

Report 114

Treaties referred on 16 November 2010 (part 1)

Agreement with the United States concerning Acquisition and Cross-Servicing

Agreement with Korea on the Protection of Classified Military Information

Agreement with the United States concerning Peaceful Uses of Nuclear Energy

Double Taxation Agreement with Chile

Amendment to the Double Taxation Agreement with Malaysia

17 Tax Information Exchange Agreements and Allocation of Taxing Rights Agreements

© Commonwealth of Australia 2010

ISBN 978-0-642-79392-8 (Printed version)

ISBN 978-0-642-79393-5 (HTML version)




Contents

Membership of the Committee	vi
Resolution of Appointment	viii
List of recommendations	ix
1 Introduction	1
Purpose of the Report	1
Conduct of the Committee's review	3
2 Agreement between the Government of Australia and the Government of the United States of America concerning Acquisition and Cross-Servicing	5
Background	5
Mutual logistics support under the ACSA	6
Updating the ACSA	7
Conclusion and recommendation	8
3 Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Classified Military Information	9
Background	9
Reasons to take treaty action	10
Obligations	10
Security cooperation between Australia and Korea	11
Conclusion and recommendation	12

4	Agreement with the United States concerning Peaceful Uses of Nuclear Energy	13
	Introduction	13
	Reasons to take treaty action	14
	Obligations	15
	Substantive changes from the 1979 agreement.....	15
	The new agreement	16
	Implementation and costs	17
	Consultation	17
	Conclusion and recommendation	18
5	Double Taxation Agreement with Chile	19
	Introduction	19
	Reasons to take treaty action	19
	Obligations	21
	Implementation and costs	23
	Consultation	23
	Conclusion and recommendation	23
6	Amendment to the Double Taxation Agreement with Malaysia	25
	Introduction	25
	Reasons to take treaty action	26
	Obligations	26
	Costs and implementation	26
	Conclusion and recommendation	27
7	Taxation Agreements	29
	Introduction	29
	Tax information exchange agreements.....	30
	Obligations	32
	Implementation and costs	34
	Allocation of taxing rights agreements	35
	Obligations	35
	Implementation and Costs	36

Conclusion and recommendations	36
Appendix A — Submissions	41
Appendix B — Witnesses	43



Membership of the Committee

43rd Parliament

Chair Mr Kelvin Thomson MP

Deputy Chair Senator Julian McGauran

Members	Ms Sharon Bird MP	Senator Simon Birmingham
	Mr Jamie Briggs MP	Senator Michaelia Cash
	Mr John Forrest MP	Senator Scott Ludlam
	Ms Sharon Grierson MP	Senator Kerry O'Brien
	Ms Kirsten Livermore MP	Senator Louise Pratt
	Ms Melissa Parke MP	Senator Dana Wortley
	Ms Michelle Rowland MP	
	Hon. Dr Sharman Stone MP	

Committee Secretariat

Secretary James Catchpole

Inquiry Secretary Kevin Bodel

Administrative Officers Heidi Luschtinetz
Dorota Cooley

42nd Parliament

Chair	Mr Kelvin Thomson MP	
Deputy Chair	Senator Julian McGauran	
Members	Mr Jamie Briggs MP	Senator Simon Birmingham
	Hon. Duncan Kerr SC MP	Senator Michaelia Cash
	Mr John Forrest MP	Senator Don Farrell
	Ms Jill Hall MP	Senator Scott Ludlam
	Hon. John Murphy MP	Senator Louise Pratt
	Ms Belinda Neal MP	Senator Dana Wortley
	Ms Melissa Parke MP	
	Mr Luke Simpkins MP	

Committee Secretariat

Secretary	Russell Chafer (from 16/7/10) Jerome Brown (until 15/7/10)
Inquiry Secretaries	Kevin Bodel Julia Searle
Researcher	Jennifer Bowles (until 30/7/10)
Administrative Officers	Heidi Luschtinetz Dorota Cooley



Resolution of Appointment

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

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



List of recommendations

2 Agreement between the Government of Australia and the Government of the United States of America concerning Acquisition and Cross-Servicing

Recommendation 1

The Committee supports the *Agreement between the Government of Australia and the Government of the United States of America concerning Acquisition and Cross-Servicing* and recommends that binding treaty action be taken.

3 Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Classified Military Information

Recommendation 2

The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Classified Military Information* and recommends that binding treaty action be taken.

4 Agreement with the United States concerning Peaceful Uses of Nuclear Energy

Recommendation 3

The Committee supports the *Agreement between the Government of Australia and the Government of the United States of America concerning Peaceful Uses of Nuclear Energy* and recommends that binding treaty action be taken.

5 Double Taxation Agreement with Chile

Recommendation 4

The Committee supports the *Double Taxation Agreement with Chile* and recommends that binding treaty action be taken.

6 Amendment to the Double Taxation Agreement with Malaysia

Recommendation 5

The Committee supports the *Third Protocol amending the Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* and recommends that binding treaty action be taken.

7 Taxation Agreements

Recommendation 6

The Committee supports the *Agreement between the Government of Australia and the Government of Anguilla on the Exchange of Information with Respect to Taxes*, and recommends that binding treaty action be taken.

Recommendation 7

The Committee supports the *Agreement between the Government of Australia and the Government of the Commonwealth of the Bahamas on the Exchange of Information with Respect to Taxes*, and recommends that binding treaty action be taken.

Recommendation 8

The Committee supports the *Agreement between the Government of Australia and the Government of Belize for the Exchange of Information with Respect to Taxes*, and recommends that binding treaty action be taken.

Recommendation 9

The Committee supports the *Agreement between the Government of Australia and the Government of the Cayman Islands on the Exchange of Information with Respect to Taxes*, and recommends that binding treaty action be taken.

Recommendation 10

The Committee supports the *Agreement between the Government of Australia and the Government of the Commonwealth of Dominica on the Exchange of Information with Respect to Taxes and Tax Matters*, and recommends that binding treaty action be taken.

Recommendation 11

The Committee supports the *Agreement between the Government of Australia and the Government of Grenada for the Exchange of Information Relating to Tax Matters*, and recommends that binding treaty action be taken.

Recommendation 12

The Committee supports the *Agreement between the Government of Australia and the Government of the Principality of Monaco for the Exchange of Information Relating to Tax Matters*, and recommends that binding treaty action be taken.

Recommendation 13

The Committee supports the *Agreement between the Government of Australia and the Government of Saint Christopher (Saint Kitts) and Nevis for the Exchange of Information Relating to Tax Matters*, and recommends that binding treaty action be taken.

Recommendation 14

The Committee supports the *Agreement between the Government of Australia and the Government of Saint Lucia on the Exchange of Information with Respect to Taxes*, and recommends that binding treaty action be taken.

Recommendation 15

The Committee supports the *Agreement between the Government of Australia and the Government of Saint Vincent and the Grenadines on the Exchange of Information with Respect to Taxes*, and recommends that binding treaty action be taken.

Recommendation 16

The Committee supports the *Agreement between the Government of Australia and the Government of Samoa on the Exchange of Information with Respect to Taxes*, and recommends that binding treaty action be taken.

Recommendation 17

The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of San Marino for the Exchange of Information Relating to Taxes*, and recommends that binding treaty action be taken.

Recommendation 18

The Committee supports the *Agreement between the Government of Australia and the Government of the Turks and Caicos Islands on the Exchange of Information with Respect to Taxes*, and recommends that binding treaty action be taken.

Recommendation 19

The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of Vanuatu on the Exchange of Information with Respect to Taxes*, and recommends that binding treaty action be taken.

Recommendation 20

The Committee supports the *Agreement between the Government of Australia and the Kingdom of the Netherlands, in respect of Aruba, on the Exchange of Information with Respect to Taxes*, and recommends that binding treaty action be taken.

Recommendation 21

The Committee supports the *Agreement between the Government of Australia and the Government of Samoa on the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments*, and recommends that binding treaty action be taken.

Recommendation 22

The Committee supports the *Agreement between the Government of Australia and the Kingdom of the Netherlands, in respect of Aruba, for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments*, and recommends that binding treaty action be taken.

Introduction

Purpose of the Report

1.1 This report contains advice to Parliament on the review by the Joint Standing Committee on Treaties of 22 treaty actions referred to the Committee on 16 November 2010. These treaty actions are the:

- *Agreement between the Government of Australia and the Government of the United States of America concerning Acquisition and Cross-Servicing*
- *Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Classified Military Information*
- *Agreement between the Government of Australia and the Government of the United States of America concerning Peaceful Uses of Nuclear Energy*
- *Convention between Australia and the Republic of Chile for the Avoidance of Double Taxation with Respect to Taxes on Income and Fringe Benefits and the Prevention of Fiscal Evasion, and Protocol*
- *Third Protocol amending the Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*
- tax information exchange agreements with the following countries:
 - ⇒ Anguilla;
 - ⇒ Bahamas;
 - ⇒ Belize;
 - ⇒ Cayman Islands;
 - ⇒ Dominica;

- ⇒ Grenada;
- ⇒ Principality of Monaco;
- ⇒ Saint Christopher (Saint Kitts) and Nevis;
- ⇒ Saint Lucia;
- ⇒ Saint Vincent and the Grenadines;
- ⇒ Samoa;
- ⇒ San Marino;
- ⇒ Turks and Caicos Islands;
- ⇒ Vanuatu; and
- ⇒ the Kingdom of the Netherlands, in respect of Aruba; and

- agreements with Samoa and Aruba relating to the allocation of taxing rights and transfer pricing adjustments.

1.2 The treaties reported on here were tabled in parliament on 22 June, and 12 May 2010 during the 42nd Parliament. The Committee had not reported on these treaties when the 42nd Parliament was prorogued and the Committee ceased to exist. As a consequence, the inquiries lapsed.

1.3 Traditionally, new treaties committees have sought to complete inquiries that lapsed as a result of the prorogation of Parliament. To do so, the Committee must receive a reference in accordance with the resolution of appointment.

1.4 The Committee received such a reference from the Hon. Kevin Rudd MP, Minister for Foreign Affairs, on 16 November 2010.

1.5 The report refers frequently to the treaties and their associated National Interest Analyses (NIAs). Copies of each treaty and its associated NIA may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct

1.6 Copies of each treaty action and the NIAs may also be obtained from the Australian Treaties Library maintained on the internet by the Department of Foreign Affairs and Trade. The Australian Treaties Library is accessible through the Committee's website or directly at:

www.austlii.edu.au/au/other/dfat/

Conduct of the Committee's review

- 1.7 The evidence used to this report was obtained during the 42nd Parliament. The treaty reviews were advertised in the national press and on the Committee's website.¹ Invitations to lodge submissions were also sent to all State Premiers, Chief Ministers, Presiding Officers of parliaments and to individuals who have expressed an interest in being kept informed of proposed treaty actions. Submissions received and their authors are listed at Appendix A.
- 1.8 The Committee also received evidence at a public hearing on 10 May 2010 in Canberra. A list of witnesses who appeared at the public hearings is at Appendix B. Transcripts of evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee's website at:
- http://www.aph.gov.au/house/committee/jsct/9_10_march2010/hearings.htm.

¹ The Committee's reviews of the proposed treaty actions were advertised in *The Australian* on 14 April 2010 and 30 June 2010. Members of the public were advised on how to obtain relevant information both in the advertisement and via the Committee's website, and invited to submit their views to the Committee.

Agreement between the Government of Australia and the Government of the United States of America concerning Acquisition and Cross-Servicing

Background

- 2.1 The *Agreement between the Government of Australia and the Government of the United States of America concerning Acquisition and Cross-Servicing* ('the ACSA') updates the framework for the reciprocal provision of logistic support, supplies and services between the military forces of Australia and the United States. It replaces a highly similar Agreement signed in 1998,¹ reviewed and supported by JSCOT in 1999.²
- 2.2 The ACSA was tabled in the 42nd Parliament on 12 May 2010. The accompanying National Interest Analysis noted the Government's intention to take binding action prior to the expiry of the 1998 Agreement on 22 September 2010.³ Following the announcement of the federal election on 17 July, the Committee resolved to table its recommendations on the ACSA prior to the dissolution of Parliament. The Committee expressed its concern to ensure the continuation of critical logistics

1 *Agreement between the Government of Australia and the Government of the United States of America concerning Acquisition and Cross-Servicing*, done at Canberra on 9 December 1998.

2 JSCOT Report 21, paras 2.51-2.63.

3 National Interest Analysis (NIA), para. 2.

cooperation with the United States.⁴ Binding treaty action was supported in Report 113, tabled on 19 July 2010.⁵

- 2.3 This chapter provides an overview of the ACSA and outlines the reasons for the recommendation put forward in the Committee's previous report. The Committee has reviewed the evidence received by JSCOT in the 42nd Parliament and endorses the recommendation.

Mutual logistics support under the ACSA

- 2.4 The ACSA is one of several bilateral Mutual Logistics Support Arrangements Australia has entered to facilitate cooperation with foreign military forces.⁶ It enables support, supplies and services to be transferred between Australia and the United States in exchange for cash payment, or payment-in-kind.⁷ Each Party is obliged to make its best efforts, consistent with national priorities, to satisfy requests made pursuant to the Agreement.⁸
- 2.5 Certain items cannot be transferred under the ACSA, including weapons systems and major end items of equipment.⁹ Items which are prohibited from transfer under national laws or regulations are also excluded.¹⁰
- 2.6 The method and quantum of payment must be mutually determined by the Parties, subject to three reciprocal pricing principles.¹¹ The Parties also agree that taxes and similar charges will not be imposed, to the extent permitted by national laws and regulations.¹²

4 JSCOT Report 113, para. 1.

5 JSCOT Report 113, Recommendation 1.

6 See T, Foster, 'Mutual Logistics Support Arrangements', *The Link: Defence Logistics Magazine*, Issue 5, July 2009, pp. 29-30.

7 National Interest Analysis (NIA), para 4.

8 Art IV; NIA para. 8.

9 Art III; NIA para. 10.

10 Art III; NIA para. 10.

11 Art V; NIA para. 16.

12 Art VI; NIA para. 17.

Updating the ACSA

- 2.7 The Department of Defence described the 1998 Agreement to the Committee as a ‘mutually beneficial arrangement’.¹³ Air Vice Marshal Staib gave evidence that the Agreement was used on a daily basis as the authority for the transfer of logistic support to the Australian Defence Force in Afghanistan, and other areas where Australian and American forces are operating together.¹⁴ The Agreement also functioned effectively in joint training exercises, such as the recent major exercise Talisman Sabre.¹⁵ Air Vice Marshal Staib was not able to recall any Australian requests which had been refused by the United States.¹⁶
- 2.8 The new ACSA preserves the basic structure established by the 1998 Agreement, incorporating a number of modifications. The Committee sought clarification of the nature and purpose of these changes, in light of the effectiveness of existing arrangements. The Department of Defence advised that the modifications are minor and create no new obligations for Australia.¹⁷ They reflect organisational changes in both the United States and Australia, and other matters necessary to satisfy current domestic legal and financial requirements.¹⁸
- 2.9 The Committee sought evidence of matters raised by the Parties in the course of negotiations. It has previously noted that the United States negotiates mutual logistic support agreements subject to a standard template.¹⁹ There is limited scope for partner States such as Australia to propose variations.²⁰
- 2.10 The Department of Defence provided written advice that most questions raised by Australia had been agreed.²¹ These proposals adapted the United States’ template text to accommodate the role of standing Implementation Arrangements in Australia.²² Liability and claims

13 Air Vice Marshal Margaret Staib, *Transcript of Evidence*, 21 June 2010, p. 11.

14 Air Vice Marshal Margaret Staib, *Transcript of Evidence*, 21 June 2010, p. 8.

15 Air Vice Marshal Margaret Staib, *Transcript of Evidence*, 21 June 2010, p. 11.

16 Air Vice Marshal Margaret Staib, *Transcript of Evidence*, 21 June 2010, p. 11.

17 Air Vice Marshal Margaret Staib, *Transcript of Evidence*, 21 June 2010, pp. 7-8; NIA, para. 11.

18 Air Vice Marshal Margaret Staib, *Transcript of Evidence*, 21 June 2010, p. 8.

19 JSCOT Report 21, para. 2.61.

20 JSCOT Report 21, para. 2.61.

21 Department of Defence, *Submission No. 3*, Attachment A.

22 Department of Defence, *Submission No. 3*, Attachment A.

provisions which have become a standard feature of logistic support agreements were also inserted at Australia's request.²³

- 2.11 Australia unsuccessfully sought the removal of an annexed Mutual Logistic Support order form and related explanatory notes.²⁴ These documents were regarded as superfluous to need. The Committee is advised that their inclusion carries no negative implications.²⁵

Conclusion and recommendation

- 2.12 The Committee is conscious that the terms of mutual logistic support arrangements with the United States are largely predetermined. Nevertheless, there is widespread agreement that the 1998 Agreement has effectively facilitated logistics cooperation of critical importance to Australia's military forces. It continues to stand the test of diverse operations, deployments, and training exercises. The new ACSA will ensure this stable and mutually beneficial framework is maintained. On the evidence presented, the Committee is satisfied that matters raised by Australia in the course of negotiations have been satisfactorily resolved.

Recommendation 1

The Committee supports the *Agreement between the Government of Australia and the Government of the United States of America concerning Acquisition and Cross-Servicing* and recommends that binding treaty action be taken.

23 Department of Defence, *Submission No. 3*, Attachment A.

24 Department of Defence, *Submission No. 3*, Attachment A.

25 Department of Defence, *Submission No. 3*, Attachment A.

Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Classified Military Information

Background

- 3.1 The *Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Classified Military Information* establishes a legal framework for the transfer of Classified Military Information (CMI) between the Parties.
- 3.2 The Australian Department of Defence currently exchanges information of this nature with the Korean Ministry of National Defence through a non-binding arrangement.¹ This arrangement was signed in 2008 as an interim measure, pending the conclusion of a legally binding instrument.²
- 3.3 The new Agreement was signed by the Parties at the Shangri-La Dialogue on 30 May 2009. It represents a further milestone in the expanding security relationship between Australia and Korea.³

1 National Interest Analysis (NIA), para. 4.

2 NIA, para. 7; Mr Frank Roberts, *Transcript of Evidence*, 21 June 2010, pp. 12-13.

3 NIA, para. 5.

Reasons to take treaty action

- 3.4 The proposed Agreement does not create an obligation for Australia to transmit information to Korea; nor an entitlement to request material.⁴ It seeks instead to safeguard the integrity of voluntary information transfers.⁵
- 3.5 The protections outlined in the Agreement are substantially similar to those provided by information exchange agreements Australia has entered with Canada, Singapore, Denmark, South Africa, the United States, and the North Atlantic Treaty Organisation.⁶ JSCOT recommended entry into each of these treaties.⁷ The National Interest Analysis contemplates that the new Agreement will facilitate security cooperation and strengthen broader bilateral relations between Australia and Korea.⁸

Obligations

- 3.6 The Agreement ensures that information transferred under the Agreement is afforded a standard of physical and legal protection no less stringent than applies to materials of the corresponding classification in the receiving State.⁹
- 3.7 Corresponding classifications are identified in the Agreement.¹⁰ Pursuant to this matrix, the Australian Defence Security Authority is satisfied that the national security standards maintained by Korea will provide equivalent protection to that received under Australian laws, regulations and policies.¹¹

4 Art. 7.5.

5 NIA, para. 4.

6 *Agreement between the Governments of Australia and Canada concerning Defence Related Information; Agreement between the Governments of Australia and Singapore concerning Defence-Related Material; Agreement with Denmark for the Reciprocal Protection of Classified Information of Defence Interest; Agreement with South Africa for the Reciprocal Protection of Classified Information of Defence Interest; Agreement between Australia and the USA concerning Security Measures for the Reciprocal Protection of Classified Information; Agreement between the Government of Australia and the North Atlantic Treaty Organisation on the Security of Information.*

7 JSCOT Report No. 2, paras 1.43-1.49; JSCOT Report No. 4, paras 2.4-2.9; JSCOT Report No. 39, Chap. 7; JSCOT Report 48, Chap. 4; JSCOT Report 98, Chap. 2.

8 NIA, para. 5.

9 Art. 5.1.4.

10 Art. 4.5.

11 NIA, para. 6.

- 3.8 Materials to be transmitted must be classified and marked by the sending party.¹² The recipient cannot downgrade the assigned classification without the sender's written consent.¹³ The recipient is also obliged to restrict the use of the material to the purpose for which it was transferred.¹⁴ It must be returned or destroyed when no longer required for this purpose.¹⁵
- 3.9 If the loss or compromise of material is suspected, the recipient must advise the sending Party and undertake an investigation immediately.¹⁶
- 3.10 The Agreement also establishes a supporting framework of monitoring and notification requirements. Each Party must permit visits by the other's Security Personnel to facilities within its territory where CMI is stored.¹⁷ The Committee was advised that standard visiting processes were in place for all Australia's international partnerships.¹⁸ Changes to national security standards which could affect the protection of transferred information must also be communicated in writing.¹⁹

Security cooperation between Australia and Korea

- 3.11 The Committee noted that Australia had not identified a Korean classification equivalent to 'Top Secret'.²⁰ Mr Roberts of the Department of Defence noted that Australia did not envisage a need to transfer material of this classification under the Agreement.²¹ It was put to the Committee that the similar channels and processes could be used if such a need arose in the future.²²
- 3.12 The Committee also queried the timing of negotiations, noting that JSCOT had received evidence in 2001 that Australia was contemplating an information exchange agreement with Korea.²³ Ms Ragg of the

12 Art. 4.1.

13 Art. 5.1.2.

14 Art. 5.1.7.

15 Art. 5.2.

16 Art. 14.1.

17 Art. 11 and Art. 12.

18 Ms Sandra Ragg, *Transcript of Evidence*, 21 June 2010, p. 14.

19 Art. 10.

20 *Transcript of Evidence*, 21 June 2010, p. 15.

21 Mr Frank Roberts, *Transcript of Evidence*, 21 June 2010, pp. 15- 16.

22 Ms Sandra Ragg, *Transcript of Evidence*, 21 June 2010, p. 16.

23 JSCOT Report 39, para. 7.14.

Department of Defence advised the Committee that the impetus for adopting a legally binding instrument was dependent on the requirements of the relationship.²⁴ Negotiations had been ongoing, subject to the process of managing both countries' bureaucracies.²⁵

Conclusion and recommendation

- 3.13 The Committee is satisfied that Australia has already established a beneficial information sharing relationship with Korea. This relationship provides a solid platform for mutual trust and confidence in future dealings. Whilst the negotiation process has evidently been protracted, entry into the treaty will ensure information exchanges take place within an appropriate legal framework.

Recommendation 2

The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Classified Military Information* and recommends that binding treaty action be taken.

24 Ms Sandra Ragg, *Transcript of Evidence*, 21 June 2010, p. 13.

25 Ms Kim Arthur, *Transcript of Evidence*, 21 June 2010, p. 16.

Agreement with the United States concerning Peaceful Uses of Nuclear Energy

Introduction

- 4.1 The proposed agreement provides for cooperation with the United States in peaceful uses of nuclear energy and governs the supply of Australian uranium. It will succeed an existing 1979 agreement that is due to expire on 15 January 2011.¹
- 4.2 Australia's bilateral safeguards agreements are intended to provide assurance that Australian Obligated Nuclear Material is used solely for peaceful purposes and not diverted to nuclear weapons or other military uses. Australia currently has 22 safeguards agreements in place, which allow the transfer of Australian material to 39 countries and Taiwan. The agreements complement the International Atomic Energy Agency's (IAEA) safeguards system.²
- 4.3 Australia concluded its first nuclear cooperation agreement with the United States in 1956. This agreement was replaced in 1979 with the existing agreement, which reflected Australia's uranium export policies at the time.³
- 4.4 The existing 1979 agreement is considered to have worked well, with the Government not experiencing any significant problems with its

1 Mr John Carlson, *Transcript of Evidence*, 21 June 2010, p. 30.

2 National Interest Analysis (NIA), para. 9.

3 Mr John Carlson, *Transcript of Evidence*, 21 June 2010, pp. 30-31.

implementation.⁴ The new agreement retains most of the provisions of the 1979 agreement, but has been updated in accordance with Australia's current policies and practices concerning nuclear safeguards.⁵

- 4.5 The agreement is also consistent with Australia's other bilateral nuclear agreements with nuclear weapon states.⁶
- 4.6 All cooperation between the two countries will be in accordance with the new agreement, relevant treaties, national laws and regulations, and will be subject to safeguards in accordance with each country's safeguards agreement with the IAEA.⁷

Reasons to take treaty action

- 4.7 The Government considers that the agreement will provide economic benefits to Australia on the basis of both current exports and forecast growth in nuclear power in the United States and worldwide. Australia's uranium exports are currently worth more than \$1 billion per year, with 36 per cent of this uranium supplied to the United States. The United States is also a major processor of uranium supplied by Australia to other countries.⁸ Almost half of all Australian Obligated Nuclear Material is in the United States at any time.⁹
- 4.8 The Australian Safeguards and Non-Proliferation Office (ASNO) told the Committee that the new agreement:
- ... addresses all of Australia's relevant policy requirements. It provides stringent safeguards and security requirements designed to ensure Australian uranium is used exclusively for peaceful purposes and is consistent with Australia's other bilateral nuclear agreements with nuclear weapon states.¹⁰
- 4.9 The new agreement also supports ongoing technical cooperation between the two countries through a strengthened international legal framework.¹¹

4 Mr John Carlson, *Transcript of Evidence*, 21 June 2010, p. 31.

5 NIA, para. 4.

6 NIA, para. 4.

7 NIA, para. 12.

8 NIA, para. 7; Article 1.

9 Mr John Carlson, *Transcript of Evidence*, 21 June 2010, p. 31.

10 Mr John Carlson, *Transcript of Evidence*, 21 June 2010, p. 31.

11 NIA, para. 7.

- 4.10 The proposed agreement refers explicitly to the IAEA's Additional Protocol, underscoring efforts by Australia and the United States to promote the Additional Protocol as the internationally recognised safeguards standard.¹² The physical protection of nuclear material is also linked to relevant international standards.¹³
- 4.11 Without a new agreement, Australia would no longer be able to transfer nuclear material to the United States, either for its own use or for processing on behalf of countries with a bilateral agreement with Australia.¹⁴

Obligations

Substantive changes from the 1979 agreement

- 4.12 The Committee was informed of a number of substantive changes in the new agreement:
- the existing lapsing provision has been replaced with an initial duration of 30 years and rolling extensions of five years;
 - Article 8 is amended to make explicit that the production of tritium for nuclear explosive purposes is prohibited;
 - Article 8 also includes a definition of 'military purpose' that is consistent with Australia's other bilateral safeguards agreements;
 - the scope of technical cooperation is updated in line with current activities;
 - provision for the protection of intellectual property has been added; and
 - provisions relating to the settlement of disputes have been included.¹⁵
- 4.13 A number of 'housekeeping' changes have also been made, largely to update terminology in accordance with current treaty making practice and include reference to treaties concluded since the 1979 agreement.¹⁶

12 NIA, para 8.

13 Mr John Carlson, *Transcript of Evidence*, 21 June 2010, p. 32.

14 Mr John Carlson, *Transcript of Evidence*, 21 June 2010, p. 33.

15 Mr John Carlson, *Transcript of Evidence*, 21 June 2010, p. 31.

16 Mr John Carlson, *Transcript of Evidence*, 21 June 2010, p. 31.

The new agreement

4.14 The key elements of the proposed agreement are:

- an assurance that Australian Obligated Nuclear Material (AONM) will be used exclusively for peaceful purposes and not used for any military purpose (Article 8);
- an assurance that AONM supplied to the United States will be subject to the United States' safeguards agreement with the IAEA for the full life of the material (Article 9), or until it is re-transferred in accordance with Article 5;
- fallback safeguards in the event that IAEA safeguards no longer apply (Article 9 and the Agreed Minute);
- prior consent will be required before:
 - ⇒ any transfer of AONM to a third party;
 - ⇒ any enrichment to 20 per cent or more in the isotope uranium-235; and
 - ⇒ reprocessing of AONM for the separation of plutonium (Article 6).
- limits upon the quantities and types of nuclear material that can be transferred (Article 4);
- AONM must be subject to physical protection measures to accepted international standards during use, storage and transport (Article 7);
- material covered by the Agreement must be stored only in mutually determined facilities (Article 5);
- in the event of non-compliance with the agreement, rights to cease further cooperation, including:
 - ⇒ suspension or cancellation of further transfers of nuclear material; and
 - ⇒ requiring the return of material, equipment or components (Article 11); and
- provision for the protection of intellectual property rights (Article 14).

4.15 The agreement also provides for consultation on implementation of the agreement and establishment of administrative arrangements relating to accounting and control of material, equipment and components subject to

the agreement. The Committee understands that the arrangements established under the 1979 agreement will continue.¹⁷

- 4.16 The Committee notes that this agreement differs from the agreements recently negotiated with China and Russia, also nuclear weapon states, in that it does not include provision for determining which facilities will be eligible to handle or use AONM. The basis for this difference is that the United States has placed all civil facilities under its safeguards agreement with the IAEA. All civil facilities are therefore eligible for IAEA inspection, which is an Australian policy requirement.¹⁸

Implementation and costs

- 4.17 Although the legislative framework is already in place, regulations to add the agreement to the list of prescribed agreements under the *Nuclear Non-Proliferation (Safeguards) Act 1987* and the *Australian Radiation Protection and Nuclear Safety Act 1998* will be required.
- 4.18 As noted above, the agreement provides that it will remain in force for an initial period of thirty years and will continue in force for additional periods of five years thereafter. The agreement can be terminated with six months advance notice at the end of the thirty year period or after any additional five year period. Obligations in respect of material transferred while the agreement was in force would continue.¹⁹
- 4.19 Costs will be incurred for ASNO officers' travel to the United States to facilitate proper operation of the nuclear material accounting system, which will be met from the Department of Foreign Affairs and Trade's resources.

Consultation

- 4.20 ASNO consulted with relevant Commonwealth agencies²⁰ prior to and during negotiations for the agreement, and briefed other agencies at the

17 NIA, para. 10(g).

18 Mr John Carlson, *Transcript of Evidence*, 21 June 2010, p. 34.

19 NIA, para. 27.

20 Attorney General's Department, Australian Nuclear Science and Technology Organisation, Department of Prime Minister and Cabinet, and the Department of Resources, Energy and Tourism.

Nuclear Agencies Consultative Committee meetings on 13 November 2009 and 19 February 2010. No objections to the proposed agreement were raised. The States and Territories were briefed at the Standing Committee on Treaties (SCOT) meeting on 12 October 2009.

Conclusion and recommendation

- 4.21 The Committee acknowledges that the United States is a significant consumer of Australian uranium and that it is a major processor for other countries with which Australian has a bilateral agreement governing uranium supply. This agreement will therefore continue existing controls over a significant percentage of Australian Obligated Nuclear Material. The Committee supports binding treaty action being taken.

Recommendation 3

The Committee supports the *Agreement between the Government of Australia and the Government of the United States of America concerning Peaceful Uses of Nuclear Energy* and recommends that binding treaty action be taken.

Double Taxation Agreement with Chile

Introduction

- 5.1 The key objectives of the *Convention between Australia and the Republic of Chile for the Avoidance of Double Taxation with Respect to Taxes on Income and Fringe Benefits and the Prevention of Fiscal Evasion, and Protocol* are to:
- promote closer economic cooperation between Australia and Chile by reducing barriers caused by double taxation of income; and
 - improve the integrity of the tax system through a framework to prevent international fiscal evasion.¹
- 5.2 Chile is Australia's third largest trading partner in Latin America, with two way trade totalling \$1.275 billion in 2008-09. Australia's major exports to Chile are coal, beef, civil engineering equipment, and specialised machinery and parts. Australia's imports from Chile include copper, lead ores and concentrates, pulp and waster paper and wood. Approximately 120 Australian companies are actively trading with Chile, with investments in 2008 of \$2 billion.²

Reasons to take treaty action

- 5.3 The Convention is intended to promote trade and investment between the two countries and provide greater certainty for Australian businesses and

1 National Interest Analysis (NIA), para. 4.

2 Regulation Impact Statement (RIS), paras 1.8 and 1.9.

other Australian taxpayers by establishing an internationally accepted framework for the taxation of cross-border transactions.³ It will also reduce taxation barriers to the cross-border movement of people, capital and technology.⁴ It will primarily achieve this through reducing withholding taxes on dividend, interest and royalty payments.⁵

- 5.4 The Convention addresses business concerns about the lack of competitiveness for Australian investments, compared with competitors, in Chile.⁶
- 5.5 The Committee was informed that although Chile did not agree to all of Australia's preferred tax treaty rate limits for withholding taxes, the treaty includes most favoured nation clauses 'that will assist in maintaining the competitiveness of Australian business and the dealings in Chile into the future'.⁷ The most favoured nation clauses will require Chile, if it limits its taxation more favourably in another treaty, to notify Australia and allow it to enter into negotiations to seek a similar outcome.⁸
- 5.6 There are several provisions in the treaty that are intended to reduce compliance costs and improve certainty for taxpayers, including:
- cross-border business profits of Australian and Chilean enterprises will be taxed in a manner consistent with international tax norms;
 - only the country of residence may tax profits from international transport activities;
 - a seven-year time limit will apply for the adjustment of profits of an enterprise in transfer pricing cases; and
 - pensioners will only be taxable in their country of residence in respect of all pension income.⁹
- 5.7 The Convention does not impose any greater obligations on residents of Australia than Australia's domestic tax laws and in some cases will reduce the obligations of Australians operating or investing in Chile.¹⁰ The

3 NIA, paras 5 and 6.

4 Mr Michael Atfield, *Transcript of Evidence*, 21 June 2010, pp. 25-26.

5 NIA, para. 7.

6 NIA, para. 9.

7 Mr Michael Atfield, *Transcript of Evidence*, 21 June 2010, p. 26.

8 Mr Michael Atfield, *Transcript of Evidence*, 21 June 2010, p. 28.

9 Mr Michael Atfield, *Transcript of Evidence*, 21 June 2010, p. 26.

10 NIA, para. 15.

Convention is expected to reduce compliance costs for taxpayers with cross-border dealings.¹¹

- 5.8 The Convention also establishes a framework for tax information exchange to prevent international tax evasion, through provisions that are similar to those in Australia's bilateral tax information exchange agreements.¹²

Obligations

- 5.9 The Convention will reduce withholding taxes on dividend, interest and royalty payments between the two countries. Under the Convention:
- the Australian dividend withholding tax rate limit will be reduced from 30 per cent to 5 per cent on intercorporate dividends on holdings of at least 10 per cent (Article 10) to promote direct investment into Australia by Chilean multinationals;¹³
 - reduced rates of interest withholding tax on Chilean sourced interest paid to Australian lenders will be locked in (Article 11);¹⁴
 - most favoured nation clauses will require Chile to reduce its rates of interest withholding tax to between 15 and 10 per cent or inform Australia if it provides more favourable treatment of interest in a subsequent treaty and enter into negotiations with Australia about providing the same treatment (Article 11(4) and Item 6 of the Protocol);¹⁵
 - royalty withholding tax will be reduced in both countries from 30 per cent to 5 per cent for equipment royalties and 10 per cent for other royalties (Article 12) and a most favoured nation obligation imposed;¹⁶ and
 - profits from within a multinational company will be allocated on an agreed basis (Articles 7 and 9).

11 NIA, para. 15.

12 NIA, para. 14. See also, for example, the treaties discussed in chapters 8 and 10.

13 NIA, para. 8.

14 NIA, para. 10.

15 NIA, para. 10.

16 NIA, para. 11.

5.10 The limits outlined in Articles 10 and 11 concerning dividends and interest will not apply in a reciprocal manner as Chile has a unique two tiered system of taxing profits, which is preserved by the agreement.¹⁷

5.11 Other obligations under the Convention include:

- a general obligation on both countries to allow tax paid under the other country's laws and in accordance with the proposed Convention to be allowed as a credit against tax payable under their own laws (Article 23);¹⁸
- a general non-discrimination principle, which requires each state to treat nationals of the other no less favourably than it treats its own nationals (Article 24);¹⁹
- dispute resolution procedures, including a mechanism for taxpayers to complain about operations of the Convention (Article 25);²⁰
- provisions for the exchange of tax information (Article 26);²¹
- rules to ensure benefits conferred by the Convention will only apply in certain circumstances and to allow for consultation between Australia and Chile where benefits may not be as contemplated or intended by the Convention (Article 27);²²
- obligations on both countries to consult in relation to any significant changes to laws relating to the taxes to which the Convention applies (Article 2 and Item 5 of the Protocol);²³ and
- a most favoured nation obligation is imposed on Chile by Item 6 and 7 of the Protocol requiring it to inform Australia if it provides more favourable treatment in a subsequent treaty with another country to interest derived by a financial institution or government, royalties, or if it excludes payment for industrial, commercial or scientific equipment from the meaning of royalties.²⁴

17 NIA, para. 16.

18 NIA, para. 17.

19 NIA, para. 18.

20 NIA, para. 19.

21 NIA, para. 20.

22 NIA, para. 21.

23 NIA, para. 22.

24 NIA, para. 23.

Implementation and costs

- 5.12 The *International Tax Agreements Act 1953* will be amended to give effect to the Convention. The existing taxation roles of the Commonwealth and States and Territories will not be affected by the agreement.²⁵
- 5.13 It is estimated that implementation of the treaty will result in minimal costs that will be managed within agency resources. The treaty is expected to reduce compliance costs for taxpayers.²⁶

Consultation

- 5.14 Negotiations for this treaty were publicly announced on 14 July 2005 and public submissions sought. Treasury also sought comment from the business community through the Tax Treaties Advisory Panel.²⁷ Business and industry groups supported the treaty.

Conclusion and recommendation

- 5.15 The Committee acknowledges the intent of this agreement is to provide greater certainty for Australian businesses and other Australian taxpayers in their dealings in Chile and promote trade and investment between the two countries. It therefore supports binding treaty action being taken.

Recommendation 4

The Committee supports the *Double Taxation Agreement with Chile* and recommends that binding treaty action be taken.

25 NIA, para. 24.

26 NIA, paras 25-27.

27 This panel comprises the Australian Bankers' Association, Australian Chamber of Commerce and Industry, Australian Financial Markets Association, Business Council of Australia, CPA Australia, Corporate Tax Association, Institute of Chartered Accountants in Australia, International Fiscal Association, Investment and Financial Services Association, Law Council of Australia, Minerals Council of Australia, Taxation Institute of Australia, and the Property Council of Australia. NIA, Consultation Attachment.

Amendment to the Double Taxation Agreement with Malaysia

Introduction

- 6.1 The *Third Protocol amending the Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* updates the Exchange of Information provisions (Article 25) in the existing double taxation agreement with Malaysia.
- 6.2 The Third Protocol will align the exchange of information provisions with the internationally agreed OECD standard on tax information exchange and enhance the ability of Australia and Malaysia to exchange tax information by:
- providing that neither tax authority can refuse to provide requested information on the basis that they do not have a domestic interest in such information or because a bank or other financial institution holds the information;
 - expanding the range of taxes in respect of which information can be exchanged to include all federal taxes; and
 - permitting information received by a tax authority to be used for other purposes when allowed by law and the tax authority of the other country.¹

¹ National Interest Analysis (NIA), para. 4.

Reasons to take treaty action

- 6.3 The Third Protocol was proposed by Malaysia soon after it endorsed the OECD standard in March 2009, and is consistent with Australia's support for global action to improve information exchange and transparency.²
- 6.4 Treasury informed the Committee that the enhanced provisions will contribute to Australia's efforts to combat offshore tax evasion by increasing the probability of detecting abusive tax arrangements.³ The amendments are consistent with other recently upgraded treaties with Belgium and Singapore considered by this Committee.⁴

Obligations

- 6.5 The obligations in the Third Protocol are:
- Article 25(1) creates reciprocal obligations for the exchange of information that is foreseeably relevant for carrying out the Agreement or to the administration and enforcement of domestic tax law;⁵
 - Article 25(2) obliges the Parties to treat information received through exchange as secret, protecting the legitimate interests of taxpayers;⁶ and
 - Article 25(3) provides for certain circumstances where a party may decline to provide information, such as where inconsistent with a country's laws or administrative practice, where not obtainable under laws or in normal administrative practice, or where it would disclose a trade or business secret or would be contrary to public policy.⁷

Costs and implementation

- 6.6 The revenue impact of the Third Protocol has been assessed by Treasury as unquantifiable. However, as the Third Protocol is expected to expand the taxpayer information available to the Australian Taxation Office, it is

2 NIA, para. 7 and Consultation Attachment.

3 Mr Michael Atfield, *Transcript of Evidence*, 21 June 2010, p. 25.

4 JSCOT Reports 107 and 110.

5 NIA, para. 8.

6 NIA, para. 9.

7 NIA, para. 10.

anticipated that it will result in enhanced taxpayer compliance and increased tax revenue.⁸

- 6.7 Implementation of the Third Protocol will result in a minimal increase in the ATO's administrative costs. There is expected to be little or no change in ongoing compliance costs for Australian taxpayers.⁹
- 6.8 The Third Protocol will be implemented through amendment to the *International Tax Agreements Act 1953* and will not affect the existing taxation roles of the Commonwealth and States and Territories.¹⁰

Conclusion and recommendation

- 6.9 The Committee recognises the importance of updating and enhancing taxation agreements with countries such as Malaysia in the interests of increasing tax transparency. The Committee therefore supports binding treaty action being taken.

Recommendation 5

The Committee supports the *Third Protocol amending the Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* and recommends that binding treaty action be taken.

8 NIA, para. 15.

9 NIA, paras 16 and 17.

10 NIA, paras 12-14.

Taxation Agreements

Introduction

7.1 This chapter addresses tax information exchange agreements with the following countries:

- Anguilla;
- Bahamas;
- Belize;
- Cayman Islands;
- Dominica;
- Grenada;
- Principality of Monaco;
- Saint Christopher (Saint Kitts) and Nevis;
- Saint Lucia;
- Saint Vincent and the Grenadines;
- Samoa;
- San Marino;
- Turks and Caicos Islands;
- Vanuatu; and
- the Kingdom of the Netherlands, in respect of Aruba.

- 7.2 The chapter also addresses agreements with Samoa and Aruba relating to the allocation of taxing rights and transfer pricing adjustments.
- 7.3 Since 2002, more than 40 countries have committed to the implementation of OECD standards on the elimination of harmful tax practices. Australia is currently Chair of the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum), which has a membership of more than 90 countries.¹
- 7.4 The Committee has previously reviewed a number of similar agreements in Reports 73, 87, 99, 102, 107 and 112.

Tax information exchange agreements

- 7.5 The key objective of each tax information exchange agreement (TIEA) is to establish a legal basis for the exchange of tax information with low tax jurisdictions that have committed to the OECD's standards.²
- 7.6 Treasury told the Committee that the OECD's work to eliminate harmful tax practices has been:
- ... very successful, especially over the last year and a half. Over the past year, especially since the G20 has become quite focused on transparency and tax information exchange, more than 400 of these tax information exchange agreements have been signed throughout the world. I believe we have signed 25. In the first five years of our efforts to sign these agreements, we probably signed four or five. In the last 18 months or so we have signed perhaps 19.³
- 7.7 The TIEAs are intended to discourage tax evasion and make it harder for taxpayers to avoid or evade Australian tax. Low-tax jurisdictions can be used in arrangements designed to avoid paying tax elsewhere. In particular, assets and income that are subject to Australian tax can be concealed by their secrecy laws.⁴
- 7.8 At the present time, countries that have concluded 12 effective agreements are considered to have 'substantially implemented' the internationally

1 Vanuatu Tax Information Exchange Agreement (TIEA) National Interest Analysis (NIA), para. 8.

2 Vanuatu TIEA (NIA), para. 3.

3 Mr Gregory Wood, *Transcript of Evidence*, 29 June 2010, pp. 3-4.

4 Vanuatu TIEA NIA, paras 11 & 12.

agreed tax standards on information exchange. Treasury indicated to the Committee that this threshold is likely to increase over time.⁵ All 90 countries that are members of the Global Forum will also be subject to peer review to examine whether they have the right agreements in place and the domestic powers to ensure the information is available and accessible.⁶

- 7.9 The TIEAs will improve Australia's ability to administer and enforce its tax laws as they will allow the Commissioner for Taxation to request information from each country that is relevant to determining Australian tax liabilities. In particular, as the agreements are consistent with the OECDs standard, jurisdictions will be unable to refuse to provide information solely because they do not have a domestic tax interest in such information or because a bank or similar financial institution holds that information.⁷
- 7.10 Australian Transaction Reports and Analysis Centre (AUSTRAC) data indicates that the flow of funds between Australia and each of these countries is either significant (Vanuatu, Cayman Islands, Bahamas, Monaco, Saint Lucia and Samoa), minor (Dominica, San Marino, Grenada, Aruba, Belize and Anguilla) or relatively small (Turks and Caicos Islands, Saint Vincent and the Grenadines, and Saint Kitts and Nevis). This classification is based upon a combination of both the number of transactions and amount of money being transferred.⁸ The Committee notes that, of the countries being considered in this chapter, the Cayman Islands has a higher flow of funds than all of the other countries combined, much of it related to legitimate business.⁹
- 7.11 Australia has placed a high priority upon concluding agreements with countries in the Pacific as there is evidence that people generally utilise havens that are geographically close.¹⁰ Some of the other agreements have arisen as a result of the international emphasis upon establishing a minimum number of 12 agreements in order to satisfy the OECD commitment to global transparency.¹¹ The Australian Taxation Office (ATO) informed the Committee that:

5 Mr Gregory Wood, *Transcript of Evidence*, 29 June 2010, p. 11.

6 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 11.

7 Mr Gregory Wood, *Transcript of Evidence*, 29 June 2010, p. 2.

8 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 10.

9 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 4.

10 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 4.

11 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 4.

The standard from the Global Forum is that if a country asks for an exchange agreement you would generally grant that.¹²

7.12 The Committee notes that Australia is seeking a tax information exchange arrangement with 26 other countries, and specifically a TIEA with Andorra, Bahrain, Brunei, Costa Rica, Cyprus, Guatemala, Liberia, Lichtenstein, Macao, Mauritius, Montserrat, Nauru, Panama and the Seychelles.¹³ It has also concluded an agreement with the Marshall Islands that is yet to be tabled.¹⁴

Obligations

7.13 Each of the agreements follows the format of the Australian model TIEA, which is based on the OECD model tax information exchange agreement.

7.14 The key obligations in each agreement are:

- both Parties are obliged to exchange information where the information is foreseeably relevant to the administration and enforcement of the parties' domestic tax laws;
- where the requested Party does not hold the information necessary to comply with the request, it must use its relevant information gathering powers to provide the requested information even if not required for domestic tax purposes;
- each Party must ensure its competent authority has the authority to obtain and provide information held by banks, financial institutions, and any person acting in an agency or fiduciary capacity, as well as information regarding ownership of companies and partnerships and persons involved with trusts and foundations;
- information must be provided as promptly as possible and must be kept confidential;
- with consent, officials of one jurisdiction can interview individuals and examine records within the other jurisdiction;
- requests can be refused if not in conformity with the agreement or if the requesting party cannot obtain the information under its own laws;
- ordinary costs will be borne by the requested party and extraordinary costs by the requesting party unless otherwise agreed;

12 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 4.

13 Mr Gregory Wood, *Transcript of Evidence*, 29 June 2010, p. 7.

14 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 7.

- both Parties are obliged not to apply prejudicial or restrictive measures based on harmful tax practices to residents or nationals of either country while the agreement is in force; and
- Parties are required to jointly endeavour to resolve any issues concerning interpretation or application of the agreement.¹⁵

7.15 The following agreements include additional provisions to those outlined above:

Aruba

Article 6 of the agreement provides that the Parties may forward to each other, without prior request, information of which they have knowledge.¹⁶

Turks and Caicos Islands

Article 5(5) provides that there is no obligation on the Contracting Parties to obtain or provide information relating to a period more than six years prior to the tax period under consultation.¹⁷

Article 9 provides that the agreement will not impinge upon the rights and safeguards secured to persons by the laws or administrative practices of the Requested Party.¹⁸

Dominica

Article 5(5) provides that the agreement does not create an obligation to obtain or provide information on ownership of public traded companies or public collective investment funds or schemes where such information would give rise to disproportionate difficulties.¹⁹

Article 9 provides that the agreement will not affect the rights and safeguards secured to persons by the laws or administrative practice of the Requested Party.²⁰

Anguilla

Article 5(5) provides that the agreement does not create an obligation on the Contracting Parties to obtain or provide information relating to a period more than six years prior to the tax period under consideration.²¹

15 See, for example, Vanuatu TIEA NIA, paras 14 to 24.

16 Aruba TIEA NIA, para. 19.

17 Turks and Caicos Islands NIA, para. 17.

18 Turks and Caicos Islands NIA, para. 22.

19 Dominica NIA, para. 17.

20 Dominica NIA, para. 22.

- 7.16 The ATO indicated that the three main types of information that would be sought using these agreements are banking, corporate ownership and accounting information.²²

Implementation and costs

- 7.17 No further legislation is required to implement the agreements.
- 7.18 The TIEAs will have a small administrative and financial impact on the ATO as it is likely that most requests for information will originate from Australia. A Memorandum of Understanding has been signed²³ or is currently under negotiation with each country to clarify costs that will be borne by the ATO.
- 7.19 The Memoranda of Understanding provide that each country will cover its own administrative costs, such as salary costs, in actioning a request for information. However, should information be required from a third party, which charges a fee or needs to obtain legal advice, those costs would be met by Australia up to a specified amount, usually somewhere between US\$500 and \$1000. Should costs be likely to exceed this, Australia would need to agree to proceed with the exchange request.²⁴
- 7.20 The Committee asked the ATO about the cost and resource implications arising from the conclusion of a large number of TIEAs at one time. The ATO indicated that it did not expect the agreements to result in significant additional work for the ATO, particularly as it is expected most requests will originate from Australia.²⁵
- 7.21 However, the capacity of low-tax countries to deal with requests from a range of countries may be an issue. The ATO indicated that it is addressing this issue in two ways. First, it is providing technical assistance, particularly to Pacific countries, and it is expected that Vanuatu and Samoa may require further one-on-one assistance. This could include assistance with training staff and making sure systems, such as computer and filing systems, are established. Secondly, Australia is participating in reviews being undertaken by the Global Forum to measure resources that are in place.²⁶

21 Anguilla NIA, para. 18.

22 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 5.

23 Memorandum of Understanding have already been concluded with Saint Lucia, Belize, Samoa and Saint Vincent and the Grenadines.

24 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 10.

25 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 12.

26 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 13.

Allocation of taxing rights agreements

- 7.22 The additional agreements with Samoa and Aruba provide for the allocation of taxing rights over certain income to help prevent double taxation of the same income. They also establish a mechanism to assist in the resolution of disputes arising from transfer pricing adjustments made to taxpayers' income by the revenue authorities of each country. The provisions in these agreements are consistent with the corresponding provisions within Australia's comprehensive tax treaties.²⁷
- 7.23 The agreements are part of a package of benefits offered by Australia to encourage each country to conclude the TIEA. The other benefits being offered are:
- public recognition – Australia will no longer refer to the jurisdiction as a 'tax haven' in any official publication;
 - technical assistance; and
 - listing of the jurisdiction's stock exchange in Australia's regulations, which provides certain benefits in terms of Australia's foreign investment fund rules.²⁸
- 7.24 While many countries have not taken up the offer of this agreement, the Committee understands that in some cases incentives have been required for jurisdictions that have made a political commitment concerning harmful tax practices, but not implemented that commitment.²⁹

Obligations

- 7.25 The obligations in each agreement are essentially the same.
- 7.26 The agreements apply only to persons who are residents (as defined in Article 4 of each agreement) for taxation purposes of Australia and/or Samoa and Australia and/or the Kingdom of the Netherlands, in respect of Aruba.³⁰
- 7.27 Each party is obliged to forego its taxing rights over certain income derived by retirees, pensioners, government employees, students and business apprentices, where they are residents of the other party:

27 Mr Gregory Wood, *Transcript of Evidence*, 29 June 2010, p. 2.

28 Mr Gregory Wood, *Transcript of Evidence*, 29 June 2010, pp. 11-12.

29 Mr Gregory Wood, *Transcript of Evidence*, 29 June 2010, p. 11.

30 Samoa Allocation NIA, para. 7; Aruba Allocation NIA, para. 6.

- Under Article 5 of each agreement, Australia cannot tax Australian source pensions and retirement annuities paid to residents of Samoa or Aruba, provided such income is subject to tax in these countries. Australia can tax Samoan and Aruban source pensions and retirement annuities paid to Australian residents.
- Article 6 obliges Australia not to tax the salaries of government employees of Samoa or Aruba working in Australia in government service for non-commercial purposes. Each country will therefore have sole taxing rights over the salaries that they pay to individuals undertaking government functions.
- Under Article 7, Australia cannot tax maintenance, education or training payments received by students or business apprentices who are temporarily studying in Australia, where those payments are made from outside Australia. Other income will remain liable to Australian tax.³¹

7.28 The agreements also establish a mechanism to resolve disputes arising from adjustments made to taxpayers' income by the revenue authorities of either country (Article 8).³²

Implementation and Costs

7.29 Minor amendments will be required to the *International Tax Agreements Act 1953* to give effect to the agreements.³³

7.30 The agreements will have a financial impact on the ATO, however Treasury informed the Committee that due to their limited application to pension recipients, government employees and students, the costs of the agreements will be negligible.³⁴

Conclusion and recommendations

7.31 The Committee recognises the importance of establishing effective arrangements with low-tax jurisdictions to help eliminate harmful taxation practices and supports the efforts being made by the Government to

31 Samoa Allocation NIA, paras 9 to 12; Aruba Allocation NIA, paras 12 to 15.

32 Samoa Allocation NIA, para. 13; Aruba Allocation NIA, para. 16.

33 Samoa Allocation NIA, para. 15; Aruba Allocation NIA, para. 18.

34 Mr Gregory Wood, *Transcript of Evidence*, 29 June 2010, p. 2.

conclude these agreements. The Committee therefore supports binding treaty action being taken.

Recommendation 6

The Committee supports the *Agreement between the Government of Australia and the Government of Anguilla on the Exchange of Information with Respect to Taxes*, and recommends that binding treaty action be taken.

Recommendation 7

The Committee supports the *Agreement between the Government of Australia and the Government of the Commonwealth of the Bahamas on the Exchange of Information with Respect to Taxes*, and recommends that binding treaty action be taken.

Recommendation 8

The Committee supports the *Agreement between the Government of Australia and the Government of Belize for the Exchange of Information with Respect to Taxes*, and recommends that binding treaty action be taken.

Recommendation 9

The Committee supports the *Agreement between the Government of Australia and the Government of the Cayman Islands on the Exchange of Information with Respect to Taxes*, and recommends that binding treaty action be taken.

Recommendation 10

The Committee supports the *Agreement between the Government of Australia and the Government of the Commonwealth of Dominica on the Exchange of Information with Respect to Taxes and Tax Matters*, and recommends that binding treaty action be taken.

Recommendation 11

The Committee supports the *Agreement between the Government of Australia and the Government of Grenada for the Exchange of Information Relating to Tax Matters*, and recommends that binding treaty action be taken.

Recommendation 12

The Committee supports the *Agreement between the Government of Australia and the Government of the Principality of Monaco for the Exchange of Information Relating to Tax Matters*, and recommends that binding treaty action be taken.

Recommendation 13

The Committee supports the *Agreement between the Government of Australia and the Government of Saint Christopher (Saint Kitts) and Nevis for the Exchange of Information Relating to Tax Matters*, and recommends that binding treaty action be taken.

Recommendation 14

The Committee supports the *Agreement between the Government of Australia and the Government of Saint Lucia on the Exchange of Information with Respect to Taxes*, and recommends that binding treaty action be taken.

Recommendation 15

The Committee supports the *Agreement between the Government of Australia and the Government of Saint Vincent and the Grenadines on the Exchange of Information with Respect to Taxes*, and recommends that binding treaty action be taken.

Recommendation 16

The Committee supports the *Agreement between the Government of Australia and the Government of Samoa on the Exchange of Information with Respect to Taxes*, and recommends that binding treaty action be taken.

Recommendation 17

The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of San Marino for the Exchange of Information Relating to Taxes*, and recommends that binding treaty action be taken.

Recommendation 18

The Committee supports the *Agreement between the Government of Australia and the Government of the Turks and Caicos Islands on the Exchange of Information with Respect to Taxes*, and recommends that binding treaty action be taken.

Recommendation 19

The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of Vanuatu on the Exchange of Information with Respect to Taxes*, and recommends that binding treaty action be taken.

Recommendation 20

The Committee supports the *Agreement between the Government of Australia and the Kingdom of the Netherlands, in respect of Aruba, on the Exchange of Information with Respect to Taxes*, and recommends that binding treaty action be taken.

Recommendation 21

The Committee supports the *Agreement between the Government of Australia and the Government of Samoa on the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments*, and recommends that binding treaty action be taken.

Recommendation 22

The Committee supports the *Agreement between the Government of Australia and the Kingdom of the Netherlands, in respect of Aruba, for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments*, and recommends that binding treaty action be taken.

Kelvin Thomson MP

Chair



Appendix A — Submissions

Treaties tabled on 12 May 2010

- 1 Australian Patriot Movement
- 1.1 Australian Patriot Movement
- 1.6 Australian Patriot Movement
- 1.7 Australian Patriot Movement
- 1.8 Australian Patriot Movement
- 3 Department of Defence

Treaties tabled on 22 June 2010

- 1.1 Australian Patriot Movement
- 1.2 Australian Patriot Movement
- 1.3 Australian Patriot Movement
- 1.4 Australian Patriot Movement
- 1.5 Australian Patriot Movement
- 1.6 Australian Patriot Movement
- 1.7 Australian Patriot Movement
- 1.8 Australian Patriot Movement
- 1.9 Australian Patriot Movement
- 1.10 Australian Patriot Movement
- 1.11 Australian Patriot Movement

- 1.12 Australian Patriot Movement
- 1.13 Australian Patriot Movement
- 1.14 Australian Patriot Movement
- 1.15 Australian Patriot Movement



Appendix B — Witnesses

Monday, 21 June 2010 - Canberra

Attorney-General's Department

Mr John Reid, Principal Legal Officer, Office of International Law

Australian Nuclear Science and Technology Organisation

Mr Steven McIntosh, Senior Policy Adviser, Government Liaison

Australian Safeguards and Non-Proliferation Office

Mr John Carlson, Director-General

Mr Malcolm Coxhead, Director, CTBT and Disarmament Section

Australian Taxation Office

Mr John Meyer, Senior Director, Tax Haven Practice, Large Business and International

Department of Defence

Ms Kim Arthur, Ag Assistant Secretary Americas, North and South Asia and Europe, International Policy Division

Mr David Green, Deputy Director International Logistics, Strategic Logistics Branch

Mr Kerry Hempenstall, Senior Legal Officer, Defence Legal

Ms Sandra Ragg, Assistant Secretary, Security Policy and Plans, Defence Security Authority

Mr Frank Roberts, Chief Security Officer, Defence Security Authority

Air-Vice Marshal Margaret Staib, Commander Joint Logistics

Department of Foreign Affairs and Trade

Ms Rebecca Lewis, Legal Specialist, Treaties Secretariat, International Legal Branch

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

Department of the Treasury

Mr Michael Atfield, Senior Adviser, Tax Treaties Unit, International Tax and Treaties Division

Mr Gregory Wood, Manager, International Tax and Treaties Division

Department of Transport and Regional Services

Mr Samuel Lucas, Director, Air Services Negotiations

Tuesday, 29 June 2010 - Sydney**Australian Taxation Office**

Mr Malcolm Allen, Assistant Commissioner - International Relations

Department of the Treasury

Ms Lynette Redman, Senior Adviser, Tax Treaties Unit

Ms Belinda Robilliard, Adviser, Tax Treaties Unit, International Tax and Treaties Division, Revenue Group

The Treasury

Mr Gregory Wood, Manager, International Tax and Treaties Division