4. The purpose of the Treaty is to put in place adequate security protection for any classified defence information shared between Australia and Denmark. The Treaty will allow such information to be shared between the defence authorities and armed forces of the two countries, when required for cooperative activities. It will also benefit industry in both countries, by enabling companies to tender or participate in defence contracts in the other country which involve classified information.

Reasons for Australia to take the Proposed Treaty Action

5. The Agreement sets out security procedures and practices for the exchange of classified information between the Parties, for the protection of transmitted classified information and for visits.

6. The Agreement has come about as an Australian initiative, at the behest of defence and defence industries, to streamline the process for information-sharing in the context of a growing defence relationship between Australia and Denmark. Danish interest in the Asia Pacific is historically of a commercial nature, but political engagement is deepening, partly as a result of the Asia/Europe Meeting (ASEM) process. Denmark will host the ASEM Summit in 2002. Australia and Denmark share good relations and cooperate on many issues in international fora, including disarmament, security issues and human rights. The Agreement will strengthen the existing level of cooperation between the two countries.

7. Australia currently exchanges a limited amount of classified information with Denmark, on an activity specific basis. The information exchanged includes details of defence acquisition projects (allowing the other country's industry to tender or participate), and information related to cooperation between the two countries' armed forces. This Treaty, by providing the necessary protocols and security assurances to facilitate all exchanges of classified defence information, will obviate the lengthy process currently required for each individual exchange.

8. Australia will benefit under this Agreement through an increased exchange of information, including classified information, with a streamlined and more efficient process to ensure that the information is protected by legally binding obligations. The Agreement will facilitate future defence cooperation and assist in strengthening the maturing relationship between the Australian and Danish Governments and their armed forces. Australian industry can also benefit through easier access to Danish defence contracting and procurement processes.

9. The Agreement is not controversial in nature and is substantially similar to other legally binding agreements concluded with a range of countries with which Australia cooperates on defence matters: Canada, France, Germany, New Zealand, Singapore, and Sweden. In addition, the Department of Defence has several bilateral security arrangements (non-legally binding instruments).

Obligations

10. Each of the bilateral security instruments that Australia has concluded is different due to the individual circumstances of the countries concerned. Nevertheless, they all largely follow a standard scheme of coverage for the reciprocal protection of classified information. The provisions in this Agreement are substantially similar to the other bilateral security treaties Australia has concluded.

11. The underlying obligation placed on the Parties is to protect each other's classified information in a similar manner as protection of their own classified information. Having examined each other's security policy and standards both Parties are satisfied that this underlying obligation can be met.

12. The provisions of the Agreement include the following matters:

a) *Marking of transmitted classified information* (Article 4)

* The Originating Party must assign all classified information with one of its national security classifications before transmission to the Recipient Party.

* [Beta]oth Parties must mark information with the prefix AUST/DENMARK or DENMARK/AUST followed by the appropriate national security classification on anything produced by one Party that contains Transmitted Classified Information provided by the other Party.

b) *Protection and use of transmitted classified information* (Article 5)

* [Beta]oth Parties must accord classified information, or anything containing classified information, received from the other Party a standard of physical and legal protection no less stringent than that which it provides to its own classified information of corresponding classification.

* The Recipient Party cannot disclose, release or provide access to classified information received from the other Party, to any third party, including any third country government, any national of a third country, or any contractor, organisation or other entity without the written consent of the Originating Party.

* Duty of the Recipient Party to return or destroy Transmitted Classified Information that is no longer required for the purpose for which it was provided.

c) *Access* (Article 6)

* Access to Transmitted Classified Information limited to personnel of a Party who meet certain criteria.

d) *Transmission of classified information* (Article 7)

* Transmission between the Parties must be in accordance with the national laws, security regulations and procedures of the transmitting Party.

* Normal means of transmission shall be through military or diplomatic channels.

e) *Details of security standards* (Article 9)

* On request each party must provide information concerning security standards, practices and procedures for the safeguarding of classified information, including those relating to industrial operations.

* Each party must inform the other Party in writing of any changes that affect the manner in which classified information is protected.

f) *Compliance and security inspections* (Article 10)

* Obligation to ensure that establishments, facilities and organisations that handle transmitted classified information protect such information in accordance with the Agreement.

g) *Visits - general* (Article 11)

* Details, particularly security clearance details, of personnel of one Party requiring access to classified information held by the other Party must be forwarded to the host Party at least four weeks prior to the commencement of a visit. The Agreement provides for multiple visits and extension of visits for periods in excess of one year. All visitors are required to comply with the appropriate security regulations and relevant establishment instructions of the host Party.

h) *Visits by security personnel* (Article 12)

* Each Party must permit authorised personnel of the other Party to undertake visits to establishments, facilities and organisations within its territory, including access to areas requiring a security clearance, to obtain access to the visiting Party's classified information and to discuss security practices and procedures for protection of classified information.

i) *Loss or compromise* (Article 14)

* To minimise any risk of damage through the loss or compromise of exchanged classified material the receiving Party shall immediately inform the originating Party of any loss of, or known or suspected compromise of, such material. The receiving Party shall then investigate the circumstances of such loss or compromise and, without delay, inform the originating Party of the finding of the investigation and corrective action taken or to be taken.

j) *Disputes* (Article 15)

* Any disputes shall be resolved amicably and expeditiously and not referred to any tribunal or Third Party.

Implementation

13. No legislation is required to give effect to Australia's obligations under the Agreement. The Agreement can be implemented through the Defence Security manuals, which set out the procedures covered by the Agreement. The Agreement will not effect any change to the existing roles of the Commonwealth and the States and Territories.

14. Article 3 of the Agreement provides that unless otherwise advised in writing, the Security Authorities responsible for implementing the Agreement are the Assistant Secretary Security, Defence Security Branch, Australian Department of Defence, and the Danish Defence Intelligence Service.

Costs

15. The Agreement imposes no foreseeable direct financial costs on Australia. The Agreement provides for each Party to be responsible for meeting its own costs incurred in implementing the Agreement (Article 16).

Consultation

16. The States and Territories were advised about the proposed Agreement through the Standing Committee on Treaties' Schedule of Treaty Action. The Agreement does not require State or Territory cooperation for its domestic implementation.

Future treaty action: protocols, annexes or other legally binding instruments

17. The Agreement does not provide for the negotiation of any future legally binding instruments. The Agreement may be amended at any time by the mutual agreement of the Parties expressed in writing (Article 18(2)).
18. The Agreement can be reviewed at any time at the request of either Party. Unless otherwise mutually determined by the Parties, the Agreement shall be reviewed every five years from the date of signature. The reviews will ensure that national security classifications of the Parties continue to correspond and will examine any changes to the Agreement which may be necessary to ensure that comparable standards for the protection of classified material are maintained (Article 17).

Withdrawal or Denunciation

19. The Agreement may be terminated at any time by mutual agreement in writing or by either Party giving the other written notice of its intention to terminate it in which case it shall terminate six months after the giving of such notice (Article 18(3)).
20. If the Agreement is terminated, the responsibilities and obligations of the Parties in relation to the protection, disclosure and use of transmitted classified information shall continue to apply irrespective of termination of the Agreement (Article 18(4)). This provision ensures the ongoing protection of classified material including its destruction or return to the originator when no longer required for the purpose for which it was exchanged.

Contact Details

21. Directorate of Security Intelligence and Protective Policy
Inspector-General's Division
Department of Defence

Agreement establishing the Pacific Islands Forum Secretariat, done at Tarawa on 30 October 2000.

NATIONAL INTEREST ANALYSIS

Proposed Binding Treaty Action

1. The proposed binding treaty action is ratification of the Agreement establishing the Pacific Islands Forum Secretariat. Upon entry into force, the Agreement shall terminate and replace the 1991 Agreement establishing the South Pacific Forum Secretariat (Article XIV).

Date of Proposed Binding Treaty Action

Date of Proposed Binding Treaty Action

2. The Agreement was signed for Australia on 30 October 2000. It is proposed that binding treaty action be taken for Australia as soon as practicable after 5 April 2001.

3. Article XII.4 provides that the "Agreement shall be subject to ratification and shall enter into force on the day on which the instrument of ratification of the last to ratify of the sixteen member governments referred to in paragraph 1 of this Article has been received by the depositary government".

Date of Tabling of the Proposed Treaty Action

4. 27 February 2001.

Purpose of the proposed treaty action and why it is in the national interest

5. The new Agreement was struck following the decision by Forum leaders at their meeting in Palau in 1999 to change the name of the South Pacific Forum to the Pacific Islands Forum. The name change reflects the wider geographic spread of Forum members, some of which are located in the North Pacific. Australia, as a founding member of the South Pacific Forum, has abiding interests in the Pacific, including the political stability of countries in the region, facilitating growth in trade and investment and helping Forum island countries to achieve the maximum possible degree of self-reliance. Ratification of the Agreement would send a positive signal to the countries of the Pacific region regarding Australia's commitment to the region and its development.

Reasons for Australia to take the Proposed Treaty Action

6. The South Pacific Forum was established in 1971 to increase cooperation in matters relating to trade and economic development in the Pacific region. Australia was a founding member of the Forum, together with the Cook Islands, Fiji, Nauru, New Zealand, Samoa and Tonga. At their meeting in Palau in October 1999, the Heads of Government of the member states of the South Pacific Forum agreed to change the name of the organisation to the Pacific Islands Forum.

7 Due to the significance of the name change, a decision was made to strike a new Agreement, rather than amend the existing Agreement establishing the South Pacific Forum Secretariat, done at Pohnpei on 29 July 1991. The 1991 Agreement established a framework for regional cooperation in trade and economic development and the South Pacific Forum Secretariat was set up to facilitate this cooperation.

8. The substance of the terms and provisions of the 1991 Agreement continue to be reflected in the new Agreement. For example, the Agreement defines the membership of the Pacific Islands Forum and establishes the Pacific Islands Forum Secretariat, as well as setting out the terms under which the Secretariat will operate, including privileges and immunities for the Secretariat and its staff and the level of members' contributions to the Secretariat's budget.

9. As a consequence of the name change, however, all references to the "South Pacific Forum" and the "South Pacific Forum Secretariat" in the 1991 Agreement have been replaced respectively with

the "Pacific Islands Forum" and the "Pacific Islands Forum Secretariat" in the new Agreement. The following minor changes to the existing text have been incorporated in the Agreement: the two Deputy Secretary General positions have been combined into one position (Article VI); Palau has been added to the list of member countries (Palau became a member in September 1995) and all references to "Western Samoa" have been replaced with "Samoa" in light of its decision to change its name.

10. Australia plays a prominent role in Pacific regional affairs, both as an economic partner and development assistance donor. Australia has strong and enduring bilateral relations with all Forum island countries (the generic name used to refer to the fourteen non-developed Pacific island members of the Forum to distinguish them from Australia and New Zealand, which are developed, metropolitan states). In broad terms, Australia's interests in the region centre on political stability, encouraging growth in trade and investment and assisting Forum island countries to achieve the maximum possible degree of self-reliance.

11. Ratification of the Agreement would not only be appropriate because of Australia's position as a founding member of the Forum but would also send a strong and positive signal regarding Australia's continued commitment to the region.

Obligations

12. The aim of the Agreement is to facilitate and enhance regional cooperation in trade and economic development and the Pacific Islands Forum Secretariat has the primary role in coordinating this cooperation. The Secretariat is established under Article II and is located in Suva, Fiji. There are, accordingly, few substantive obligations placed on countries which are party to the Agreement. The principal obligations for Australia under the Agreement are to contribute financially to the operating costs of the Secretariat (Article X), and to provide the Secretariat, its officials and staff with specified privileges and immunities (Article XI).

13. Article X provides that the "costs of operating the Secretariat shall be borne by the member governments in the shares set out in the Annex to this Agreement, subject to review from time to time by the Forum". The Annex to the Agreement sets out the level of each member government's contribution to the budget. Australia is currently required to contribute an amount equivalent to 37.16% of the annual budget.

14. Article XI refers to the legal status of the Pacific Islands Forum Secretariat and sets out the privileges and immunities to be accorded to its officials and staff. These obligations remain the same as in the 1991 Agreement. Under the Agreement, the Secretariat is to be accorded the legal capacity of a body corporate in the territories of member governments, is immune from suit and legal process and its premises, archives and property are inviolable. The Secretariat is also to be exempt from taxes, duties and other levies, other than charges for specific services rendered, on goods imported for its official use. Secretariat staff are entitled to immunity from suit and legal process in respect of performance of their official duties. The Secretary General and Deputy Secretary General are provided with the same exemption from taxes, duties and other levies as is accorded to a diplomatic agent.

Implementation

15. Consequential amendments reflecting the name change from the South Pacific Forum Secretariat to the Pacific Islands Forum Secretariat will be made to the *South Pacific Forum Secretariat (Privileges and Immunities) Regulations 1992*, which provides for the privileges and immunities specified in Article XI, and the *Hazardous Wastes (Regulation of Exports and Imports) (Waigani Convention) Regulations 1999*.

Costs

16. The most significant cost to Australia under the Agreement is the contribution to the budget of the Secretariat. As provided in Article X, the costs of operating the Secretariat are subject to review from time to time by the Forum. Australia is currently required to contribute 37.16% of the Secretariat's annual budget, which in 2001 will amount to \$1,083,700. There may be revenue foregone as a result of the privileges and immunities granted to the Secretariat under Article XI. The amount of foregone, however, is likely to be negligible as the Secretariat is located in Fiji.

Consultation

17. The proposed treaty action was advised to the States and Territories in November 2000 through the Commonwealth-State-Territory Standing Committee on Treaties process.

Future treaty action: protocols, annexes or other legally binding instruments

Future treaty action: protocols, annexes or other legally binding instruments

18. Article XIII provides that the Agreement can be amended at any time by the unanimous agreement of all member governments. A proposal to amend the Agreement requires the support of at least two other members before it can be included on the agenda for the next meeting of the Forum Officials Committee. If the proposed amendment requires ratification by one or more member governments, which in Australia's case it would, it would enter into force on the day on which the instrument of ratification of the last to ratify has been received by the depositary government.

Withdrawal or Denunciation

19. Article XII.8 provides that any member government may denounce the Agreement by notification addressed to the depositary government and such denunciation shall take effect one year after the day on which the depositary government has received the notification.

Contact Details

Pacific Regional Section

South Pacific, Africa and Middle East Division

Department of Foreign Affairs and Trade

Amendments to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the United States of America

NATIONAL INTEREST ANALYSIS

Proposed Binding Treaty Action

1. The proposed treaty action concerns the acceptance of the 1999 amendments to the 1987 *Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America* ('the Treaty').

Date of Proposed Binding Treaty Action

2. It is proposed that Australia's instrument of acceptance be lodged, in accordance with Article 8, with the Government of Papua New Guinea, the depositary of the Treaty, as soon as practicable after 6 April 2001. The amendments shall enter into force upon receipt by the depositary of the last instrument of ratification, acceptance or approval from all members of the Treaty.

Date of Tabling of Proposed Treaty Action

3. 6 March 2001

Purpose of the proposed treaty action and why it is in the national interest

4. The proposed treaty action concerns four amendments to the Treaty. The most significant is an amendment that would remove a restriction against US longline vessels fishing in the high seas areas of the central and western Pacific that form part of the Treaty area, thus returning to the US their right at international law to high seas longline access within the Treaty area. The remaining three amendments would modify access by United States (US) fishing vessels to waters subject to the national jurisdiction of Papua New Guinea and the Solomon Islands respectively.
5. The Treaty provides financial and economic benefits to Australia and other Pacific Island Parties to the Treaty. The Treaty also provides a valuable forum for Australia to advance its strong interests in the proper management of the fisheries resources of the Pacific. Acceptance of the amendments to the Treaty will assist Australia to maintain the goodwill of other Parties to the Treaty, particularly other Pacific Island Parties that regard the amendments as being significant to enhance the development of their domestic fishing industries and general economic wellbeing.

Reasons for Australia to take the Proposed Treaty Action

6. The Treaty subject to the proposed treaty action establishes a regional fisheries access arrangement for United States flagged fishing vessels ('US fishing vessels') in a defined area of the Pacific. There are presently seventeen Parties to the Treaty, which entered into force for Australia on 15 June 1988. The Treaty is administered by the Forum Fisheries Agency established under the South Pacific Forum Fisheries Agency Convention of 1979.
7. The Treaty recognises the importance of fisheries located in and around the exclusive economic zones ('EEZ') or fisheries zones of Pacific Island Parties and aims to maximise the benefits flowing to those parties from the development of fisheries resources. To that end, the Treaty regulates fishing by US fishing vessels in the 'Treaty area' comprising parts of the high seas of the central and western Pacific and waters subject to the jurisdiction of the Pacific Island Parties to the Treaty. In the case of Australia this includes a part of the Australian Fishing Zone ('AFZ') in the Coral Sea.

8. The terms and conditions of fishing by US fishing vessels and procedures governing the issue of licenses and payments are set out in the Annexes to the Treaty. Under Annex 1, provision is made for Pacific Island Parties to list laws, regulations or other instruments ('applicable national laws') that govern the activities of foreign fishing vessels (Schedule 1, Annex 1). Schedule 2 of Annex 1 also provides that Pacific Island Parties may specify waters subject to their jurisdiction that are closed to fishing by US fishing vessels ('closed waters'). Australia and other Pacific Island Parties to the Treaty have specified applicable national laws and identified closed waters for the purposes of the Treaty.
9. The proposed treaty action comprises the following amendments to the Treaty:
 - i. an amendment to Article 3 of the Treaty to allow US longline fishing vessels to fish in the high seas areas of the Treaty Area ('The US Amendment');
 - ii. an amendment to Schedule 2 of Annex 1 to the Treaty to exclude US vessels from fishing in archipelagic waters claimed by Papua New Guinea ('The PNG Amendment'); and
 - iii. an amendment to Schedule 2 of Annex 1 to the Treaty to expand the area of Solomon Islands EEZ available to be fished by US vessels under the Treaty, and an amendment to Schedule 3 of Annex 1 to the Treaty to remove a fishing effort limitation that currently applies to the US purse seine fishing vessels operating in the Solomon Islands EEZ ('The SI Amendments').
10. The US Amendment would place US longline fishing vessels in the same position as other distant water fishing nations ('DWFNs') operating in the high seas portion of the Treaty area.
11. Australia considers the United States to be a responsible fishing nation. Its engagement as a longline fishing nation in the Pacific may assist Australia in its efforts to encourage other DWFNs to fish more responsibly in the region.
12. It is not expected that the removal of US longline fishing restrictions will adversely affect the Australian fishing industry. The US longline fleet is subject to a strict permit system limiting the number and size of fishing vessels. In addition, US longline fishing effort is concentrated in the vicinity of the Hawaiian Islands and the west coast of the United States. There is no indication of the existence of a significant latent fishing effort in the United States awaiting the opening of additional fishing grounds in the Pacific.
13. The PNG Amendment would increase significantly the area of PNG waters that are closed to fishing by US fishing vessels. The amendment is intended to assist PNG to further develop its domestic tuna fishing industry.
14. The SI Amendments are also intended to enhance economic development in the Solomon Islands by facilitating a fishing joint venture with a US operator. This is being done by amending Schedule 3 to remove a fishing effort limitation on the US purse seine fishing fleet and amending Schedule 2 of Annex 1 to increase the area of the Solomon Islands EEZ open to US fishing vessels under the Treaty.
15. The Treaty has resulted in economic benefits for Australia and other Pacific Island Parties. In this respect, the Treaty is generally acknowledged to provide greater financial returns to the Pacific Island parties than would otherwise be the case under traditional bilateral access arrangements. As a Party to the Treaty, Australia has received approximately US \$2.3 million for allowing access to US purse seine fishing operations to part of the AFZ.
16. Australia also has a broader interest in the development of fisheries in the Pacific region. In this respect, securing the proper management of stocks fished under the Treaty such as skipjack, yellowfin and bigeye tuna will be essential to ensure the continued well being of the Australian fishing industry.
17. The Treaty is widely regarded as setting a benchmark for responsible fisheries access arrangements in the region. Australia's continued participation in the Treaty provides an important forum for Australia to advance its interests and contribute to the economic well-being and stability of the Pacific region.

Obligations

18. Acceptance of the proposed treaty action will not result in Australia becoming subject to any new binding international obligations.
19. The US Amendment will remove a restriction on US longline fishing operations in the high seas areas of the Treaty area prescribed in Article 3.2 of the Treaty. Article 3.2 of the Treaty currently provides that only US fishing vessels fishing albacore tuna by the trolling method are permitted to fish in the high seas area of the Treaty area. Under the US Amendment, Article 3.2 would be amended to permit US fishing vessels to be used for 'fishing albacore by the trolling method or for fishing by the longline method' in the high seas areas of the Treaty area.
20. The PNG Amendment would add 'archipelagic waters' to the list of closed waters specified by PNG under Schedule 2 of Annex 1 to the Treaty. At present, PNG specifies an area of its EEZ known as the 'Mogardo square' together with its internal waters and territorial sea as closed waters under Schedule 2. The inclusion of PNG's claimed archipelagic waters under the PNG amendment would significantly increase the area of PNG waters closed to fishing by US fishing vessels.
21. The SI Amendments to Schedule 2 to Annex 1 of the Treaty would alter the area of closed waters specified by the Solomon Islands. At present, the Solomon Islands specifies all waters under its jurisdiction or control apart from a limited area of its EEZ as closed waters. The effect of the SI Amendment to Schedule 2 would be to increase the area of the Solomon Islands EEZ open to fishing by US fishing vessels under the Treaty.
22. Schedule 3 to Annex 1 currently provides that US fishing vessels may not collectively/cumulatively fish for more than 500 days or part days in any given year in the EEZ of the Solomon Islands. The SI Amendments to Schedule 3 would remove this restriction on fishing effort.

Implementation

23. Australia's obligations under the Treaty are implemented under the *Fisheries Management Act 1991* ('the Act'). The Treaty presently forms a Schedule to the Act. Regulations will need to be made under section 4(7) of the Act to provide that the amendments to the Treaty have effect for the purposes of the Act prior to Australia taking the proposed treaty action.

Costs

24. There are no direct foreseeable financial costs to the Commonwealth of Australia, the States and Territories or industry from taking the proposed treaty action.

Consultation

25. The proposed treaty action has been advised to the States and Territories through the Commonwealth-State-Territory Standing Committee on Treaties.
26. The Federal Minister for Agriculture, Fisheries and Forestry has also written to his State and Territory counterparts in Tasmania, Victoria, New South Wales, Queensland and the Northern Territory regarding the proposed treaty action. Industry and environment groups have been consulted by the Department of Agriculture, Fisheries and Forestry - Australia (AFFA) and the Australian Fisheries Management Authority (AFMA).
27. The following have been consulted regarding the proposed treaty action:
 - i. the Ministers responsible for fisheries in Tasmania, Victoria, New South Wales and Queensland and the Northern Territory.
 - ii. the Australian Fisheries Management Authority (AFMA).
 - iii. the AFMA convened Eastern Tuna and Billfish Fishery Management Advisory Committee (ETBF MAC) which includes industry and environment non government organisation representatives.

28. The Western Australian and South Australian Fisheries Ministers were not consulted as the proposed treaty action does not concern tuna stocks fished off their coasts. Those fish stocks are treated as separate stocks to those in the Pacific region under both domestic and international management arrangements. In addition US longline vessels have never been excluded under the US treaty from fishing outside the AFZ off South Australia and Western Australia.
29. The States and Territories consulted have expressed their support for Australia taking the proposed treaty action relating to the SI and PNG amendments.
30. The results of the consultations in relation to the US proposed amendment are:
 - i. the Northern Territory believes all proposed amendments should be accepted;
 - ii. when first consulted through the ETBF MAC, Australian industry representatives were concerned about potential increased fishing pressure on Pacific bigeye and broadbill swordfish stocks for which the stock status is considered uncertain. The industry concern appeared partly driven by a (then) recently adopted non-binding resolution of those engaged in fishing in the western and central Pacific to exercise reasonable restraint in any expansion of fishing effort in the region. At a follow-up ETBF MAC meeting representatives from industry accepted that the US amendment was not contrary to the non-binding resolution mentioned above. They also indicated that the amendment was acceptable on the basis that the US treaty represented a good financial return to the Australian public;
 - iii. Tasmania assumed acceptance of the US amendment would lead to an expansion in fishing in southern waters and therefore encouraged the Government not to accept the US proposed amendment. Tasmania nonetheless recognised there were a range of issues to be taken into account in making a decision on the matter;
 - iv. New South Wales agreed with the Government's approach of proposing to accept all the amendments. They drew attention to a possible conflict with recreational fishers in north Queensland should billfish (essentially marlin in this context) catch be increased. They also noted the potential for bait supply problems to occur in light of (then) recent pilchard kills if the US longline fleet sought bait from Australia;
 - v. Queensland raised concerns about potential impacts of acceptance of the US amendment on recreational and game fishing for tuna and billfish off the Queensland coast and suggested a ban on US longline vessel retention of billfish. The Minister has since responded to this concern noting it is unlikely US high seas longlining operations would adversely impact the recreational and gamefishing sector. The fact most Queensland game fishing was distant from high seas areas to which US vessels might regain access and that black marlin in particular inhabit waters closer to land were noted to make it unlikely longlining on the high seas would significantly affect gamefishing for that stock. It was stated that to be effective a wide application of a ban on billfish retention, preferably under a (now) developed regional management arrangement, would be preferable.
 - vi. TRAFFIC OCEANIA (an environment NGO) supported all proposed amendments. It saw little risk the US proposed amendment would lead to increased longline fishing in the central and western Pacific. It also noted that the US fleet was generally regarded as behaving responsibly and that failure to accept the amendment may encourage re-flagging of those vessels to the detriment of flag state control. It noted the need to manage fish stocks comprehensively throughout their range and that this is the aim of a (then draft) regional management arrangement for the western and central Pacific.

Future treaty action: protocols, annexes or other legally binding instruments

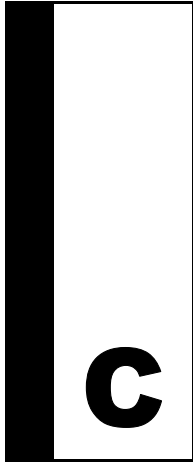
31. The Treaty does not specifically provide for the conclusion of future Protocols, Annexes or other legally binding instruments. However, Article 7 of the Treaty provides that the parties shall meet annually for the purpose of reviewing the operation of the Treaty. The proposed treaty action does not provide for the conclusion of any future protocols or other legally binding instruments. Amendments to the body of the Treaty can be made pursuant to Article 8 of the Treaty. Amendments to Annexes to the Treaty can be made pursuant to Article 9 of the Treaty.

Withdrawal or denunciation

32. Under Article 12.7, any party may denounce or withdraw from the Treaty by instrument addressed to the depositary. The denunciation or withdrawal takes effect six months after the date of receipt of the instrument.
33. Under Article 12.6, the Treaty would cease to continue in force generally if any of the following States were to withdraw from or denounce the Treaty: the United States; the Federated States of Micronesia; the Republic of Kiribati; Papua New Guinea; or, such number of Pacific Islands States as would leave fewer than ten such States as Parties.

Contact details

Aquaculture and International Fisheries
Fisheries and Aquaculture
Fisheries and Forestry Industries
Department of Agriculture, Fisheries and Forestry - Australia



Appendix C - Submissions

Air Services Agreements

Submission No.	Organisation/Individual
1	Department of Transport and Regional Services
2	Mrs D Knoch
2.1	Mrs D Knoch

Mutual Recognition Agreement on Conformity Assessment with Singapore.

Submission No.	Organisation/Individual
1	Queensland Government
2	Department of Industry Science and Resources
2.1	Department of Industry Science and Resources

Amendment to the Constitution of the International Labour Organization

Submission No.	Organisation/Individual
1	Mrs D Knoch
2	Queensland Government
3	South Australian Government
4	Council for the National Interest
4.1	Council for the National Interest

Agreements with Denmark and South Africa for the Reciprocal Protection of Classified Information of Defence Interest

Submission No.	Organisation/Individual
1	Mrs D Knoch

Agreement establishing the Pacific Islands Forum Secretariat

Submission No.	Organisation/Individual
1	Mrs D Knoch

Amendments to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the United States of America.

Submission No.	Organisation/Individual
1	Queensland Government
2	Department of Agriculture, Fisheries and Forestry



Appendix E – Regulations made under the International Organisations (Privileges and Immunities) Act¹

Treaty-implementing regulations in force under the *International Organisations (Privileges and Immunities) Act 1963* as at 1 November 2000

Title and Reference	<u>Name of organisation for which made (if not evident from title) and other Notes</u>
<i>*Asian and Pacific Development Centre (Privileges and Immunities) Regulations SR 1983 No 132</i>	
Asian Development Bank (Privileges and Immunities) Regulations SR 1967 No 175	
<i>*Asia-Pacific Telecommunity (Privileges and Immunities) Regulations SR 1981 No 8</i>	
Association of Iron Ore Exporting Countries (Privileges and Immunities) Regulations SR 1982 No 150	The Association suspended all activities in 1989 but the underlying treaty remains in force.
<i>Australia-Indonesia Zone of Cooperation (Privileges and Immunities) Regulations</i>	The organisation is the Joint Authority established under the Timor Gap Treaty,

¹ Department of Foreign Affairs and Trade, *Submission No. 1 to ITLOS*, 15 June 2000, Attachment C.

Title and Reference	<u>Name of organisation for which made (if not evident from title) and other Notes</u>
<i>SR 1990 No 228</i>	whose terms continue in force as between Australia and the United Nations under an Exchange of Notes of February 2000 (ATS 2000 No 9).
Bank for International Settlements (Privileges and Immunities) Regulations	
SR 1989 No 284	
CAB International (Privileges and Immunities) Regulations	“CAB International” is the formal name of the organisation; the letters previously stood for Commonwealth Agricultural Bureaux.
SR 1990 No 26	
<i>Commission for the Conservation of Antarctic Marine Living Resources (Privileges and Immunities) Regulations</i>	Original regulations implemented an Interim Headquarters Agreement (ATS 1983 No 10, now replaced by a permanent treaty - ATS 1986 No 21), not the Convention for the Conservation of Antarctic Marine Living Resources (ATS 1982 No 9).
SR 1983 No 22	
<i>Commission for the Conservation of Southern Bluefin Tuna (Privileges and Immunities) Regulations</i>	Regulations were made to implement the provisions (other than those relating to sales tax, which required legislation) of the then draft Headquarters Agreement (now in force as ATS 1999 No 6), not the Convention for the Conservation of Southern Bluefin Tuna (ATS 1994 No 16).
SR 1996 No 40	
Customs Cooperation Council (Privileges and Immunities) Regulations	Now known as the World Customs Organization.
SR 1979 No 72	
<i>Energy Charter Conference (Privileges and Immunities) Regulations</i>	Treaty not yet in force for Australia.
SR 1997 No 329	
European Bank for Reconstruction and Development (Privileges and Immunities) Regulations	The treaty allows parties to reserve the right to tax their nationals working for the Bank. Australia has done so.
SR 1992 No 110	
Intelsat (Privileges and Immunities) Regulations SR 1984 No 283	Intelsat’s full name is International Telecommunications Satellite Organization.

Title and Reference	<u>Name of organisation for which made (if not evident from title) and other Notes</u>
<i>International Atomic Energy Agency (Privileges and Immunities) Regulations</i> SR 1971 No 30	The Regulations significantly preceded entry into force for Australia in 1986 of the relevant treaty (ATS 1986 No 10) but appear to have been made in anticipation of an earlier, ineffective treaty action (ATS 1973 No 40).
* <i>International Center [sic] for Living Aquatic Resources Management (Privileges and Immunities) Regulations 1998</i> SR 1998 No 251	Treaty not yet in force.
<i>International Centre for Settlement of Investment Disputes (Privileges and Immunities) Regulations</i> SR 1991 No 42	Made under section 9A of the Act, inserted in 1990, as the Centre did not meet the definition in the Act of an “organisation to which this Act applies”.
International Court of Justice (Privileges and Immunities) Regulations SR 1967 No 80	Made under section 9 of the Act.
<i>International Exhibitions Bureau (Privileges and Immunities) Regulations</i> SR 1973 No 174	
International Hydrographic Organization (Privileges and Immunities) Regulations SR 1997 No 330	
<i>International Institute for Democracy and Electoral Assistance (Privileges and Immunities) Regulations</i> SR 1997 No 331	The regulations repealed earlier substantially identical regulations (SR 1996 No 197) made in order to implement the treaty prior to entry into force for Australia (ATS 1997 No 16) but which were invalid as until then Australia was not yet a member of the Institute, hence it did not meet the definition in the Act of an “organisation to which this Act applies”.
International Maritime Satellite Organization (Privileges and Immunities) Regulations	Now known as International Mobile Satellite Organisation (Inmarsat).

Title and Reference	<u>Name of organisation for which made (if not evident from title) and other Notes</u>
SR 1982 No 210	
International Organization for Migration (Privileges and Immunities) Regulations	
SR 1991 No 457	
*International Plant Genetic Resources Institute (Privileges and Immunities) Regulations 1998	
SR 1998 No 250	
<i>*International Rice Research Institute (Privileges and Immunities) Regulations 1998</i>	Treaty not yet in force for Australia.
SR 1998 No 252	
International Sea-Bed Authority (Privileges and Immunities) Regulations	
SR 1996 No 229	
International Sugar Organization (Privileges and Immunities) Regulations	
SR 1978 No 213	
International Tribunal for the Law of the Sea (Privileges and Immunities) Regulations 1998	Made under section 9B of the Act, inserted in 1997, as ITLOS did not meet the definition in the Act of an "organisation to which this Act applies".
SR 1998 No 41	
<i>*International Tropical Timber Organization (Privileges and Immunities) Regulations</i>	
SR 1984 No 477	
International Wheat Council (Privileges and Immunities) Regulations	
SR 1982 No 152	
<i>Joint Accreditation System of Australia and New Zealand (Privileges and Immunities) Regulations 1998</i>	Regulations implement the second treaty (ATS 1998 No 16) concerning the organisation, not the first (ATS 1991 No 44).

Title and Reference	<u>Name of organisation for which made (if not evident from title) and other Notes</u>
<p>SR 1998 No 136</p> <p>Multilateral Investment Guarantee Agency (Privileges and Immunities) Regulations 1998</p>	
<p>SR 1998 No 135</p> <p>Network of Aquaculture Centres in Asia and the Pacific (Privileges and Immunities) Regulations 1998</p>	
<p>SR 1998 No 66</p> <p>Organisation for Economic Co-operation and Development (Privileges and Immunities) Regulations</p>	<p>The Regulations implement a bilateral treaty with the OECD concerning its privileges and immunities (ATS 1983 No 5), not its constitutive treaty (ATS 1971 No 11).</p>
<p>SR 1983 No 7</p> <p>Preparatory Commission for the Comprehensive Nuclear Test-Ban Treaty Organisation (Privileges and Immunities) Regulations 2000</p>	<p>Treaty not yet in force; the Preparatory Commission was created not by the Comprehensive Nuclear Test- Ban Treaty but by resolution of the Diplomatic Conference that adopted that treaty (once the treaty enters into force generally the CTBTO will replace it).</p>
<p>SR 2000 No 84</p> <p>Preparatory Commission for the Organization on the Prohibition of Chemical Weapons (Privileges and Immunities) Regulations</p>	<p>When the treaty entered into force in 1997 the OPCW replaced the Preparatory Commission and Australia's obligations in respect of the privileges and immunities of inspectors were implemented by regulations under the <i>Chemical Weapons (Prohibition) Act 1994</i>.</p>
<p>South Pacific Commission (Privileges and Immunities) Regulations</p> <p>SR 1970 No 171</p>	<p>Now known as the Pacific Community.</p>
<p>South Pacific Forum Fisheries Agency (Privileges and Immunities) Regulations</p> <p>SR 1984 No 476</p>	
<p>South Pacific Forum Secretariat (Privileges and Immunities) Regulations</p> <p>SR 1992 No 162</p>	<p>Now known as the Pacific Islands forum.</p>

Title and Reference**Name of organisation for which made (if not evident from title) and other Notes**

South Pacific Nuclear Free Zone Committee
(Privileges and Immunities) Regulations

SR 1986 No 359

South Pacific Regional Environmental
Programme (Privileges and Immunities)
Regulations

SR 1996 No 144

*Specialized Agencies (Privileges and Immunities)
Regulations*

SR 1986 No 67

Applies to Food and Agriculture
Organization, International Civil Aviation
Organization, United Nations Educational,
Scientific and Cultural Organization, World
Health Organization, International Labour
Organization, International Monetary Fund,
International Bank for Reconstruction and
Development, Universal Postal Union,
International Telecommunication Union,
World Meteorological Organization,
International Maritime Organization,
International Finance Corporation,
International Development Association,
World Intellectual Property Organization,
United Nations Industrial Development
Organization, International Fund for
Agricultural Development.

*Tuvalu Trust Fund (Privileges and Immunities)
Regulations*

SR 1987 No 241

United Nations (Privileges and Immunities)
Regulations

SR 1986 No 66

World Trade Organization (Privileges and
Immunities) Regulations

SR 1996 No 24

Notes

1. Most of these regulations have been amended since their original making, some of them many times.
2. Regulations preceded by an asterisk (*) recognise legal personality only and confer no privileges or immunities.
3. The regulations cited in italics are those whose making preceded or coincided with the treaty action they were implementing, in conformity with the policy the Government has followed since May 1996 (whether or not the policy applied at the time). A stricter application of the policy, to which the Government now adheres, is that treaty action must await the expiry of the disallowance period of the regulations under Part XII of the *Acts Interpretation Act 1901*. Some regulations not italicised may have repealed earlier regulations that would have conformed with the 1996 policy had it applied at the time of their making.



Appendix F – Air Service Agreements: Related documents¹

Designated International Airports in Australia

Airport	Major	Restricted use	Alternate	Non-scheduled	External Territory
Adelaide	✓				
Brisbane	✓				
Cairns	✓				
Darwin	✓				
Melbourne	✓				
Perth	✓				
Sydney	✓				
Avalon		✓	✓		
Broome		✓			
Canberra		✓	✓		
Coffs Harbour		✓	✓		
Coolangatta		✓	✓		
Hobart		✓			
Leannonth		✓	✓		
Lord Howe Island		✓			
Port Hedland		✓	✓		
Townsville		✓	✓		
Alice Springs			✓		
Dubbo			✓		
Kalgoorlie			✓		
Launceston			✓		
Rockhampton			✓		
Tindal			✓		

¹ Department of Transport and Regional Services, *Submission 1 to Air Services Agreements*, p. 1

Airport	Major	Restricted use	Alternate	Non-scheduled	External Territory
Horn Island				✓	
Norfolk Island					✓
Christmas Island					✓
Cocos (Keeling) Island					✓

Current as at 16 January 2001

Major international airport means an airport where all formalities incident to Customs, Immigration, Health and similar procedures are carried out.

Restricted use international airport means an airport where all formalities incident to Customs, Immigration, Health and similar procedures are available on a restricted basis, on prior approval only eg charters.

Alternate international means an airport specified in a flight plan to which a flight may proceed when it becomes inadvisable to land at the airport of intended landing.

International Aviation Stakeholder List²

<u>Organisation</u>	<u>Type of Organisation</u>
<u>Ansett International</u>	<u>Airline</u>
<u>Qantas Airways Ltd.</u>	<u>Airline</u>
<u>Regional Airlines Association of Australia</u>	<u>Airline</u>
<u>Adelaide Airport Ltd</u>	<u>Airport</u>
<u>Alice Springs Airport Pty Ltd</u>	<u>Airport</u>
<u>Australian Airports Association</u>	<u>Airport</u>
<u>Brisbane Airport Corporation Limited</u>	<u>Airport</u>
<u>Broome International Airport</u>	<u>Airport</u>
<u>Cairns Port Authority</u>	<u>Airport</u>
<u>Canberra International Airport</u>	<u>Airport</u>
<u>Darwin International Airport Pty Ltd</u>	<u>Airport</u>
<u>Gold Coast Airport</u>	<u>Airport</u>
<u>Hobart International Airport</u>	<u>Airport</u>

<u>Organisation</u>	<u>Type of Organisation</u>
<u>Launceston Airport</u>	<u>Airport</u>
<u>Melbourne Airport</u>	<u>Airport</u>
<u>Newcastle Airport Ltd</u>	<u>Airport</u>
<u>Sydney Airports Corporation Limited</u>	<u>Airport</u>
<u>Townsville Airport</u>	<u>Airport</u>
<u>Westralia Airports Corporation Pty Ltd</u>	<u>Airport</u>
<u>Austrade</u>	<u>Commonwealth Government</u>
<u>Australian Customs Service</u>	<u>Commonwealth Government</u>
<u>Department of Agriculture, Fisheries & Forestry Australia</u>	<u>Commonwealth Government</u>
<u>Department of Foreign Affairs and Trade</u>	<u>Commonwealth Government</u>
<u>Department of Immigration and Multicultural Affairs</u>	<u>Commonwealth Government</u>
<u>Department of Industry, Science and Resources</u>	<u>Commonwealth Government</u>
<u>Department of the Treasury</u>	<u>Commonwealth Government</u>
<u>International Air Services Commission</u>	<u>Commonwealth Government</u>
<u>Overnight Airfreight Operators Association Freight Council</u>	
<u>Australian Federation of International Forwarders</u>	<u>Freight Council</u>
<u>Air Freight Council of Queensland Ltd</u>	<u>Freight Council</u>
<u>Air Freight Council of Western Australia</u>	<u>Freight Council</u>
<u>Air Freight Export Council of NSW Inc</u>	<u>Freight Council</u>
<u>Perishables Taskforce to the Victorian Airfreight Council</u>	<u>Freight Council</u>
<u>SA Air Freight Export Council Inc</u>	<u>Freight Council</u>
<u>Tasmanian Export Council</u>	<u>Freight Council</u>
<u>Australian and International Pilots</u>	<u>Industry Body</u>
<u>Australian Federation of Travel Agents</u>	<u>Industry Body</u>
<u>Australian Horticultural Corporation</u>	<u>Industry Body</u>
<u>Australian Seafood Industry Council</u>	<u>Industry Body</u>

International Aviation Stakeholder List

<u>Organisation</u>	Type of Organisation
Supermarket to Asia Ltd	Industry Body
Australian Tourist Commission	Industry Body
Inbound Tourism Organisation of Australia	Industry Body
Tourism Task Force	Industry Body
Centre for Asia-Pacific Aviation	Industry Body
Air Transport Council (NSW)	State Government (Transport)
Chief Minister's Department	State Government (Transport)
NSW Department of Transport	State Government (Transport)
NT Department of Transport and Works	State Government (Transport)
Queensland Department of State	State Government (Transport)
SA Department of Transport	State Government (Transport)
Tasmanian Department of Infrastructure, Energy & Resources	State Government (Transport)
Victorian Department of Infrastructre	State Government (Transport)
WA Department of Transport	State Government (Transport)
Northern Territory Tourism Commission	State Government (Tourism)
South Australian Tourism Commission	State Government (Tourism)
Tourism New South Wales	State Government (Tourism)
Tourism Queensland	State Government (Tourism)
Tourism Tasmania	State Government (Tourism)
Tourism Victoria	State Government (Tourism)
WA Tourism Commission	State Government (Tourism)