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The Parliament of the Commonwealth of Australia

# **Report 48**

**Treaties tabled in August and September 2002**

Joint Standing Committee on Treaties

October 2002  
Canberra

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## **Membership of the Committee**

**Chair** Ms Julie Bishop MP

**Deputy Chair** Mr Kim Wilkie MP

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Senator Guy Barnett

Mr Kerry Bartlett MP

Senator Andrew Bartlett

Mr Steven Ciobo MP

Senator Linda Kirk

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Senator Brett Mason

Mr Greg Hunt MP

Senator Gavin Marshall

Mr Peter King MP

Senator Ursula Stephens

The Hon Bruce Scott MP

Senator Tsebin Tchen

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## **List of recommendations**

### **2 Oil Pollution Damage Conventions**

#### Recommendation 1

The Committee recommends that improved departmental procedures be implemented such that the Committee is advised in a timely fashion of International Maritime Organization amendments proposed to take effect through a 'tacit acceptance' procedure.

### **3 Two protocols amending double tax agreements with Canada and Malaysia**

#### Recommendation 2

The Committee supports the Protocol amending the Convention between Australia and Canada 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.

#### Recommendation 3

The Committee supports the Protocol and Exchange of Letters 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 as amended by the First Protocol of 2 August 1999 and recommends that binding treaty action be taken.

#### **4 Agreement between Australia and the USA concerning Security Measures for the Reciprocal Protection of Classified Information**

##### **Recommendation 4**

The Committee, concurring with the views expressed in the National Interest Analysis, recommends that the Agreement be ratified.

##### **Recommendation 5**

The Committee recognises that responses to questions on notice and requests to amend the Hansard record must receive security clearance and Ministerial approval prior to their release.

The Committee recommends that the Department of Defence ensures that these measures do not inhibit its ability to provide requested information to the Committee within an acceptable timeframe.

#### **5 Treaty between Australia and the Hellenic Republic on Mutual Assistance in Criminal Matters**

##### **Recommendation 6**

The Committee concurs with the views expressed by the Attorney-General's Department in the National Interest Analysis and recommends ratification of the treaty.

#### **6 Agreement between the Government of Australia and the Government of New Zealand relating to Air Services**

##### **Recommendation 7**

The Committee recognises that responses to questions on notice must receive Ministerial approval prior to their release.

The Committee recommends that the Department of Foreign Affairs and Trade ensures that these measures do not inhibit its ability to provide requested information to the Committee within an acceptable timeframe.

##### **Recommendation 8**

The Committee agrees that by facilitating the development of the single aviation market between the two countries, the Agreement will promote benefits for inbound tourism, freight operations and greater air travel options for Australian consumers, and recommends that binding treaty action be taken.







## **Amendments to the Schedule to the International Convention for the Regulation of Whaling**

- 1.1 The International Convention on Whaling (1946) is a multilateral treaty that regulates the conservation and utilisation of whale stocks. Australia has been a Contracting Government to the Convention since it came into force in 1948.<sup>1</sup>
- 1.2 The Schedule is an integral part of the Convention, and is amended from time to time in accordance with Article V to take account of decisions of the International Whaling Commission (established under the Convention). Under the Convention, amendments enter into force on the expiration of 90 days after formal notification, except for those parties who have lodged an objection.
- 1.3 At the 54th meeting of the International Whaling Commission (IWC) held in Shimonoseki from 20 to 24 May 2002, the Schedule to the Convention was amended to maintain the moratorium on commercial whaling (in place since 1982) and to renew Aboriginal subsistence quotas. An editorial footnote regarding the Indian Ocean Sanctuary was also inserted. Official notification of the amendments was sent to the Australian Government on 12 June 2002. The Minister for the Environment and Heritage wrote to the Committee on 15 August outlining the particular arrangements. Amendments came into force on 10 September 2002 as no objections were lodged.

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<sup>1</sup> Information about the proposed treaty action is taken from the National Interest Analysis, tabled in conjunction with the treaty text on 27 August 2002, and a public hearing held in Canberra on 16 September 2002.

- 1.4 The Committee notes that the changes are minor and in most part do not affect whale populations in Australian waters. Some amendments to the moratorium simply substitute the dates in certain paragraphs of the schedule to apply the zero quota for the coming year. These amendments are required annually to maintain the moratorium on commercial whaling and the currency of the Schedule.<sup>2</sup>
- 1.5 Amendments to renew the Aboriginal subsistence catch limits require several changes to paragraph 13 of the Schedule.<sup>3</sup> Environment Australia summarised the effects of the amendments to the catch limits for indigenous cultures as:
- renewing for five years the shared quota of 620 grey whales taken by the indigenous people of Russia and the United States;
  - renewing for five years the quota of 187 minke whales taken each year by the indigenous people of Greenland; and
  - allowing the take of four humpback whales per year for the next five years by the Bequian people of St Vincent and the Grenadines (in effect doubling the quota from two whales per year), providing that the hunters conduct their activities under appropriate legislation and with the advice of the Scientific Committee.
- 1.6 The second set of amendments arise from the need to review Aboriginal subsistence whaling catch limits of baleen whales, which are set by paragraph 13 of the Schedule. These limits apply to whale populations that do not occur in Australian waters. In two cases (North Pacific grey whales; Greenland minke whales), the Commission agreed by consensus to renew the existing quotas for a further five years, substituting dates from 1997 to 2002 with dates from 2002 to 2007.
- 1.7 The Committee recognised that these amendments are both minor and of little impact to Australia, and sought further general information from Environment Australia about the Convention itself, conservation issues, consultation processes and Australian involvement in the Scientific Committee.
- 1.8 The Committee noted that when the Convention first came into effect in the late 1940s it was a harvesting convention. Mr Mark Tucker, representing Environment Australia, suggested that 'the member parties to the Convention have evolved over time into a more conservation-minded group of people regarding whale harvesting'.<sup>4</sup> While the treaty

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2 As advised in paragraph 8 of the National Interest Analysis.

3 M. Tucker, *Transcript of Evidence*, p.2.

4 *ibid.*

has not been amended to reflect a change in effect from a harvesting treaty to a conservation treaty, the additions of schedules have dictated certain arrangements and it is these amendments which have changed the nature of the Convention. These include the 1982 decision to implement a moratorium on commercial whaling and the establishment in 1994 of the Southern Ocean Sanctuary.

- 1.9 The Committee was advised that Australia has been a strong advocate of conservation measures within the Commission since the closure of the last Australian shore-based whaling operation in 1979.
- 1.10 The IWC is considered to be the most appropriate forum for pursuit of international efforts to improve the conservation of whales. There are approximately fifty member countries at the present time.

### **Aboriginal subsistence whaling**

- 1.11 At present catch limits apply to baleen whales whose populations do not occur in Australian waters. The Committee was interested to hear about the nature of indigenous populations and their specific catch limits. Because the Commission meets annually, the countries under the treaty determine each year how many whales can be taken for indigenous purposes and which indigenous cultures are able to take them.
- 1.12 The Committee was advised that indigenous populations who presently undertake Aboriginal subsistence whaling under the control of the IWC are Greenlanders (Denmark), Alaskan Eskimos and the Makah Indian Tribe (USA), Bequian Islanders (St Vincent and the Grenadines), and native peoples of Chukotka (Siberia, Russia).

### **Consultation**

- 1.13 The Committee noted that several consultation methods exist for environmental matters, depending on the nature of the treaty action. The Natural Resource Management Ministerial Council is co-chaired by the Ministers for the Environment and Heritage, and for Agriculture, Fisheries and Forestry. Of the standing committees and subcommittees which operate under that Council, the Marine and Coastal Committee has a standing item on international matters, where this treaty was considered. That Committee is also the primary body for formal consultation with relevant agencies.<sup>5</sup> The Committee noted that states and territories would

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<sup>5</sup> M. Tucker, *Transcript of Evidence*, p.4.



also receive advice on this action via the Commonwealth-States-Territories Standing Committee on Treaties, which meets twice a year.

- 1.14 In addition, Environment Australia consults with other government departments and non-government organisations prior to each meeting of the Commission and a report from the delegation to each annual Commission meeting is made available.
- 1.15 Environment Australia advised the Committee that, as the states and territories would have little interest in these particular amendments, as they apply only to the Northern Hemisphere in terms of the catch limits and they extend a ban which has been in place in Australia since 1979, the normal consultation process has not been followed.

## Non-government organisations

- 1.16 The Australian Government also permits non-government representatives to participate in the Australian delegation. In 2002, representatives from Project Jonah and Humane Society International were members of the Australian delegation, while other conservation organisations are able to attend as observers. Nominations are arranged by the groups themselves.<sup>6</sup> Environment Australia informed the Committee that there are some people who have been regular participants in such delegations for several years and who have 'an extraordinary depth of knowledge'.<sup>7</sup>
- 1.17 The Committee was advised that the Australian Government does not usually fund directly the attendance of non-government members of Australian delegations to international meetings. However, a one-off payment was made to assist with the accommodation costs of the non-government representatives in 2002 due to the financial hardship imposed by the unusual occurrence of two IWC meetings in the one financial year.
- 1.18 The Committee was informed that continuing consultation with non-government organisations relates particularly to their concerns about recurring contentious issues, such as whale harvesting and conservation, and the Australian Government's position on these.

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6 M. Tucker, *Transcript of Evidence*, p.6.

7 M. Tucker, *Transcript of Evidence*, p.6.

## Scientific Committee

- 1.19 The Committee requested information on the involvement of Australians on the Scientific Committee. The Scientific Committee meets for two weeks prior to Commission meeting each year. The Scientific Committee is comprised of both 'invited participants', generally funded by the IWC, and scientists representing their governments. Environment Australia advised that Australia usually has at least two representatives at the Scientific Committee each year, and a varying number of 'invited participants' depending on the topics to be discussed and what expertise is required. In May 2002 there were three Australian scientists on the Australian delegation and four 'IPs' resident in Australia.
- 1.20 Mr Tucker explained that the Scientific Committee has been working on a revised management scheme which asks, 'in a sense, what would be the basis of sustainable whaling if commercial whaling were to start again.'<sup>8</sup>
- 1.21 No further action is required nor costs imposed as this treaty action essentially maintains the ban on commercial whaling and permits Aboriginal whalers in some parts of the Northern Hemisphere to continue their hunts. The Committee notes that Australia's domestic legislation has stronger protections for whales in Australian waters than those afforded under the Convention.<sup>9</sup> The Committee was pleased to hear that Australia makes efforts each year to lobby the commission to extend the protection of the convention internationally in order to reflect the Australian standards. Environment Australia advised that other mechanisms that may afford wider international protection are also available, for example, the Convention for Migratory Species and the Convention for the International Trade in Endangered Species, which form part of a 'multipronged approach' internationally for protecting the species.<sup>10</sup>
- 1.22 The Committee concurs with the view expressed in the National Interest Analysis that the amendments accord with Australia's long-held position on the banning of commercial whaling and the limited hunting of whales by Aboriginal subsistence cultures to meet demonstrated traditional, cultural and dietary needs.

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8 M. Tucker, *Transcript of Evidence*, p.6.

9 The *Environment Protection and Biodiversity Conservation Act 1999* prohibits killing, injuring or interfering with whales in Australian waters and provides for the preservation, conservation and protection of whales and other cetaceans in Australian waters, including to the outer limits of the Exclusive Economic Zone.

10 M. Tucker, *Transcript of Evidence*, p.4.



## **Oil Pollution Damage Conventions**

### **Amendments to the Limitation Amounts in the 1992 Protocol of the International Convention on Civil Liability for Oil Pollution Damage and Amendments to the Limits of Compensation in the 1992 Protocol of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage**

- 2.1 Compensation for pollution damage caused by oil spills from tankers is governed by an international regime established by the 1992 Protocol of the International Convention on Civil Liability for Oil Pollution Damage and the 1992 Protocol of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage. Under this regime, the burden of compensating victims of oil spills is shared between shipowners and cargo owners. The Committee examined the Amendments to the two Conventions together and investigated some broader maritime and treaty issues.
- 2.2 The Committee noted that the resolutions of the International Maritime Organization (IMO) to accept these Amendments were adopted by its legal committee in October 2000 by what is called the 'tacit acceptance procedure'.<sup>1</sup> This procedure is being introduced by the IMO where proposed amendments to conventions are of a 'technical' nature.<sup>2</sup> As no

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1 Information about the proposed treaty action is taken from the National Interest Analysis, tabled in conjunction with the treaty text on 27 August 2002, and a public hearing held in Canberra on 16 September 2002.

2 R. Alchin, *Transcript of Evidence*, p.14.

states indicated that they did not accept the Amendments by the May 2002 deadline, they will enter into force on 1 November 2003.

- 2.3 The Committee did not receive adequate notification (that is, before the deadline had passed) from the Department of Transport and Regional Services that the proposed treaty actions should have been reviewed. The Department advised that this oversight was caused by a number of factors, including confusion as to whether treaty actions listed for 'tacit acceptance' are subject to consideration by this Committee.
- 2.4 The Committee recognises the objectives of the IMO to make the process of implementation of amendments more efficient by ensuring that they will automatically enter into force after a passage of time. While the Committee also accepts that many changes will be of a technical nature, they may still have significant ramifications of which the Committee, as well as the relevant Government department, should be aware. The Committee has been assured that improved procedures are now in place to ensure that the Committee is advised of any proposed amendments in a timely manner, regardless of the manner of their acceptance.

### **Recommendation 1**

**The Committee recommends that improved departmental procedures be implemented such that the Committee is advised in a timely fashion of International Maritime Organization amendments proposed to take effect through a 'tacit acceptance' procedure.**

### **1992 Civil Liability Convention**

- 2.5 The 1992 Civil Liability Convention governs the liability of shipowners for oil pollution damage and created a system of compulsory liability insurance. Shipowners are normally entitled to limit their liability to an amount which is linked to the tonnage of their ships.
- 2.6 The 1992 Civil Liability Protocol increased the limitation amounts for oil pollution damage; Resolution LEG.1(82) will amend the protocol to further increase the limitation amounts to take account of the erosion of the value of the current limits, caused by inflation. Under the new Agreement, the limitation amount applying, for example, to a 26 000 tonne tanker will increase from approximately A\$29 million to approximately A\$44 million.

2.7 The Committee agrees that, while it is important to provide limits to liability so that a tanker owner is not exposed to unlimited liability in cases of claims arising from an oil spill, 'the tanker owner should also be expected to pay a reasonable amount towards the cost of compensation for consequent damages.'<sup>3</sup>

2.8 The limitation amounts set out in the 1992 Civil Liability Convention, in the 1992 Civil Liability Protocol and in Resolution LEG.1(82) are expressed in terms of Units of Account.<sup>4</sup> The following table compares the current limitation amounts with the limits proposed by Resolution LEG.1(82).

Table 1 Limitation amounts

	Current limitation amounts		Proposed limitation amounts	
	Units of Account	\$A <sup>5</sup>	Units of Account	\$A
For a ship up to 5,000 tons	3,000,000	7,384,000	4,510,000	11,100,000
For each additional ton	420	1,033	631	1,553
Maximum limitation amount	59,700,000	146,900,000	89,770,000	221,000,000

Source *National Interest Analysis*

2.9 The increased limitation amounts have the potential to increase the costs of insurance for owners. Advice was sought from the International Group of P&I Associations (whose members provide cover for over 90% of world ocean-going shipping tonnage) on the potential effect of the increased limitation amounts. The component of a tanker's insurance that covers oil spills is only a very minor part of the whole cost of the insurance for this vessel, therefore an increase in liability will probably not result in an increase in the insurance premiums.

3 *National Interest Analysis*, paragraph 13.

4 One Unit of Account is the same as a Special Drawing Right (SDR) as defined by the International Monetary Fund. The value of the SDR varies from day to day in accordance with changes in currency values. On 24 July 2002, one SDR was worth \$A2.46136.

5 These values are rounded for convenience.

## 1992 Fund Convention

- 2.10 The 1992 Fund Convention is supplementary to the 1992 Civil Liability Convention. It established a regime for compensating victims when the compensation provided for under the Civil Liability Convention is inadequate or unable to be obtained through certain circumstances. The 1992 Fund Convention established the International Oil Pollution Compensation (IOPC) Fund that pays compensation where it may not be obtainable under the Civil Liability Convention for any of the following reasons:
- the shipowner is exempt from liability under the 1992 Civil Liability Convention because the shipowner can invoke one of the exemptions under that Convention; or
  - the shipowner is financially incapable of meeting his or her obligations under the 1992 Civil Liability Convention and the shipowner's insurance is insufficient to satisfy the claims for compensation for pollution damage; or
  - the damage exceeds the shipowner's liability under the 1992 Civil Liability Convention.
- 2.11 The Fund is financed by contributions levied on any person who has received by sea more than 150 000 tons of 'contributing oil' (crude oil and fuel oil) in a calendar year. Annual contributions are levied by the IOPC Fund to meet the anticipated payments of compensation and administrative expenses during the coming year. Each contributor pays a specified amount per ton of contributing oil received. The Committee notes that refined petroleum products are not covered by these conventions.
- 2.12 The 1992 Fund Protocol set the limitation amounts for compensation payable from the IOPC Fund; Resolution LEG.2(82) will amend the limits in Article 6(3) of that Protocol. Under the new Agreement, the maximum amount of compensation payable for a single incident would increase from 135 million units of account (approximately A\$325 million) to 203 million units of account (approximately A\$500 million).
- 2.13 It is important to provide a limit to the amount that the IOPC Fund may be required to pay in the case of a major oil spill so that there can be some estimate of potential liabilities of the IOPC Fund. However, it is recognised that the limit on liability should be set at a level that is sufficient to cover anticipated compensation costs arising from almost all oil pollution incidents involving oil tankers. The Committee was advised

that the amendments to the limits of compensation set out in Resolution LEG.2(82) will increase the existing limits to take account of the erosion of their value by inflation since 1992.

- 2.14 The Committee noted that there have been only two cases where the 1992 Fund Convention has applied and where the existing limits of compensation have been exceeded. Neither of these incidents occurred in Australia.<sup>6</sup>
- 2.15 The Committee was advised that the Fund is set up as a separate legal entity, collecting levies from companies who receive oil. The Committee notes the distinction between 'receiving' and 'importing' in this context: if oil is moved from one part of a country to another by sea it is deemed to have been received, meaning a levy is still applicable if the amount received exceeds 150 000 tons in a calendar year.
- 2.16 The limits of compensation set out in the 1992 Fund Convention, in the 1992 Fund Protocol and in Resolution LEG.2(82) are expressed in terms of Units of Account.<sup>7</sup> In accordance with Resolution LEG.2(82), the maximum amount of compensation to be paid for a single pollution incident will be increased from 135 million units of account to 203 million units of account. The increased limits have the potential to increase the costs of contributions by receivers of contributing oil, but this is unlikely to occur unless there is a very major oil pollution incident where the compensation costs exceed the current limit of 135 million units of account (approximately \$A325 million).
- 2.17 The balance sheet for the Fund as at December 2001 showed a cash balance of 97.8 million pounds sterling, a figure which varies from year to year depending on the anticipated claims and the extent to which payments have been made by contributors.<sup>8</sup> This money is held in term deposit accounts at fifteen different banks, current and call deposit accounts at two banks and two foreign currency deposit accounts.
- 2.18 The Committee was advised that contributions held pending payments to claimants are invested with various financial institutions. As at 30 June 2002, the Fund's portfolio of investments totalled 114.5 million pounds sterling with twenty-one financial institutions.

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6 The incidents were the breaking up of the *Nakhodka* in the Sea of Japan on 2 January 1997 and the breaking up of the *Erika* off the coast of Brittany, France on 12 December 1999.

7 One Unit of Account is the same as a Special Drawing Right (SDR) as defined by the International Monetary Fund. The value of the SDR varies from day to day in accordance with changes in currency values.

8 Information in the following paragraphs was provided as supplementary information by the Department of Transport and Regional Services.



- 2.19 Funds are controlled by an Assembly comprising all states who are members of the Fund (currently eighty-one). The Fund Assembly approves annual budgets, investments, external audit reports<sup>9</sup> and contributions required for each marine pollution incident. Payments of compensation require endorsement by an Executive Committee comprising fifteen member states elected by the Assembly. Australia is currently a member of the Executive Committee.
- 2.20 The Committee was concerned that, in the event of several marine incidents during a calendar year, the Fund's reserves would become depleted to a point where it would be unable to fully fund payment for compensation claims for damage caused by oil pollution.
- 2.21 The Committee was advised that the Fund Assembly operates a system of deferred invoicing. The total amount to be levied in contributions for a given calendar year will be set by the Assembly, who may decide to levy the amount in two separate portions. In the unlikely event that it is found that the Fund does not have sufficient money for payments in a particular year, the contributions would be increased in the following year.
- 2.22 The Committee also noted that payments for a particular incident are often made some time after the incident. There may be a multitude of claims which are paid at different times. For example, in the case of the Erika, which broke up off France in December 1999, 5,840 claims for compensation had been lodged with the Fund by 31 December 2001.

### **Impact on existing treaty obligations**

- 2.23 The 1976 Convention on Limitation of Liability for Maritime Claims is a general convention that provides a limit on the amount of damages that can be claimed as a result of an incident connected with the operation of a ship. The Committee was advised by the Department that the Civil Liability Convention is specifically excluded from the coverage of the 1976 Convention.

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9 The external auditor is the Comptroller and Auditor-General of the United Kingdom.

## Insurance and Prevention of Oil Pollution Damage

2.24 The Committee considered the role of the Australian Maritime Safety Authority (AMSA) and Australian Customs in inspections of ships using Australian ports. Insurance certificates are checked as part of this process. The Committee was advised that a tanker will be detained until it has appropriate insurance. The Department advised that 202 tankers visited Australian ports between August 2001 and August 2002, and of the ships 'eligible' for inspection (i.e. that had not been inspected by AMSA for 3-6 months prior to arrival at an Australian port), 68 per cent were inspected. The Department also advised that, in the twenty years that the Civil Liability regime has been in place in Australia, AMSA was not aware of any instances where a tanker did not have the required insurance.

## Future increases of amounts under the Conventions

2.25 The Committee noted that each of the conventions limits the amount of future increases to no more than six per cent compounded from the time of the previous increase. That is, if a further amendment was required to the current amount, it could only be a six per cent increase on 203 million units of account.

2.26 The Committee also understands that there has not been any previous increase by the tacit acceptance procedure, however, the 1992 Protocol itself was an increase on the previous conventions.

2.27 The Committee was advised that in response to concerns from the European countries that the level of compensation may not be adequate, the Legal Committee of the IMO is developing a further protocol to the Fund Convention. This protocol is to be considered by diplomatic conference in 2003.

## Implementation and Conclusion

2.28 For both treaty actions, the Committee was advised that implementation can occur by amending existing legislation, and there will be no additional costs on the Australian Government. In the case of the Civil Liability Convention, there would be a likely increase to insurance costs for ship owners, but this is not quantifiable. For the Fund Convention, there is a potential increase in the costs of contributions by receivers of contributing oil, but this would only occur if a very major incident occurred with compensation costs exceeding the current limit.

- 2.29 In order to avoid the application of the amended amounts in either Convention, Australia would be required to denounce the relevant treaty, which the Committee agrees would not be in the national interest.
- 2.30 Consultation with interested parties suggests that there is support, including among ship owners, for the introduction of revised amounts. The changes would be implemented by amendments to the *Protection of the Sea (Civil Liability) Act 1981* and the *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993* to commence 1 November 2003 (when both actions, if accepted by the Committee, will enter into force).
- 2.31 The Committee was advised that the views of the governments of the States and the Northern Territory, the Australian Shipowners Association (representing Australian owners of ships), Shipping Australia Limited, the Association of Australian Ports and Marine Authorities and to the receivers of contributing oil in Australia were sought on whether Australia should accept the revised limits of compensation. The Committee understands that all responses received supported the proposed treaty actions. The Committee also noted that the matters were discussed as part of the consultative procedures between the Commonwealth and State transport authorities from the Australian Maritime Group, the Standing Committee on Transport, and the Australian Transport Council.
- 2.32 The Committee noted that maritime unions were not involved in the consultation process. The Department advised that the only potential outcome of the amendments could be a minimal effect on the companies' insurance.<sup>10</sup> Given the positive feedback from all parties consulted, the Committee concurs that this was not an issue of importance for union consideration.
- 2.33 The Committee accepts that it is in Australia's interest to accept the proposed amendments to these Conventions and anticipates an improvement in the notification processes for such actions, whether accepted tacitly or by other means, in the future.

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10 R. Alchin, *Transcript of Evidence*, p.17.

## Two protocols amending double tax agreements with Canada and Malaysia

### Background<sup>1</sup>

- 3.1 This chapter contains the results of the Committee's review of two proposed protocols that would amend:
- the *Convention between Australia and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* (the Convention); and
  - 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 as amended by the First Protocol* (the Agreement).
- 3.2 Double tax agreements (DTAs) reduce or eliminate double taxation by limiting the taxing rights of signatories over various types of income. A typical limitation imposed by DTAs is that neither country will tax business profits derived from enterprises in the other country unless the business activities in the taxing country are substantial enough to constitute a permanent establishment and income is attributable to that permanent establishment.

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<sup>1</sup> Unless otherwise specified the material in this section was drawn from the National Interest Analyses (NIAs) for the *Protocol, done at Canberra on 23 January 2002, amending the Convention between Australia and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, done at Canberra on 21 May 1980* and the *Second Protocol and Exchange of Letters, done at Genting Highlands, Malaysia on 28 July 2002, 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 of 20 August 1980, as amended by the First Protocol of 2 August 1999*.

- 3.3 Another important function of DTAs is the prevention of international fiscal evasion. DTAs address international fiscal evasion through profit shifting by providing an agreed basis for determining whether income returned or expenses claimed on related party dealings by members of a multinational group operating in both countries can be regarded as acceptable. Another means of preventing international fiscal evasion is by facilitating the exchange of information between the parties to the agreement.
- 3.4 Thus the general aim of DTAs is to promote closer economic cooperation through the elimination of overlapping taxing jurisdictions and to prevent international fiscal evasion. The specific aims of the proposed protocols amending the DTAs with Canada and Malaysia is to align these agreements with current Australian tax treaty policies and practice.

## Proposed treaty actions

- 3.5 Both Protocols update tax treaty arrangements between Australia and the other party. Both DTAs extend the definition of royalties to include payments for reception or use of transmissions by satellites, cable, fibre optic or similar technology.
- 3.6 The terms of each of the Protocols will require the incorporation of their texts as schedules to the *International Tax Agreements Act 1953*.
- 3.7 On the most recent previous occasion that the Committee considered a DTA it recommended that:
- ...the Australian Tax Office in consultation with the Australian Treasury and other interested parties, take immediate action to develop an effective methodology to quantify the economic benefits of double tax agreements [and that]
- ...the ATO report back to the Committee on the methodology developed before the Committee is required to recommend action on further double tax agreements.<sup>2</sup>
- 3.8 The Treasury provided greater detail of the specific issues and quantitative gains and losses that will accompany the amended DTAs with Canada and Malaysia through supplementary NIAs for each Protocol.

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2 Recommendation 5 of *Report 46: Treaties Tabled on 12 March 2002*.

## Protocol to DTA with Canada

- 3.9 The DTA between Australia and Canada entered into force on 29 April 1981. The proposed Protocol updates the terms of the Convention to bring them into line with current tax treaty policies and practices.
- 3.10 The Protocol will enhance the already substantial bilateral framework for trade and investment and is likely to reduce administration and compliance costs to businesses and individuals required to deal with the Australian Taxation Office (ATO) and the Canadian Customs and Revenue Agency (CCRA).
- 3.11 There are approximately 100 Australian companies active in the Canadian market with sizeable investments. Currently Canada is the 14<sup>th</sup> largest source of investment in Australia while Australia is the 11<sup>th</sup> largest investor in Canada. In terms of overall trade Canada is Australia's 17<sup>th</sup> largest trading partner with two-way trade reaching \$A3.6 billion in the 2000-01 financial year.
- 3.12 The Protocol was signed on 23 January 2002. The Protocol shall have effect in Australia:
- (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year next following that in which the Protocol enters into force; and
  - (ii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following that in which the Protocol enters into force.<sup>3</sup>
- 3.13 Taxation rates would undergo three changes if the Protocol enters into force:
- the adoption of a split rate of five percent for non-portfolio dividends and 15 percent for all other dividends;
  - the reduction of the limitation on Canadian and Australian branch profits taxation for 25 percent (in Canada) to five percent; and
  - the reduction of the limitation on interest withholding tax rates from 15 percent to ten percent.

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3 Department of Treasury, *Correspondence*, 10 September 2002, p.1.

- 3.14 The Convention revises the definition of ‘substantial equipment’ which is a criterion used to determine whether an establishment is permanent for taxation purposes. Substantial equipment is no longer confined by a 12 month time test or the application of natural resources. Equipment used in connection with a building site or construction, installation or assembly project is now explicitly excluded from being deemed a permanent establishment.
- 3.15 Income from real property is specified so as to include revenue from leases of land, exploration rights and the right to mine resources as well as the right to receive payments either as consideration for or in respect of the right to explore or exploit natural resources.
- 3.16 Profits arising from the sale of shares or other interests in land rich companies or other entities, whether the land is held directly or indirectly, also give rise to taxation in the country in which the real property is situated.
- 3.17 Monetary amounts under which employment in a country during a visit of less than 183 days were not taxed will be removed by the Protocol. The current levels of attracting exemption are \$C3,000 and \$A2,600.
- 3.18 The Protocol extends the definition of Australia to include the territory of Heard and MacDonal Islands.

## **Second Protocol to DTA with Malaysia**

- 3.19 The DTA between Australia and Malaysia entered into force on 26 June 1981. The First Protocol to the agreement entered into force on 27 June 2000.<sup>4</sup>
- 3.20 The primary functions of the Second Protocol:
- extend tax sparing arrangements between Australia and Malaysia from 1 July 1992 to 30 June 2003; and
  - exclude persons who benefit from the Labuan offshore business activity regime from receiving treaty benefits.
- 3.21 Tax sparing is an arrangement where tax foregone, for example in the form of tax holidays or tax reductions, by a foreign country on the income of an Australian resident is deemed to have been paid. Thus the tax foregone is credited as if it were actually paid.

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4 For details of the Committee’s consideration on the First Protocol of the DTA with Malaysia see *Report 25: Eight Treaties Tabled on 11 August 1999*, Ch.6.

- 3.22 The typical circumstance in which this arrangement operates is where a developing nation seeks to attract foreign investment through tax incentives. Without a tax sparing arrangement the incentive would be negated to the extent that Australia would collect the tax foregone by the source country.
- 3.23 In exchange for the Australian Government's agreement to extend tax sparing arrangements with Malaysia, the Labuan offshore business activity regime will be excluded from DTA benefits.<sup>5</sup> Labuan is an island off the coast of Malaysia that was given effective tax-free status by the Malaysian Government in 1990 to encourage investment. Because Labuan is still part of Malaysia:
- companies based there still received advantages under the country's network of tax treaties with other nations, including Australia.<sup>6</sup>
- 3.24 There are 115 non-manufacturing Australian companies registered with AUSTRADE, Kuala Lumpur. In 2000 Australia was Malaysia's 12<sup>th</sup> largest trading partner while Malaysia was Australia's 10<sup>th</sup> largest trading partner overall and Australia's second largest trading partner in ASEAN after Singapore. In 1999-2000 Australian investment in Malaysia totalled \$A389 million and in 2000 Malaysian investment in Australia totalled \$A1,731 million.
- 3.25 The Second Protocol was signed on 28 July 2002. The Protocol shall have effect in Australia:
- in relation to income of any year of income beginning on or after 1 July in the calendar year next following that in which [it] enters into force.
- It will have effect in respect of Malaysian tax for any year of assessment beginning on or after 1 January in the calendar year next following the calendar year in which the second Protocol enters into force.<sup>7</sup>
- 3.26 Besides the extension of tax sparing arrangements and the exclusion from treaty benefits of Labuan tax beneficiaries the Second Protocol provides that, in the event that Malaysia introduces a dividend withholding tax, the rate would not exceed 15 percent.

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5 David Martine, *Transcript of Evidence*, 16 September 2002, p.24.

6 Allesandra Fabro, 'Loophole closed as Australia alters treaty with Malaysia', *Financial Review*, 19 September 2002.

7 Department of Treasury, *Correspondence*, 10 September 2002, p.2.



- 3.27 In addition, the Second Protocol provides that if Australia concludes an agreement with a third country granting more favourable treatment in relation to underlying tax on dividends and tax sparing concessions, the Governments of Australia and Malaysia will enter into negotiations with a view to providing similar treatment to Malaysia.

### **Provision of Regulation Impact Statement**

- 3.28 The Committee inquired as to the reason that a Regulation Impact Statement (RIS) was not provided with the NIA for the Second Protocol amending the DTA with Malaysia and would accompany implementing legislation instead. Treasury informed the Committee that the Department of Foreign Affairs and Trade (DFAT) had advised it that the tabling of an RIS with the NIA was not necessary for this Agreement.
- 3.29 The Committee asked Treasury to provide information regarding the general procedures for determining when RISs were required to be tabled with treaty actions and why no RIS was required in the particular case of the Malaysian Protocol.
- 3.30 Treasury has assured the Committee that in the future RISs will be attached to relevant NIAs when they are tabled in order to avoid confusion.

### **Tax sparing arrangements**

- 3.31 Concerns about the inability of the Government to quantify some amounts while apparently being more certain of others continued to occupy the attention of the Committee in relation to the estimated benefits and losses accompanying the extension of tax sparing arrangements with Malaysia.
- 3.32 Treasury outlined the difficulties that accompany the quantification of dynamic benefits associated with changes to taxation regimes:

Using the Canadian protocol as an example, there is a reduction in dividend withholding taxes in Canada. In terms of the dynamic benefits, one would then need to start making assumptions about what the subsidiary of an Australian based multinational that is operating in Canada might do as a result of that ... change. Will it retain those profits within Canada and seek to invest there or will it repatriate those profits back to Australia? If so, does it invest the profits here or distribute them to shareholders?<sup>8</sup>

## Exchange of information

3.33 The Committee inquired as to the level of information exchanged between governments facilitated by international tax agreements such as those that Australia has with Malaysia and Canada. It was concerned about the balance between the right to privacy of tax paying individuals and entities and the need to prevent fiscal evasion.

3.34 Treasury advised that the Organisation for Economic Cooperation and Development has developed guidelines on how Exchange of Information (EOI) articles apply. EOI articles are important in ensuring that taxpayers pay the correct amounts of tax:

... having the power to obtain information from overseas jurisdictions is seen as an important deterrent to fiscal evasion practices ...<sup>9</sup>

3.35 The type of information that can be exchanged under EOI articles is limited in at least three ways. First, information obtained under an EOI article is limited to that which is relevant to taxes payable under the specific DTA in which the EOI article is included. Second, the information obtained under an EOI article is subject to all the secrecy requirements of the receiving tax administration. Third:

A Contracting State is not required to do anything on request from another Contracting State that the requesting State would not be able to do under its own laws or administrative practices.<sup>10</sup>

## Conclusion and recommendation

3.36 The Committee is cognisant of the fact that some of the information that it requires to fulfil its function of examining proposed treaty actions in terms of the impact upon the national interest may, if made public, compromise the very interest that the Committee has been established to protect. It notes and is satisfied with the efforts of Treasury to provide fuller and more specific details in relation to individual DTAs that come before it.

3.37 The Committee recognises that economics is far from being an exact science as it requires the making of assumptions about the conduct of individuals who have open to them a large number of possible actions. However, the Committee urges that Treasury continue in its efforts to provide as much information as possible about the assumptions on which

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9 Department of Treasury, *Correspondence*, 30 September 2002, p.2.

10 Department of Treasury, *Correspondence*, 30 September 2002, p.3.

it makes its policy decisions and what it hopes to achieve from the actions it implements in DTAs.

### **Recommendation 2**

**The Committee supports the Protocol amending the Convention between Australia and Canada 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.**

### **Recommendation 3**

**The Committee supports the Protocol and Exchange of Letters 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 as amended by the First Protocol of 2 August 1999 and recommends that binding treaty action be taken.**

## **Agreement between Australia and the USA concerning Security Measures for the Reciprocal Protection of Classified Information**

- 4.1 The proposed Agreement between Australia and the USA concerning Security Measures for the Reciprocal Protection of Classified Information sets out procedures and practices for the exchange and protection of classified information and for visits between Australia and the United States of America. Upon entry into force, the proposed Agreement will supersede three existing non-legally binding instruments with the USA regulating classified information:
- the 'Security Agreement' between the Department of Defense of the United States of America and the Department of Defence of Australia which came into effect on 29 August 1950, as amended;
  - the United States-Australian Arrangements for facilitating Disclosure of Classified Military Information to Commonwealth Nations which came into effect on 29 August 1950; and
  - the 'General Security of Information Agreement' between the Government of Australia and the Government of the United States of America concluded by an exchange of notes dated 2 May 1962, as amended.<sup>1</sup>

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<sup>1</sup> Information about the proposed treaty action is taken from the National Interest Analysis, tabled in conjunction with the treaty text on 27 August 2002, and a public hearing held in Canberra on 16 September 2002.

## Background

- 4.2 While there is no suggestion that either party has, or would, fail to comply with its commitments under the existing instruments, the US requested in February 2000 that the arrangement be formalised by treaty and has indicated that it requires a legally binding agreement. Australia agreed to this request and agreement was reached on all the relevant parts of the documents in March 2001. Ministerial approval was granted in August 2001. The agreement was signed on 25 June 2002.<sup>2</sup>
- 4.3 Similar Agreements recently reviewed by the Committee and recommended for ratification were the 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 2002, and the Agreement between the Government of Australia and the Government of Kingdom of Denmark for the Reciprocal Protection of Classified Information of Defence Interests, done at Copenhagen on 27 September 1999.

## The Agreement

- 4.4 The Committee has been advised that the proposed Agreement with the United States will set uniform standards and procedures for exchanging classified information between all government departments and agencies in both countries.<sup>3</sup> It will also enable companies in both countries to tender for, and participate in, contracts which involve access to security classified information. Following termination of the existing instruments, any information previously exchanged shall continue to be protected in accordance with the proposed Agreement.
- 4.5 Under the proposed Agreement, classified information which the Government of Australia passes to the Government of the United States of America will be afforded protection similar to United States information of corresponding security classification, will not be used for a purpose other than that for which it was provided and will not be passed to any third party without the written consent of the Australian Government. Access to Australian classified information will be limited to those United States Government officers whose official duties require such access. Equally, information passed under the proposed Agreement from the

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2 M. McCarthy, *Transcript of Evidence*, p.32.

3 NIA; evidence from the Attorney-General's Department, public hearing 16 September 2002.

United States Government to the Australian Government must be protected in the same manner. Supplementary Implementing Arrangements can be separately negotiated to cover particular departmental or agency issues.

- 4.6 The Committee was advised that the Australian Government currently exchanges a large amount of classified information with the United States. These exchanges include government to government information, details of defence acquisition projects (permitting the other country's industry to tender for, or participate in, classified contracts), and information related to cooperation between the two countries' armed forces. The proposed Agreement provides the necessary protocols and security assurances to facilitate the exchange of classified information by ensuring that the information is protected by legally binding obligations.
- 4.7 The Committee understands that the delay between the granting of ministerial approval and the actual signing was in part due to the events of 11 September 2001. The arrangements in the proposed Agreement provide all the necessary safeguards for the exchange of classified information even given that change in world circumstances; there has not been a need to revisit the terms or the negotiated terms as a result of 11 September and the reassessment that many countries, including Australia, have made of their security arrangements.

## **Provisions of the Agreement**

- 4.8 The provisions of the Agreement include the following matters:<sup>4</sup>

### **Marking of classified information (Article 3)**

- 4.9 The name of the originating government must appear on all classified information received by both parties. National security classifications to all classified information must be assigned on transmission and on receipt.

### **Protection of classified information (Article 4)**

- 4.10 Each Party 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.

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4 Extracted from the National Interest Analysis.

- 4.11 The recipient Party shall only disclose, release or provide access to classified information received from the other Party to individuals who require access in order to perform their official duties and hold an appropriate personnel security clearance.
- 4.12 The recipient Party must ensure that each facility or establishment that handles classified information maintains a registry of the clearance of individuals at the facility or establishment who are authorised to have access to the information.

#### **Personnel Security Clearances (Article 5)**

- 4.13 Article 5 sets out the criteria for granting personnel security clearances, requires the Parties to investigate adherence to the criteria and obliges them to provide assurances to the other Party about the classifications of persons receiving information.

#### **Release of Classified Information to Contractors (Article 6)**

- 4.14 Prior to any release of classified information to contractors or prospective contractors, personnel and facilities must be checked to ensure that the information is going to be protected in accordance with national laws.

#### **Responsibility for Classified Information (Article 7)**

- 4.15 Each Party is responsible for all classified information it receives from the other Party while the information is under its jurisdiction and control. During the transmission of information the transiting Party retains responsibility until the custody of the information is formally transferred to the other Party.

#### **Responsibility for Facilities (Article 8)**

- 4.16 Each Party is responsible for ensuring that all facilities, where the classified information of the other Party is kept, are secure.

#### **Transmission of classified information (Article 10)**

- 4.17 Classified information shall be transmitted between the Parties through government-to-government channels or channels mutually approved in advance in writing by both Parties. The minimum standards for packaging the classified information are detailed in the proposed Agreement.

### **Visits (Article 11)**

4.18 Visits by representatives of one Party to facilities and establishments of the other Party, that require access to classified information, or where a security clearance is required to permit such access, shall be limited to those necessary for official purposes and to representatives who hold a valid security clearance. All requests, with details of the visit, will be forwarded through each Party's embassy prior to such visit.

### **Security standards (Article 13)**

4.19 On request, each Party must provide to the other Party information concerning its security standards, practices and procedures for the safeguarding of classified information, including those relating to industrial operations. Each Party must inform the other Party of any changes to its laws and regulations that would affect the manner in which classified information is protected under the proposed Agreement.

### **Reproduction of Classified Information (Article 14)**

4.20 Each Party must ensure that any reproductions made of classified information are marked with all original security markings, placed under the same control as the originals and are limited to the numbers required for official purposes.

### **Destruction of Classified Information (Article 15)**

4.21 The destruction of classified information must be done by means that will prevent the reconstruction of the classified information.

### **Downgrading and Declassification (Article 16)**

4.22 Each Party must not downgrade the security classification of the classified information received from the other Party without prior written consent of the originating Party.

### **Loss or compromise (Article 17)**

4.23 To minimize any risk of damage through the loss or compromise of exchanged classified information the receiving Party shall immediately inform the originating Party of any loss of, or known or suspected compromise of, such information. The receiving Party shall then investigate the circumstances of such loss or compromise and inform the



originating Party of the finding of the investigation and corrective action taken or to be taken.

### **Disputes (Article 18)**

4.24 Any disputes shall be resolved by the Parties through consultation and shall not be referred to any national court, international tribunal or third party for settlement.

### **Termination of Agreement**

4.25 The proposed Agreement may be terminated at any time by mutual agreement in writing, ninety days after the giving of such notice. If the proposed Agreement is terminated, the responsibilities and obligations of the Parties in relation to the protection, disclosure and use of classified information already exchanged shall continue to apply, irrespective of the termination. 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.

### **Consultation**

4.26 The Minister for Foreign Affairs provided approval for the Department of Defence to be the coordinating authority for the Commonwealth in the implementation of this proposed Agreement. The Department of Defence consulted with Department of Prime Minister and Cabinet, the Attorney-General's Department and Department of Foreign Affairs and Trade throughout the negotiation process and they have confirmed that the proposed Agreement meets the requirements of all Australian Government departments and agencies that deal with national security classified information.

4.27 The States and Territories were advised about the proposed Agreement through the Commonwealth-States-Territories Standing Committee on Treaties' Schedule of Treaty Action. No State or Territory comment has been received to date.

### **Implementation**

4.28 The Committee has been advised that no changes to domestic laws or policy are required to implement the proposed Agreement. The proposed

Agreement can be implemented through the Commonwealth Protective Security Manual, which sets out the procedures covered by the Agreement. The Agreement will not effect any change to the existing roles of the Commonwealth Government or the State and Territory Governments.

- 4.29 The Security Authorities responsible for implementing the proposed Agreement are the Head Defence Security Authority, Australian Department of Defence, and the Director International Security Programs, USA Department of Defense.

## Issues arising

### Classifying information

- 4.30 In response to the Committee's concerns about the different national security classifications between Australia and the United States of America, officials from the Department of Defence stated that it was a matter of different bureaucracies giving different names to substantially the same information. The Department also suggested this is based on different definitions of the harm that will come to national security if the information is compromised and advised that there is 'always an element of subjectivity in those judgments.'<sup>5</sup> The Committee was advised, subsequent to the public hearing, that there are four levels of national security protective markings, which are assigned to reflect the consequences of the compromise of the information:

- **RESTRICTED** – when the compromise of the information could **cause limited** damage to national security;
- **CONFIDENTIAL** – when the compromise of the information could **cause damage** to national security;
- **SECRET** – when the compromise of the information could cause **serious damage** to national security; and
- **TOP SECRET** – when the compromise of the information could cause **exceptionally grave damage** to national security.<sup>6</sup>

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5 McCarthy, *Transcript of Evidence*, p.34.

6 Supplementary information provided by the Department of Defence, 10 October 2002.

- 4.31 Where there is a difference in levels of classification, or a discrepancy in terms used for classified material, the Department stated that the United States will treat Australian restricted information in the same way that it treats its own (American) confidential information.<sup>7</sup>

## Access

- 4.32 The Committee was advised that access to Australian classified information will be limited to those United States Government officers whose official duties require such access. Equally, information passed under the proposed agreement from the United States Government to the Australian Government must be protected in the same manner. Supplementary implementing arrangements can be separately negotiated to cover particular departmental or agency issues. The agreement will not in any way prejudice the existing procedures for access to classified information by elected representatives. The agreement will not change domestic law or policy.
- 4.33 The Department confirmed, as per the Exchange of Notes which were included with the tabling documentation, that Members of Parliament have access to classified information with no requirement for a security clearance:

In respect of the requirements for security clearances in the Agreement, the Parties acknowledge the special status of elected representatives at the federal level, and confirm their intention to continue to apply their current practices to them.<sup>8</sup>

## Transmission of information

- 4.34 The Department advised that shared information is transmitted both electronically and in hard copy, and as is the case with the majority of government information which needs to be transmitted and stored, it is encrypted.
- 4.35 The Committee was advised that the Defence Signals Directorate, in its role as the national information security authority, actually provides advice to the whole of government about levels of encryption; a higher level of encryption will obviously be needed to encrypt, for example, highly sensitive information flowing between departments. The Defence

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7 M. McCarthy, *Transcript of Evidence*, p.34.

8 Exchange of Notes, paragraph 5.

Security Authority advises the Department of Defence on policy in relation to matters such as encryption.

- 4.36 The Department referred to the cost of levels of encryption and the risk assessments which are carried out to judge the appropriate standard of encryption:

It is not that the Defence Signals Directorate would or would not attempt to limit levels of encryption; it is that it would advise on appropriate levels of encryption for different types of information, recognising that there are high costs involved as you increase the level of encryption.<sup>9</sup>

## Visits to facilities

- 4.37 In the context of Article 11 of the Treaty, the Committee expressed concern about the ability of Australian Members of Parliament to visit joint (US-Australia) facilities in Australia, and the arrangements for visits of American elected representatives to those sites. Some Committee members expressed a belief that members of the American Congress have greater access to some Australian-based facilities than Members of Australian Parliaments. The Committee requested further information from the Defence Security Authority on how visit requests are made, how many requests have been received and whether they have all been undertaken.
- 4.38 The Committee was advised subsequently that the sole joint facility in Australia is the Joint Defence Facility Pine Gap (JDFPG), which operates under the Pine Gap Treaty (Australian Treaty Series 1966 No. 17, amended by Australian Treaty Series 1988 No. 36). Access to this facility must be approved by the Minister for Defence. Records dating from 1996 show that 14 visits were made by Members of the Australian Parliament and eight visits by Members of the Northern Territory Assembly. From March 1996 to August 2002 there have been 17 visits by US congressional staff to the JDFPG. The information about the number of requests made is still to be provided.<sup>10</sup>
- 4.39 While the Committee was advised during the hearing that there are specific national areas within joint facilities, the Committee understands that this evidence is to be amended. The Committee also requested information from officials from the Department of Defence about the

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9 McCarthy, *Transcript of Evidence*, p.40.

10 Department of Defence, *Correspondence*, 10 October 2002.

briefings that are able to be obtained in those circumstances. At the time of printing this report, the Committee is still awaiting clarification of these issues.

## Loss or compromise - penalties for disclosure

4.40 The Committee was advised that if there is a breach of the conditions of this treaty, the parties will initially advise one another that there has been a possible compromise of their information. The two organisations concerned would need to consult about the level of compromise. The Committee understands that it then becomes a matter for the government concerned. Defence officials stated that:

For example, in the defence context the penalties might range from a minor breach due to oversight rather than malice where the penalty might be that the person receives further training in awareness through to, at the most extreme end, possible criminal sanctions for the unauthorised disclosure of classified information. The government concerned would sanction the person concerned and would keep the other government apprised of what action it was taking. Obviously it would want to reassure the other government that appropriate steps had been taken and that any systemic problems, for example, that might be identified are addressed.<sup>11</sup>

## Monitoring

4.41 The Committee was advised that there is not a formal monitoring regime in place for this Agreement, but that the Defence Security Authority and its counterpart agencies in the United States are in regular contact, which may also include visits to discuss issues under the treaty.<sup>12</sup>

4.42 The Committee notes that Australian companies which are handling US classified information will also be internally monitored and evaluated to ensure compliance with the terms of the Agreement. It was the view of Defence Department officials that the United States has similar audit arrangements in place for its own facilities.<sup>13</sup>

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11 McCarthy, *Transcript of Evidence*, p.41.

12 McCarthy and Wishart, *Transcript of Evidence*, p.41.

13 McCarthy, *Transcript of Evidence*, p.42.

## Concluding remarks

- 4.43 The Committee notes that there were several areas, particularly in relation to the procedures relating to visits referred to under Article 11, on which departmental officials were unable to provide an adequate briefing. Further, the Committee was advised that certain evidence given at the hearing required amendment. The Committee is still to receive formal notification of where inaccuracies occurred in evidence provided by the Departmental officials. The Committee expresses its concern at the quality of evidence that was provided at the time of the hearing, and the delay in any subsequent correction.
- 4.44 The Committee is of the view that this treaty is, overall, in the national interest. Conscious of the timeframe imposed upon the Committee for the tabling of reports, the Committee recommends ratification. However the Committee remains concerned that the Department of Defence and the Defence Security Authority have yet to provide specific answers to requests from Committee members on issues arising under Article 11 of the Treaty. Accordingly, the Committee will seek further briefings from the Department of Defence and the Defence Security Authority about the procedural issues that have led to this situation, and proposals to ensure that it does not recur.

### Recommendation 4

**The Committee, concurring with the views expressed in the National Interest Analysis, recommends that the Agreement be ratified.**

### Recommendation 5

**The Committee recognises that responses to questions on notice and requests to amend the Hansard record must receive security clearance and Ministerial approval prior to their release.**

**The Committee recommends that the Department of Defence ensures that these measures do not inhibit its ability to provide requested information to the Committee within an acceptable timeframe.**



## **Treaty between Australia and the Hellenic Republic on Mutual Assistance in Criminal Matters**

- 5.1 The Treaty between Australia and the Hellenic Republic on Mutual Assistance in Criminal Matters, done at Athens on 4 July 2002, is similar to several others already in place between Australia and other countries. It is based on the Australian Model Mutual Assistance in Criminal Matters Treaty, although there are some minor technical variations, which will be discussed later in this chapter.<sup>1</sup>
- 5.2 Mutual Assistance treaties allow law enforcement agencies to obtain information and evidence needed for investigating and prosecuting serious crime. Australia began negotiating a network of such treaties in the 1980s. The Committee was advised that there are currently 20 such treaties in force, four are awaiting entry and enforcement, and negotiations are continuing with several other countries. Existing treaties are mainly with countries in Western Europe, the Americas, and East Asia.<sup>2</sup>
- 5.3 The Committee understands that mutual assistance in criminal matters is a relatively modern form of international cooperation, covering a broad range of assistance for criminal investigation and prosecution and the pursuit of the proceeds of crime. It is a streamlined and expanded form of the traditional process of court to court assistance through letters of request.<sup>3</sup>

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1 Information about the proposed treaty action is taken from the National Interest Analysis, tabled in conjunction with the treaty text on 27 August 2002, and a public hearing held in Canberra on 23 September 2002.

2 M. Manning, *Transcript of Evidence*, p.3.

3 J. Blackburn, *Transcript of Evidence*, p.2.



- 5.4 In Australia, the formal requesting or granting of international assistance in criminal matters is governed by the *Mutual Assistance in Criminal Matters Act 1987* (“the Act”). Under the Act the Australian Government is able to give effect to bilateral mutual assistance treaties with other countries. The Attorney-General's Department clarified that, while mutual assistance can be requested under the Act, a country is not obliged to provide it. Therefore a treaty, providing legal obligations on both parties, makes the process both more certain and more efficient. This treaty will impose obligations on both parties to cooperate to the extent that they can and within the limitations contained in both the treaty and the Australian legislation.
- 5.5 The Committee has been advised that this treaty will enable Australia and Greece to assist each other in the investigation and prosecution of serious crime including offences relating to taxation, customs duties, foreign exchange control and other revenue matters. This assistance includes:
- taking evidence and obtaining statements;
  - providing documents and other records;
  - executing requests for search and seizure;
  - locating and preventing any dealing in, transfer or disposal of proceeds of crime and enforcing orders in relation to such proceeds;
  - making persons (including prisoners) available to give evidence or assist investigations; and
  - serving documents.
- 5.6 It does not include the arrest or the enforcement of verdicts, the execution of criminal judgements imposed by the courts of the treaty partner, the transfer of persons in custody to serve sentences or the extradition of any person.
- 5.7 Assistance may be refused where the request relates to an offence which carries the death penalty. Australia’s position on the provision of assistance in relation to offences carrying the death penalty (as set out in amendments, which commenced in 1997, to section 8 of the Act) was made clear to Greece in the course of the negotiations. Although Greece abolished the death penalty for ordinary crimes in 1993 it still retains the death penalty for certain military crimes.
- 5.8 Further, the obligation to provide assistance under the terms of the treaty is qualified by certain internationally accepted exceptions. These include an obligation to refuse assistance in cases involving political or military offences or where there are substantial grounds for believing that the

request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of that person's race, sex, religion, nationality or political opinions. Assistance may also be refused where the Requested State considers that granting assistance would seriously impair its sovereignty, security, national interest or other essential interests. This will be discussed later in this chapter.

- 5.9 Both the treaty and the Act provide a very broad discretion to determine whether the provision of assistance is overruled in the interests of Australia to do so. The discretion lies with in the Attorney-General. It is exercised either by the Attorney-General, by the Minister for Justice and Customs or by delegates within the Attorney-General's Department.
- 5.10 The Committee understands that, while there are many matters in the treaty that are already covered by the Act, in many cases, a treaty arrangement will make the process more efficient. The Committee also recognises that there are some countries which, in the absence of a treaty, cannot provide the mutual assistance that Australia requests. The Committee was advised that there is a continuing relationship with Greece in terms of both extradition and mutual assistance.
- 5.11 The Committee was advised that information on the proposed Treaty has been provided to the States and Territories through the Commonwealth-State Standing Committee on Treaties' Schedule of Treaty Action, and that no negative response to the Treaty has been received.

## Variations from similar treaties

- 5.12 The Attorney-General's Department advised of some variations from the Model Treaty. One relates to article 17.3, a provision which states:

The Requested State shall, to the extent permitted by its law, give effect to a final order forfeiting or confiscating the proceeds of crime made by a court of the Requesting State.<sup>4</sup>

- 5.13 The Attorney-General's Department advised that, in some cases, Greek law permits confiscation of the proceeds of crime for which no-one has been convicted. At this time Australia would not be able to enforce such orders under the treaty, and this appears to be a point of incompatibility of law.<sup>5</sup>

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4 J. Blackburn, *Transcript of Evidence*, p.2.

5 *ibid.*

## Operation and evaluation of Mutual Assistance treaties

- 5.14 The Committee requested information about the procedure that would apply to an actual request under the treaty. Officials from the Attorney-General's Department gave some examples as to how information would be requested and obtained. The Committee was advised that a request would need to be accompanied by sufficient information about the identity of the persons concerned and the nature of the matter under investigation to give a reasonable guarantee of bona fides.
- 5.15 The Committee requested specific information in order to gain a quantifiable understanding of the role and operation of this type of treaty, given that it would almost invariably involve dealing with people who are engaged in significant criminal activity involving the transfer of funds or substances between countries.
- 5.16 The Department agreed that collection of such quantifiable data would be a worthwhile way to evaluate the efficacy and effectiveness of the process, but that it was not available at this stage.<sup>6</sup>
- 5.17 The Committee understands that regulations will be made under the Act to provide that the Act applies to Greece, subject to the Treaty. The text of the Treaty will be set out in the Regulations.<sup>7</sup> There will be no changes to the existing roles of the Commonwealth and the States and Territories as a consequence of implementing the Treaty.

## Sovereignty

- 5.18 The Committee raised concerns about what might constitute a breach of sovereignty. In response, the Attorney-General's Department commented that:

it is conceivable that a foreign government's investigation might happen to cross over with some form of security investigation of our own where it might potentially threaten that investigation if we were to disclose evidence to that country or to take the particular action that they requested at the time when they wanted it done.<sup>8</sup>

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6 J. Blackburn, *Transcript of Evidence*, p.11.

7 National Interest Analysis, paragraph 18.

8 M. Manning, *Transcript of Evidence*, p.6.

- 5.19 The Department further advised that while it is probably not a complete description of the possibilities, it would be an example of the sort of potential issue that might arise. The Committee accepts that this would not be a usual event, and that a number of grounds for refusal are already set out in Section 8 of the Act, including specific reference to where:
- the provision of the assistance could prejudice an investigation or proceeding in relation to a criminal matter in Australia;
  - the provision of the assistance would, or would be likely to, prejudice the safety of any person (whether in or outside Australia);
  - the provision of the assistance would impose an excessive burden on the resources of the Commonwealth or of a State or Territory; and/or
  - it is appropriate, in all the circumstances of the case, that the assistance requested should not be granted.

### Relation to other treaty obligations

- 5.20 With respect to the place of this treaty in a broader law enforcement framework, Ms Blackburn stated that this form of treaty was 'the primary process by which information for the purpose of investigation and prosecution is obtained'.<sup>9</sup> Other methods included extradition treaties as well as other law enforcement cooperation arrangements at the operational level between law enforcement agencies. These were described as forming part of a 'web' of arrangements from the operational level to the very formal process of extradition.<sup>10</sup>
- 5.21 Mr Manning also referred to the value of mutual assistance treaties in the context of differing jurisdictions in different states:

The amount of direct assistance between law enforcement agencies varies to some extent, depending on the legal system of the countries concerned. As a general statement, it would be fair to say that civil law countries such as Greece tend to have a more judicially supervised process of investigation; therefore it is more difficult to get informal assistance and, for that reason, the mutual assistance process whereby we can make a formal request is a more important part of the cooperative process.<sup>11</sup>

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9 J. Blackburn, *Transcript of Evidence*, p.11.

10 Ibid.

11 M. Manning, *Transcript of Evidence*, p.11.

- 5.22 The Department stated that this treaty has no relationship to the ICC obligations. The mutual assistance obligations to the International Criminal Court are contained in the International Criminal Court legislation and the Statute of Rome, which established the court. This treaty and the Commonwealth Mutual Assistance in Criminal Matters Act specifically exclude provision of assistance for the prosecution of political or military offences.

### Confidentiality

- 5.23 The Committee was advised that, under the terms of the treaty, the Requesting Party may request that each Party, subject to its law, keep confidential the requests it receives for assistance and its responses to such requests (Article 9.1), as well as information it receives in response to a request under the Treaty (Article 9.2). The Requesting State must not use evidence obtained, or information derived therefrom, for purposes not stated in the request without the consent of the Requested State (Article 9.3).
- 5.24 The Committee expressed concerns about these confidentiality provisions. The Department clarified that the confidentiality provisions of the treaty have no impact on providing information on the number of requests received and responded to, the number granted and the number refused.<sup>12</sup> The Committee was advised that such information is regularly provided in public forums. Confidentiality provisions are specifically designed to apply to individual requests, which quite often are seeking information as part of an ongoing investigation. Disclosure of such operational information could impair the completion of that operation. The confidentiality aspect is consistent with similar treaties in existence.
- 5.25 Despite the length of time between the commencement of the negotiations and their conclusion, the Committee agrees that this proposed treaty action will make mutual assistance in criminal matters between Australia and Greece more efficient.

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12 J. Blackburn, *Transcript of Evidence*, p.7.

### **Recommendation 6**

**The Committee concurs with the views expressed by the Attorney-General's Department in the National Interest Analysis and recommends ratification of the treaty.**



## **Agreement between the Government of Australia and the Government of New Zealand relating to Air Services**

- 6.1 The purpose of the Agreement between the Government of Australia and the Government of New Zealand relating to Air Services, done at Auckland on 8 August 2002, is to allow direct air services between Australia and New Zealand to facilitate trade and tourism. This is the first agreement of its type and is in keeping with the principles of the *Australia-New Zealand Closer Economic Relations Trade Agreement* and the *Australia-New Zealand Single Aviation Market Arrangements (SAM)* which entered into force on 1 January 1983 and 1 November 1996 respectively.<sup>1</sup> The Committee was advised that the SAM arrangements were less than treaty status, but that all former and new arrangements are combined in this Agreement.<sup>2</sup>
- 6.2 The Agreement obligates each party to allow the designated airlines of the other country *and* SAM carriers to operate scheduled air services carrying passengers and cargo between the two countries on specified routes. It 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 establishment of offices and sale of fares in the territory of the other party. The Committee considered the above provisions and the implications of 'open skies' agreements and the SAM arrangements.
- 6.3 The Committee was advised that the Australian Government identified Singapore, the United States and the United Kingdom as high-priority

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1 Information about the proposed treaty action is taken from the National Interest Analysis, tabled in conjunction with the treaty text on 27 August 2002, and a public hearing held in Canberra on 23 September 2002.

2 A. Parle, *Transcript of Evidence*, p.26.



targets to negotiate future open skies agreements. The open skies agreement is a liberal agreement; the Committee was advised that virtually all the barriers that pertain to the normal bilateral treaties have been removed. The Committee understands that the agreement will confirm the existing liberal aviation rights between the two countries (as in the SAM arrangements) as well as remove some of the remaining restrictions in the aviation arrangements between Australia and New Zealand. The Agreement also allows tariffs for air transportation to be established by each designated airline or SAM carrier, based upon commercial considerations in the marketplace, rather than requiring government approval.

- 6.4 The unique SAM arrangements between Australia and New Zealand provide New Zealand owned airlines, as the only foreign international airlines, with the ability to operate on Australian domestic routes. Australian carriers also have the right to operate domestic routes between points in New Zealand. Under the new Agreement, the Committee was advised that the requirement that a country's designated airlines be controlled by nationals of that country will be retained, however the requirement that a designated airline of a country be owned by nationals of that country has been removed.
- 6.5 The Committee understands that fifth freedom rights allow an international airline to operate from one country to the other and then continue to a further country, and historically, there have been restrictions on the provision of services according to these rights (see Table 1, opposite). The Committee notes the new development in this Agreement, which removes such restrictions to provide fifth freedom services, meaning that services no longer have to start and finish in the country of designation. The Committee heard that, for example, under the new Agreement, New Zealand carriers can now operate services originating in the United States through points in New Zealand and Australia and beyond points in South-East Asia without restriction, assuming that they hold the necessary rights with these third countries.<sup>3</sup>
- 6.6 In addition, the Committee understands that pure freight carriers under these arrangements are granted seventh freedom rights, which allow cargo airlines in one country to base aircraft in another country and to operate to a third country. Seventh freedom rights differ from fifth freedom rights as an airline does not have to start its journey in the country where designations took place.

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3 A. Parle, *Transcript of Evidence*, p.26.

**Table 2 International Aviation Rights of Passage (Commonly known as 'Freedoms')**

First Freedom*	The right of an airline of one country to fly over the territory of another country without landing.
Second Freedom*	The right of an airline of one country to land in another country for non traffic reasons, such as maintenance or refuelling, while en route to another country.
<i>*These freedoms are referred to as technical rights. Some 100 countries are contracting parties to the 'International Air Services Transit Agreement' which provides multilateral approval of these technical rights.</i>	
Third freedom**	The right of an airline of one country to carry traffic (passengers, mail, cargo) <b>to</b> another country.
Fourth freedom**	The right of an airline of one country to carry traffic <b>from</b> another country to its own country.
Fifth freedom**	The right of an airline of one country to carry traffic between two foreign countries as long as the flight originates and terminates in its own country.
<i>** These rights are granted as rights in bilateral air services agreements.</i>	
<b>There are a number of other 'freedoms' which, although not officially recognised by the Chicago Convention or granted in bilateral air services agreements, are referred to and taken into account in bilateral negotiations (in particular the sixth freedom).</b>	
Sixth freedom	The right of an airline of one country to carry traffic between two foreign countries via its own country.
Seventh freedom	The right of an airline of one country to carry traffic on stand alone services between two other countries.
Eighth freedom or Cabotage	The right of an airline of one country to carry domestic traffic between two points within the territory of another country. Also known as cabotage, this right is rarely granted to foreign airlines, although this may change in a single aviation block comprised of a number of countries (e.g. the European Union).

Source *International Relations Branch, Aviation Policy Division, Department of Transport and Regional Services*

6.7 The Committee was advised that the Agreement also includes provisions that will remove secondary barriers within the SAM for the airlines of each country. This is achieved through the Australian and New Zealand governments agreeing that their domestic competition laws will apply to ensure fair regimes for airport access through slot management and non-discriminatory and fair pricing of aviation related user charges. The Australian Government has stated that the Agreement provides for competition authorities responsible for administering the competition laws in Australia and New Zealand to assist each other in investigations and enforcement actions in relation to competition policy.<sup>4</sup>

4 A Parle, *Transcript of Evidence*, pp.13-14.

- 6.8 Another new feature of this Agreement is that benefits will apply to non-scheduled or charter operations. As a result, the aeronautical authorities of both Australia and New Zealand will adopt a liberal approach in respect of non-scheduled operations consistent with the traffic rights exchanged under the agreement. The Committee viewed the extension of the Agreement to include non-scheduled carriers as a positive feature for Australian charter operators to be able to make decisions about whether they serve secondary gateways or establish services between Australia and New Zealand. The Committee accepts that there would be very few bilateral treaties that contained reference to non-scheduled operations.
- 6.9 To facilitate air services between the countries, the Agreement also includes standard reciprocal provisions on a range of other aviation related matters such as safety, aviation 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. Under Article 6, 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.

## Designated airlines

- 6.10 The Committee raised concerns about the significance of designation of airlines under the Agreement. Despite the term 'open skies', the central issue of ownership and control remains.
- 6.11 The Committee was informed that designation comes about by, for example, a New Zealand carrier having its principal place of business in New Zealand and being controlled by the nationals of that country.<sup>5</sup> This Agreement will always be unusual because of the existence of both designated and single aviation market airlines. The Committee was advised that SAM airlines can be 50 per cent owned by either New Zealand or Australian nationals, but the chairman of the board must be either a New Zealand or Australian national and there must be a majority of either New Zealanders or Australians on that board. SAM carriers have permission to operate domestically within Australia or domestically within New Zealand. 'Designated' carriers can only operate internationally between Australia and New Zealand and beyond, or via other points.<sup>6</sup>
- 6.12 The Committee was advised that it is in Australia's interest to focus only on principal places of business as being the test for designation, but that not all potential treaty signatories would have the same focus. The

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5 A. Parle, *Transcript of Evidence*, p. 15.

6 A. Parle, *Transcript of Evidence*, p. 15.

Committee understands that should there be a concern raised under the terms of the treaty, negotiations would be held between the governments. There is also a dispute settlement procedure within this agreement.

- 6.13 The Committee is concerned that the issue of designation is still very much one for governments to decide, which could possibly lead to behaviour that could stifle competition and not be in the spirit of the treaty.
- 6.14 The Committee was advised that issues of 'ownership' and 'control' in the context of airlines have been pursued by the Australian Government in a number of fora around the globe. The Committee was informed that the Government view is that removing impediments to foreign investment would be an effective way of ensuring that carriers have profitable and viable operations.<sup>7</sup>
- 6.15 The Committee identified a potential contradiction between the increasing freedoms on the provisions of air services between Australia and New Zealand and the ongoing formality of passport and visa requirements for travel between the two countries. The views of Department of Foreign Affairs officials were sought but to date no response has been received.

## Recommendation 7

**The Committee recognises that responses to questions on notice must receive Ministerial approval prior to their release.**

**The Committee recommends that the Department of Foreign Affairs and Trade ensures that these measures do not inhibit its ability to provide requested information to the Committee within an acceptable timeframe.**

- 6.16 The Committee was advised that no amendments to legislation are required for the implementation of the Agreements, and there were no anticipated direct financial costs to the Australian Government. The Committee was also advised that of the wide consultation that was undertaken (such as relevant government departments, the International Air Services Commission, State government tourism authorities, tourism industry bodies, Australian international airports, and Qantas Airways Ltd), all major stakeholders supported the Agreement.

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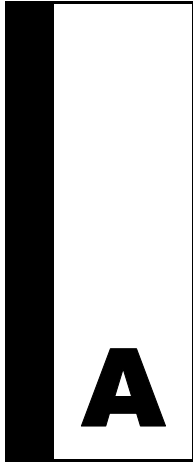
<sup>7</sup> A. Parle, *Transcript of Evidence*, p.19.

- 6.17 The Committee understands that information on the Agreement has been provided to the States and Territories through the Commonwealth-State-Territory Standing Committee on Treaties and that the results of the consultations have all been supportive of taking binding treaty action.

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**Recommendation 8**

**The Committee agrees that by facilitating the development of the single aviation market between the two countries, the Agreement will promote benefits for inbound tourism, freight operations and greater air travel options for Australian consumers, and recommends that binding treaty action be taken.**



## **Appendix A - Submissions**

### **Individuals and agencies who made written submissions on treaties tabled in August and September 2002**

- |     |                             |
|-----|-----------------------------|
| 1   | Australian Patriot Movement |
| 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 |



## **Appendix B - Witnesses at Hearings**

**Monday 16 September 2002 - Canberra**

**Attorney-General's Department**

Mr Trevor Clement, Assistant Secretary, Policy and Services Branch,  
Protective Security Coordination Centre

Ms Robyn Frost, Principal Legal Officer, Office of International Law

**Department of Defence**

Ms Margot McCarthy, Head, Defence Security Authority

Ms Raelene Sheean, Assistant Director, International, Industry and Projects  
Defence Security Authority

Mr John Wishart, Acting Director of Agreements, Defence Legal Service

**Department of the Environment and Heritage**

Mr Mark Tucker, Acting First Assistant Secretary, Marine and Water  
Division

**Department of Foreign Affairs Defence and Trade**

Dr Gregory French, Director, Sea Law, Environmental Law and Antarctic  
Policy Section, International Organisations and Legal Division

Mr Paul Grigson, Branch Head, Maritime South East Asia Branch, South  
and South East Asia Division

Dr Brendon Hammer, Assistant Secretary, Americas Branch

Mr Peter Scott, Executive Officer, International Law and Transnational  
Crime Section, Legal Branch

Ms Shennia Spillane, Executive Officer, International Law and Transnational Crime Section

**Department of Transport and Regional Services**

Mr Robert Alchin, Policy Officer, Strategic Transport Planning Branch, Transport and Infrastructure Policy Division

Mr Winton Brocklebank, Acting Assistant Secretary, Strategic Transport Planning Branch, Transport and Infrastructure Policy Division

**Department of the Treasury**

Mr Mathew Collett, Analyst, International Tax and Treaties Division, Revenue Group

Mrs H K Holdaway, Analyst, International Tax and Treaties Division, Revenue Group

Mr David Martine, General Manager, International Tax and Treaties Division, Revenue Group

Mr Paul McBride, Manager, International Tax and Treaties Division, Revenue Group



## **Monday 23 September 2002 - Canberra**

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

Ms Joanne Blackburn, First Assistant Secretary, Criminal Justice Division

Ms Rebecca Irwin, Acting Assistant Secretary, Office of International Law

Mr Michael Manning, Principal Legal Officer, Criminal Justice Division

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

Ms Julie Chater, Acting Assistant Secretary, New Zealand and Papua New Guinea Branch

Mr Alan Fewster, Executive Director, Treaties Secretariat

Mr Colin Milner, Director, International Law and Transnational Crime Legal Branch

Ms Margaret Twomey, Assistant Secretary, Northern, Southern and Eastern Europe Branch

Mr Tony Urbanski, Director, Southern Europe Section

### **Department of Transport and Regional Services**

Mr Andrew Parle, Acting Assistant Secretary, Aviation Industry Policy

Mr Matthew Hobbs, Policy Officer, Aviation Industry Policy