

Report 73

Treaties tabled in February 2006

Amendments, done at Nairobi, Kenya on 25 November 2005, to Appendices I and II of the Convention on the Conservation of Migratory Species of Wild Animals

Bilateral Aviation Safety Agreement and Implementation Procedures for Airworthiness with the United States of America

Protocol of Amendments, adopted in Monaco on 14 April 2005, to the Convention on the International Hydrographic Organization

Protocol amending the Agreement between the Government of Australia and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

Agreement between the Government of Australia and the Government of Bermuda on the Exchange of Information with respect to Taxes

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Membership of the Committee

Chair	Dr Andrew Southcott MP	
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Resolution of appointment

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

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



List of abbreviations

AHS	Australian Hydrographic Service
ATO	Australian Taxation Office
CASA	Civil Aviation Safety Authority
CMS	Conservation of Migratory Species
Cth	Commonwealth
EPBC	Environment Protection and Biodiversity Conservation
FAA	Federal Aviation Administration
GST	Goods and Services Tax
IHO	International Hydrographic Organization
IPs	Implementation Procedures
IPA	Implementation Procedures for Airworthiness
MFN	Most Favoured Nation
NIA	National Interest Analysis
OECD	Organisation for Economic Co-operation and Development
RIS	Regulation Impact Statement
SOLAS	Safety of Life at Sea

SPWG	Strategic Planning Working Group
TIEA	Tax Information Exchange Agreement
UK	United Kingdom of Great Britain
US	United States of America
WET	Wine Equalisation Tax



List of recommendations

3 Bilateral Aviation Safety Agreement and Implementation Procedures for Airworthiness with the United States of America

Recommendation 1

The Committee supports the *Agreement on the Promotion of Aviation Safety between the Government of Australia and the Government of the United States of America (Canberra, 21 June 2005) and Implementation Procedures for Airworthiness Covering Design Approval, Production Activities, Export Airworthiness Approval, Post Design Approval Activities and Technical Assistance between Authorities under the Agreement on the Promotion of Aviation Safety between the Government of Australia and the Government of the United States of America done at Canberra on 21 June 2005 (Gold Coast, 26 September 2005)* and recommends that binding treaty action be taken.

4 Protocol of Amendments to the Convention on the International Hydrographic Organization

Recommendation 2

The Committee supports the *Protocol of Amendments, adopted in Monaco on 14 April 2005, to the Convention on the International Hydrographic Organization, done at Monaco on 3 May 1967* and recommends that binding treaty action be taken.

5 Protocol amending the Agreement with New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

Recommendation 3

The Committee supports the *Protocol amending the Agreement between the Government of Australia and the Government of New Zealand 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.

6 Agreement between the Government of Australia and the Government of Bermuda on the exchange of information with respect to taxes

Recommendation 4

The Committee supports the *Agreement between the Government of Australia and the Government of Bermuda [as authorised by] the Government of the United Kingdom of Great Britain and Northern Ireland on the exchange of information with respect to taxes (Washington, 10 November 2005)* and recommends that binding treaty action be taken.

Introduction

Purpose of the report

- 1.1 This Report contains advice to Parliament on the review by the Joint Standing Committee on Treaties of six treaty actions tabled in Parliament on 7 and 8 February 2006.¹ These treaty actions are:

7 February 2006

- *Amendments, done at Nairobi, Kenya on 25 November 2005, to Appendices I and II of the Convention on the Conservation of Migratory Species of Wild Animals, done at Bonn on 23 June 1979*
- *Agreement on the Promotion of Aviation Safety between the Government of Australia and the Government of the United States of America, done at Canberra, 21 June 2005*
- *Implementation Procedures for Airworthiness Covering Design Approval, Production Activities, Export Airworthiness Approval, Post Design Approval Activities, and Technical Assistance between Authorities under the Agreement on the Promotion of Aviation Safety between the Government of Australia and the Government of the United States of America, done at Canberra, 21 June 2005 (Gold Coast, 26 September 2005)*

¹ Australia, House of Representatives 2004-05-06, *Votes and Proceedings*, No. 72, p. 802; Australia, Senate 2004-05-06, *Journals*, No. 60, p. 1437.

- *Protocol of Amendments, adopted in Monaco on 14 April 2005, to the Convention on the International Hydrographic Organization, done at Monaco on 3 May 1967*

8 February 2006

- *Protocol amending the Agreement between the Government of Australia and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (Melbourne, 15 November 2005)*
- *Agreement between the Government of Australia and the Government of Bermuda [as authorised by] the Government of the United Kingdom of Great Britain and Northern Ireland on the Exchange of Information with respect to Taxes (Washington, 10 November 2005)*

Briefing documents

- 1.2 The advice in this Report refers to the National Interest Analyses (NIAs) prepared for the proposed treaty actions. These documents are prepared by the Government agency (or agencies) responsible for the administration of Australia's responsibilities under each treaty. Copies of the NIAs may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct/february2006/tor.htm

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

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

Conduct of the Committee's review

1.4 The Review contained in this report was advertised in the national press and on the Committee's website.² Letters were also sent inviting comment from all State Premiers, Chief Ministers, Presiding Members of Parliament and from individuals who have expressed an interest in being kept informed of proposed treaty actions such as these. A list of submissions and their authors is at Appendix A.

1.5 The Committee also received evidence at a public hearing held on 27 February 2006. A list of witnesses who appeared before the Committee at this public hearing is at Appendix B. A transcript of evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct/february2006/hearings.htm

2 The Committee's review of the proposed treaty actions was advertised in *The Australian* on 22 February 2006. Members of the public were advised on how to obtain relevant information and invited to submit their views to the Committee, both in the advertisement and via the Committee's website.

Amendments, done at Nairobi, Kenya on 25 November 2005, to Appendices I and II of the Convention on the Conservation of Migratory Species of Wild Animals

Introduction

- 2.1 The *Amendments, done at Nairobi, Kenya on 25 November 2005, to Appendices I and II of the Convention on the Conservation of Migratory Species of Wild Animals* (the Amendments) add 11 species to Appendix I and 16 species to Appendix II to the *Convention on the Conservation of Migratory Species of Wild Animals* (CMS).

Background

- 2.2 CMS entered into force generally in 1983 and for Australia in 1991. It obliges its Parties to protect migratory species of wild animals that live within, or pass through, their jurisdictional boundaries.¹
- 2.3 Appendix I lists migratory species that are endangered and for which Parties are obliged to provide *immediate* protection.²

1 National Interest Analysis (NIA), para. 7.

2 NIA, para. 9

- 2.4 Appendix II lists migratory species with an unfavourable conservation status and which require, or would significantly benefit from, international cooperation for their conservation and management. This would be achieved by an international agreement.³

The Amendments

- 2.5 The Amendments to Appendix I (listed by their common name) consist of the: Gorilla; Short-beaked Common Dolphin; Bukhara Deer; Henderson Petrel; Balearic Shearwater; Madagascar Squacco Heron; Madagascar Pond-heron; Red Knot; Basra Reed Warbler; Spotted Ground Thrush; Basking Shark; Atlantic, Common, Baltic, German or European Sturgeon.
- 2.6 The Amendments to Appendix II (listed by their common name) consist of: Natal Clinging Bat; Large-eared Free-tailed Bat; Straw-Coloured Fruit Bat; Striped Dolphin; Short-beaked Common Dolphin; Bukhara Deer; Rock or White-collared Pratincole; African Skimmer or Scissorbill; Strange-tailed Tyrant; Cock-tailed Tyrant; Chestnut Seedeater; Rufous-rumped Seedeater; Marsh Seedeater; Narosky's or White-collared Seedeater; Saffron-cowled Blackbird; Basking Shark.
- 2.7 Of particular interest, the Basking Shark was jointly nominated by Australia and the United Kingdom for inclusion in both Appendices.⁴ Australia is a Range State for the Basking Shark.⁵
- 2.8 A Range State is defined under Article I of the CMS as any State that exercises jurisdiction over any part of the range of that migratory species, or a State, the flag vessels of which are engaged outside national jurisdictional limits in taking that migratory species.⁶
- 2.9 Under Article II of the CMS, Range States accept special obligations towards those species for which it is a Range State. Under Article III(4) this includes a prohibition against taking species listed in Appendix I (with some exceptions) and endeavouring to conserve those species listed in Appendix II.⁷

3 NIA, para. 9.

4 NIA, para. 5.

5 NIA, para. 5.

6 NIA, para. 12.

7 NIA, para. 17.

Implementation

- 2.10 Australia's obligations under CMS are implemented through the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (the EPBC Act). The National Interest Analysis states that the obligations imposed by the listing of species for which Australia is a Range State will not extend beyond the protection already afforded to those species under the EPBC Act.⁸
- 2.11 As a result of the listing of the Basking Shark, Australia will need to update the list of migratory species pursuant to Division 2 of Part 13 of the EPBC Act. Section 209(3)(a) specifies that the list of migratory species must include all species that are 'from time to time included in appendices to the CMS and for which Australia is a Range State under the Convention'.

Entry into force

- 2.12 Amendments to the CMS automatically enter into force for all Parties 90 days after adoption unless a Party has made a reservation in accordance with Article XI(6). Australia has not lodged a reservation and the Amendments automatically entered into force on 23 February 2006.⁹ The Minister for the Environment and Heritage wrote to the Chair of the Joint Standing Committee on Treaties providing details of the Amendments and their entry into force prior to their tabling in the Parliament.¹⁰

Consultation

- 2.13 A number of Federal and State agencies were consulted regarding the nomination of the Basking Shark for listing in Appendices I and II.¹¹

8 NIA, para. 25.

9 NIA, para. 3.

10 NIA, para. 4. Senator the Hon Ian Campbell, Minister for the Environment and Heritage, letter, 11 January 2006.

11 This includes the Department of the Environment and Heritage, Australian Fisheries Management Authority, Department of Agriculture, Fisheries and Forestry, Department

The Department of Agriculture, Fisheries and Forestry and the Australian Antarctic Division supported the nomination and no other agency consulted raised any objections.¹²

Conclusion

- 2.14 The Committee supports efforts to protect endangered species and appreciates the international cooperation and coordination required to protect endangered *migratory* species. Furthermore, the Committee supports Australia's joint nomination of the Basking Shark as a continuation of its efforts to protect sharks as well as a continuation of its broader efforts to protect migratory species.

of Primary Industries (NSW), Department for Environment and Heritage (SA), Department of Primary Industries, Water and Environment (Tas), Department of Primary Industries (Vic), Department of Conservation and Land Management (WA) and the Department of Fisheries (WA).

12 NIA 'Consultation', para. 2.

Bilateral Aviation Safety Agreement and Implementation Procedures for Airworthiness with the United States of America

Introduction

- 3.1 The treaty action before the Committee consists of two separate treaties. The first is the *Agreement on the Promotion of Aviation Safety between the Government of Australia and the Government of the United States of America* (the Agreement) which provides for bilateral cooperation in a number of areas, including aircraft certification, maintenance, flight operation and environmental certification. The Committee was informed that the Agreement is the 'umbrella agreement' and provides

The broad framework...for developing the implementation procedures which will give effect to the treaty.¹

- 3.2 The Agreement also provides for a number of technical Implementation Procedures (IPs) to be developed. The second treaty is the *Implementation Procedures for Airworthiness covering design approval, production activities, export airworthiness approval, post design approval activities, and technical assistance under the Agreement on the Promotion of Aviation Safety between the Government of Australia and the*

¹ Mr John Doherty, *Transcript of Evidence*, 27 February 2006, p. 5.

Government of the United States of America (the IPA). They are the first such technical IPs to be developed under the Agreement. The IPA sets out

The detailed technical processes which CASA and the FAA will undertake in certifying, approving and overseeing a range of airworthiness activities, including design and production of aeronautical products.²

3.3 Both treaties are discussed in this chapter.

The Agreement

3.4 The Agreement is expected to reduce impediments to the Australian aviation industry gaining access to the United States of America (US) market, reduce costs imposed on the aviation industry by technical inspections, evaluations and testing, and promote aviation safety.³

3.5 Article 1 of the Agreement provides that Parties are to sustain an equivalent level of aviation safety and to facilitate the acceptance of approvals for civil aeronautical products, personnel and facilities.

3.6 Article 2 designates the Civil Aviation Safety Authority (CASA) as Australia's implementing authority and the Federal Aviation Administration (FAA) as the implementing authority for the US.

3.7 Article 4 lists a number of technical areas which the Parties may pursue cooperation on. These are:

- airworthiness approvals of civil aeronautical products
- environmental approval and environmental testing
- approval and monitoring of maintenance facilities and alteration or modification facilities
- approval and monitoring of maintenance personnel
- approval and monitoring of crews
- evaluation of flight simulator qualification
- approval and monitoring of aviation training establishments and

2 Mr John Doherty, *Transcript of Evidence*, 27 February 2006, p. 5.

3 The Agreement National Interest Analysis (NIA), paras 7 and 18.

- any other matters within the scope of this Agreement, or otherwise agreed between the Parties through an exchange of correspondence through their diplomatic channels.
- 3.8 Under Article 5, consultation with regard to implementation, interpretation or application of the Agreement or any IPs may be requested at any time, can be conducted through discussion or correspondence, and shall start within 60 days of receipt of the request unless otherwise agreed. Consultation will be undertaken by the implementing authorities.

The Implementing Procedure for Airworthiness (IPA)

- 3.9 The IPA provides for cooperation between the US and Australia in areas such as design approval activities, export airworthiness approval activities and technical assistance between authorities. They are the first technical IPs to be developed under the Agreement.
- 3.10 Paragraph 1.2 of the IPA provides many of its key principles. These include:
- certifications issued by CASA and FAA, as the designated implementing authorities, are recognised as equally valid.
 - findings made by CASA and FAA in accordance with the laws and regulations of their respective Party and in accordance with the IPA are recognised as equally valid.
 - findings made by CASA and FAA in accordance with the IPA through aircraft certification systems are as valid as those made directly by the implementing authority.
- 3.11 Under Paragraph 1.3.0, CASA and FAA agree to keep each other informed in a timely manner of significant changes within similar aircraft systems. Upon notice of change, the other implementing authority may request a meeting to review the need for amendment to, and the continued validity of, the IPA.
- 3.12 Section II of the IPA covers the scope of the IPs for products, parts and appliances and other provisions. This includes:

- Australia and the US will accept Export Certificates of Airworthiness for the import of certain products, parts and appliances made in the country of the exporting authority⁴
 - Australia and the US will accept Authorized Release Certificates for the import of certain products, parts and appliances made in the country of the exporting authority⁵
 - Australia and the US are required to accept standard parts for all products, parts and appliances when they conform to established specifications⁶
 - Australia and the US are obliged to accept without further investigation specific Australian and US Design Approvals.⁷
- 3.13 Section III of the IPA provides the agreed working procedures for design approval, production and surveillance activities, export airworthiness approval and post design approval.⁸
- 3.14 Section IV of the IPA provides for technical assistance between Australia and the US.
- 3.15 Section V of the IPA provides for special arrangements which might relate to the IPs but are not specifically addressed by them. The special arrangements will be developed by the Parties' implementing authorities in a separate working procedure and are to be listed in Appendix D of the IPA.⁹

Regulation Impact Statement

- 3.16 A Regulation Impact Statement (RIS) was prepared for this treaty action. It notes that the two-stage process for Australian designed and produced products to be certified for import by other countries is costly and time consuming.¹⁰ A bilateral aviation safety agreement, such as the one considered by the Committee in this chapter, would provide more efficient and effective safety regulations in addition to

4 IPA NIA, para. 17; Paras 2.1.0 and 2.1.2.

5 Paragraphs 2.1.1 and 2.1.3.

6 Paragraph 2.1.4.

7 Paragraph 2.3.1 for Australia's obligation and Paragraph 2.3.3 for USA's obligation.

8 Outlined in Paragraphs 3.0, 3.1, 3.2 and 3.3.

9 IPA NIA, para. 26.

10 RIS, p. 3.

removing, where applicable, technical regulatory barriers to trade in aviation products and services.¹¹

Costs and implementation

- 3.17 Administrative costs incurred by CASA as the aviation safety regulator and implementing authority are expected to be negligible.¹² The IPA does not impose any additional costs on manufacturers, exporters or State and Territory Governments.¹³
- 3.18 No amendment to current legislation is required to implement Australia's obligations under the Agreement. Implementation will occur through the *Air Navigation Act 1920 (Cth)* and the *Civil Aviation Act 1988 (Cth)*.¹⁴

Future treaty action

- 3.19 Given the nature of the Agreement as an 'umbrella' agreement, future IPs in one of the technical areas listed in Article 4 are expected.

Conclusion and recommendation

- 3.20 The Committee supports efforts to increase aviation safety and improve the trade efficiency of aviation products and services.

11 RIS, p. 5.

12 The Agreement NIA, para. 18.

13 IPA NIA, para. 29.

14 The Agreement NIA, para. 16, the IPA NIA, para. 28.

Recommendation 1

The Committee supports the *Agreement on the Promotion of Aviation Safety between the Government of Australia and the Government of the United States of America (Canberra, 21 June 2005)* and *Implementation Procedures for Airworthiness Covering Design Approval, Production Activities, Export Airworthiness Approval, Post Design Approval Activities and Technical Assistance between Authorities under the Agreement on the Promotion of Aviation Safety between the Government of Australia and the Government of the United States of America done at Canberra on 21 June 2005 (Gold Coast, 26 September 2005)* and recommends that binding treaty action be taken.

Protocol of Amendments to the Convention on the International Hydrographic Organization

Introduction

- 4.1 The *Protocol of Amendments, adopted in Monaco on 14 April 2005, to the Convention on the International Hydrographic Organization, done at Monaco on 3 May 1967* (the Amendments) will improve the efficiency of the International Hydrographic Organization (IHO) by creating new structures and processes to improve corporate governance. This includes the establishment of the IHO Assembly, Council, and Finance Committee.
- 4.2 In addition, the Amendments introduce voting procedures that will apply where consensus between Member States cannot be reached. The new procedures will also make it easier for new States to join the IHO.¹

¹ National Interest Analysis (NIA), paras 2 and 3.

Background

The International Hydrographic Organization

- 4.3 Established in 1921,² the IHO is an intergovernmental consultative and technical organisation that supports safety in navigation and the protection of the marine environment.³
- 4.4 The objectives of the IHO are to:
- coordinate the activities of the national hydrographic offices
 - ensure uniformity in nautical charts and documents
 - adopt reliable and efficient methods of carrying out and exploiting hydrographic surveys
 - develop sciences in the field of hydrography and techniques for descriptive oceanography.⁴
- 4.5 Australia shared membership of the IHO with the United Kingdom of Great Britain and New Zealand from 1921 until 1958.⁵ Australia exercises its obligations under the IHO Convention through the Australian Hydrographic Service.⁶
- 4.6 The Committee was informed that there are currently 76 Member States to the IHO Convention with a number of others waiting to join.⁷ These include Cameroon and Ireland. Both countries require 47 approvals from IHO Member States to join. Cameroon has obtained 32 approvals and Ireland 38 approvals. Bulgaria, Mauritania, Qatar, Romania and Saudi Arabia have had their applications for membership approved, but are yet to deposit an instrument of accession to the IHO.⁸

2 NIA, para. 6.

3 NIA, para. 2; International Hydrographic Organization <www.iho.shom.fr>, viewed 13 March 2006.

4 International Hydrographic Organization <www.iho.shom.fr>, viewed 13 March 2006.

5 NIA, para. 6; Captain Roderick Nairn, *Transcript of Evidence*, 27 February 2006, p. 9.

6 Captain Roderick Nairn, *Transcript of Evidence*, 27 February 2006, p. 9.

7 Captain Roderick Nairn, *Transcript of Evidence*, 27 February 2006, p. 9.

8 Australian Hydrographic Organization, *Submission 2*, p. 1.

The Australian Hydrographic Service

- 4.7 The Australian Hydrographic Service (AHS) is part of the Royal Australian Navy. AHS is responsible for the conduct of hydrographic surveys and providing Australia's national charting service under the Safety of Life at Sea (SOLAS) Convention and the *Navigation Act 1912* (Cth).⁹
- 4.8 Australia has been an active member of the IHO's Strategic Planning Working Group (SPWG), which has been responsible for reviewing the operations of the IHO. The SPWG reported in April 2004 recommending changes which have been incorporated into the current Amendments. In addition, Australia was appointed Deputy Chair of the recent 'Third Extraordinary International Hydrographic Conference' held in Monaco in April 2005 where the Amendments initiated by the SPWG were adopted.¹⁰
- 4.9 The AHS has national, international and defence responsibilities and commitments. These include:
- publishing and maintaining national navigational charts, Australian National Tide Tables, Australian Series of Sailing Directions, compilation and maintenance of the Australian Hydrographic data collection
 - determining the priority of national hydrographic survey requirements through liaison with various scientific and maritime agencies
 - representing national hydrographic interests on various bodies and committees
 - active participation in IHO working groups and advisory committees
 - coordination of regional charting
 - hydrographic data collection, providing hydrographic and oceanographic military geospatial information services and military meteorology services.¹¹

9 Australian Hydrographic Service <www.hydro.gov.au>, viewed 13 March 2006.

10 NIA, para. 7.

11 Australian Hydrographic Service <www.hydro.gov.au>, viewed 13 March 2006.

- 4.10 In addition, the AHS is assisting countries in the South West Pacific with hydrographic services and in particular Papua New Guinea. Australia has been assisting Papua New Guinea with hydrographic services through an agreement that has been in place since 1975.¹²

Overview

- 4.11 The Committee received evidence that Australia will benefit from the IHO's expected improvement in efficiency as a result of the Amendments entering into force.¹³ This includes improvements in internationally accepted nautical charting products which will benefit maritime trade and defence activity in Australia's area of maritime interest.¹⁴
- 4.12 Australia's defence and commercial maritime interests are served by adhering to internationally agreed technical standards for the provision of its hydrographic service. International standards ensure a high level of quality in the surveys and the subsequent publication of nautical charts and other essential nautical references in all forms of media, including electronic formats and bathymetric imagery.¹⁵
- 4.13 Noting the advances in contemporary electronic navigation systems and their need for conforming data, the adoption of the appropriate international standards for electronic navigational charts and their ancillary information is increasingly important for Australia's navigation interests as they impact on safety of life at sea, maritime trade and protection of the environment.
- 4.14 The Committee received further information that it is in Australia's interest to agree to the Amendments as Australia has been an active Party to all preceding discussions and has been instrumental and proactive in formulating the Amendments.¹⁶

The amendments primarily affect the internal business processes, improving corporate governance, streamlining decision-making processes and making it easier for new

12 Captain Roderick Nairn, *Transcript of Evidence*, 27 February 2006, p. 11.

13 Captain Roderick Nairn, *Transcript of Evidence*, 27 February 2006, p. 10.

14 NIA, para. 7.

15 Bathymetric imagery is the science of measuring the depths of the oceans, seas and other bodies of water and mapping the corresponding topography of those depths. NIA, para. 10.

16 NIA, para, 10.

states to join the organisation. The benefit to Australia comes from its ongoing membership of a more efficient and effective organisation.¹⁷

Consultation

4.15 The AHS consulted with the Office of International Law, Attorney-General's Department, and the Sea Law Section of the Department of Foreign Affairs and Trade.¹⁸

Costs

4.16 No additional costs will be imposed on Australia as a result of the Amendments entering into force. Australia will gain additional value from its current financial subscription to IHO as a result of the expected improved governance of the IHO through the Amendments.¹⁹

Entry into force, implementation and withdrawal

4.17 The Agreement will enter into force three months after the Government of the Principality of Monaco receives notifications of approval by two thirds of the Member States who are Party to the Convention.²⁰

4.18 The Amendments will not require any changes to domestic legislation.²¹

4.19 Australia may withdraw from the Convention with one year's written notice to the Government of the Principality of Monaco. Withdrawal would take effect on 1 January following the expiration of the receipt of notice.²²

17 Captain Roderick Nairn, *Transcript of Evidence*, 27 February 2006, p. 10.

18 NIA, Consultation Annex, para. 2.

19 NIA, para. 14.

20 NIA, paras 1 and 12.

21 NIA, para. 11.

22 NIA, para. 18.

Conclusion and recommendation

- 4.20 The Committee acknowledges that the Amendments will improve the efficiency of the IHO by creating new structures and processes to improve corporate governance, thereby benefiting Australia as a Member State.
- 4.21 The Committee believes the Amendments will also serve to improve internationally accepted nautical charting products and in turn benefit Australia's maritime trade and defence activities.

Recommendation 2

The Committee supports the *Protocol of Amendments, adopted in Monaco on 14 April 2005, to the Convention on the International Hydrographic Organization, done at Monaco on 3 May 1967* and recommends that binding treaty action be taken.

Protocol amending the Agreement with New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

Introduction

- 5.1 The Protocol¹ revises the Exchange of Information Article of the existing Australia-New Zealand tax Agreement in line with the new OECD² standard. In addition, the Protocol inserts two new articles: assistance in the collection of taxes;³ and a Most Favoured Nation (MFN)⁴ article covering withholding⁵ taxes.⁶

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- 1 *Protocol amending the Agreement between the Government of Australia and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income.*
- 2 Organisation for Economic Co-operation and Development
- 3 This article will assist in the recovery of tax debts from Australian taxpayers who migrate to New Zealand. NIA, para. 16.
- 4 The MFN article will ensure that if New Zealand enters into a treaty with another country where it reduces withholding tax rates on dividend payments, interest and royalties to levels below those in the existing Australia-New Zealand tax agreement, that it will enter into negotiations with Australia to provide the same treatment for Australia. NIA, para. 6; Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 14.
- 5 Withholding tax is a tax on dividends and interest sent abroad to non residents. Both taxing earnings are paid to foreign lenders or investors. Withholdings tax is deducted when the payment is sent overseas. Carew, E, *The Language of Money*, ANZ Bank, viewed 13 March 2006, <www.anz.com>
- 6 NIA, para. 4.

- 5.2 The Information Exchange and Assistance in Collection provisions will extend to all federal taxes administered by the Commissioner of Taxation. This will assist in the administration and collection of Goods and Services Tax (GST) and the extension of the benefits of Australia's Wine Equalisation Tax (WET)⁷ rebate to New Zealand.⁸ The new Assistance in Collection provision will aid in the recovery of tax debts from Australian taxpayers who relocated thus ensuring tax compliance.⁹
- 5.3 Australia's tax agreements with other jurisdictions allocate taxing rights between Parties so that Australian taxpayers investing offshore will not be subject to double taxation.¹⁰
- 5.4 The revision of the Agreement with New Zealand will enhance Australia's competitive and modern tax agreement network, ensure it remains relevant for emerging issues¹¹ and improve the level of cooperation between the two jurisdictions.¹²
- 5.5 Australia currently has approximately 40 comprehensive tax treaties with other countries.¹³ In recent years, Australia has also revised its tax agreements with the United States of America (US) and the United Kingdom of Great Britain (UK).¹⁴
- 5.6 In addition, Australia agreed to lower withholding tax rates with the US and include a non-discrimination article in the UK agreement. This obliges Australia to negotiate the same deal with its MFN countries¹⁵ in addition to its key investment partners.¹⁶

7 WET is applied at a rate of 29% at the wholesale level to alcoholic beverages such as grape, fruit and vegetable wines, cider, perry, mead, sake and grape wine products like marsala, vermouth, wine creams and cocktails. WET is included in the price for which retailers purchase the wine and is passed on to the end consumer. For the domestic market, WET liability is remitted to the Australian Taxation Office or for imports to the Australian Customs Service. Exports of wine are not subject to WET. Australian Taxation Office, viewed 13 March 2006, <www.ato.gov.au>; Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 15.

8 NIA, para. 6; Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 15.

9 Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 15.

10 Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 14.

11 NIA, para. 8.

12 Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 15.

13 Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 15.

14 NIA, para. 9.

15 These countries include: Korea, Finland, Norway, Switzerland, Austria, Italy, France, Spain, Romania, Mexico, South Africa and Taipei. Paul McBride, *Transcript of Evidence*, 27 February 2006, p. 20.

16 Mr Paul McBride, *Transcript of Evidence*, 27 February 2006, p. 20.

- 5.7 The Protocol is a more limited outcome than that sought by Australia as New Zealand is in the process of finalising its tax treaty policy in a number of critical areas,¹⁷ in particular, withholding taxes.¹⁸

Obligations

- 5.8 Under the Protocol Australia is obliged to:
- exchange information relevant for administration or enforcement of domestic law concerning all Federal tax laws administered by the Commissioner of Taxation
 - treat information received through exchange as secret in the same manner as information obtained under its own domestic law
 - collect information if requested by New Zealand even where it is not needed for Australia's own taxation purposes
 - assist New Zealand in the collection of revenue claims where amounts owed in respect of taxes of every kind and description are imposed under New Zealand law
 - where requested by New Zealand collect a revenue claim owed to New Zealand as if it were an Australian revenue claim.¹⁹
- 5.9 Either Party, in line with OECD model guidelines, may not supply information where:
- a trade or business secret may be disclosed
 - disclosure of information is contrary to public policy such as a breach of human rights policy.²⁰

17 NIA, para. 17.

18 Mr Paul McBride, *Transcript of Evidence*, 27 February 2006, p. 16.

19 NIA, paras 18-22.

20 NIA, para. 23; Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 15.

Overview

5.10 New Zealand is Australia's fifth largest merchandise export market and Australia is New Zealand's largest merchandise export market. New Zealand is the sixth largest foreign investor in Australia and Australia is the largest investor in New Zealand with investment between nations at \$A61.8 billion in 2004.²¹ Both Australia and New Zealand are committed to working towards a trans-Tasman single Economic Market. In addition to the Australia New Zealand Closer Economic Relations Trade Agreement,²² this Agreement will serve to signify the importance Australia places on closer economic and administrative relations with New Zealand.²³

Consultation

5.11 State and Territory Governments were consulted through the Commonwealth-State/Territory Standing Committee on Treaties. Australian business was consulted through the Tax Treaties Advisory Panel and the Australia-New Zealand Business Council. Issues that arose were administrative in nature and include:

- tax exemptions for temporary migrants
- interaction of debt equity rules
- treatment of trusts and hybrid entities
- the interaction of the superannuation systems of both countries in promoting the mobility of labour and their implications for cross-border pensions.²⁴

5.12 The Committee was informed that the issues raised could be dealt with administratively or legislatively and were outside the Agreement context.²⁵

21 NIA, para. 12.

22 NIA, para. 11.

23 NIA, para. 7.

24 NIA, paras 1-2.

25 Mr Paul McBride, *Transcript of Evidence*, 27 February 2006, pp. 17-18.

Costs

- 5.13 The Assistance in Collection Article will have a positive effect on revenue collection and improve international tax compliance.²⁶
- 5.14 In addition, the Protocol may create minimal increases in administrative costs for the Australian Taxation Office (ATO) as a result of the enhanced information exchange between Australia and New Zealand.²⁷
- 5.15 The Assistance in Collection Article is likely to have cost implications for the ATO. These costs may arise from the extra human and financial resources required to handle inbound and outbound requests for debt collection. The exact costs associated with the Assistance in Collection Article are currently unknown as the Article will be added to existing and future tax treaties. The ATO has informed the Committee that it may need to expand its operations as the number of tax agreements Australia enters into increases.²⁸
- 5.16 Concerns were raised about the lack of financial modelling undertaken by the ATO in relation to administrative costs arising from the Agreement. The ATO responded with:

Based on our experience around exchange of information, we already have in place the infrastructure and the people to do this type of work. We already have in place, as was mentioned, over 40 treaties...In that area I do not believe that there will be need for a great increase or there will be a great burden, as we already have the infrastructure in place. Assistance in collection is new for us but it is something that will assist us. There will be some increased administrative costs around this area. It is one of those things where we do not know quite yet how much activity we will have and how much we will need to put into it. It is virtually impossible at this stage to do any models or anything like that on the costs.²⁹

26 NIA, para. 25.

27 NIA, para. 26.

28 NIA, paras 26-28.

29 Mr Graham Whyte, *Transcript of Evidence*, 27 February 2006, p. 16.

Legislation

- 5.17 The *International Tax Agreements Act 1953* (Cth) will be amended to give effect to Australia's obligations under the Protocol.³⁰

Entry into force and withdrawal

- 5.18 The Agreement will enter into force on the date of the last notification in writing by both Parties. Article 4 (Assistance in the Collection of Taxes) will take effect from the date agreed in a subsequent exchange of notes. This notification may not coincide with entry into force of the other Articles of the Protocol.³¹
- 5.19 As the Agreement has been in force for more than five years, either Australia or New Zealand can give a notice of termination of the Agreement in writing through diplomatic channels in any calendar year on or before 30 June.³²
- 5.20 In the case of a notice of termination being given, the Agreement would cease to be effective in Australia for:
- withholding tax on income derived by a non-resident and fringe benefits tax provided on or after 1 April in the calendar year after the year the notice of termination was given
 - 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 after the year the notice of termination was given.³³

Conclusion and recommendation

- 5.21 The Committee acknowledges that the Protocol will assist in bringing the tax Agreement with New Zealand into line with the OECD standard and serve to strengthen Australia-New Zealand ties.

30 NIA, para. 24.

31 NIA, para. 2.

32 NIA, para. 35.

33 NIA, para. 36.

Recommendation 3

The Committee supports the *Protocol amending the Agreement between the Government of Australia and the Government of New Zealand 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.

Agreement between the Government of Australia and the Government of Bermuda on the exchange of information with respect to taxes

Introduction

- 6.1 The Agreement¹ provides for the full exchange of information on criminal and civil tax matters between Australia and Bermuda. The Agreement will help Australia to protect its revenue base by allowing access to necessary offshore information and improving the integrity of the tax system by discouraging tax evasion.²
- 6.2 The Agreement includes an additional article that prevents Australia or Bermuda from imposing prejudicial or restrictive measures based on harmful tax practices on residents or nationals of either Party while the Agreement is in force. This reflects the understanding among participating partners that committed jurisdictions that enter into Tax Information Exchange Agreements (TIEAs) will not be considered tax havens by OECD³ member countries.⁴

1 *The Agreement between the Government of Australia and the Government of Bermuda [as authorised by] the Government of the United Kingdom of Great Britain and Northern Ireland on the exchange of information with respect to taxes.*

2 NIA, para. 6; Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 23.

3 Organisation for Economic Co-operation and Development

4 NIA, para. 12.

- 6.3 Bermuda's⁵ economy is heavily dependent on tourism and international business including insurance, investment holding, pension fund, unit trust and mutual funds, and shipping. A combination of a low tax structure, a stable political and legal system, well developed infrastructure, a highly skilled workforce, high education standards, and a good climate, positions Bermuda as a significant financial hub.⁶
- 6.4 The majority of economic activity occurring between Australia and Bermuda is in the insurance and reinsurance industries and currency trading activities, including foreign exchange hedging and forward contract purchases.⁷

Background

The OECD's Global Forum on Taxation and TIEA model

- 6.5 The OECD's Global Forum on Taxation (the Forum) as part of its work on harmful tax competition has identified the lack of effective exchange of information as a key contributing factor to the existence of harmful tax practices.⁸
- 6.6 The Forum advocates a process for establishing a global level playing field that undertakes a high standard of transparency in the equitable information exchange on tax matters between member and non-member countries.⁹ Internationally, 33 low-tax jurisdictions have made a commitment to the elimination of harmful tax practices.¹⁰
- 6.7 In 2002, the OECD released a model TIEA to facilitate negotiations between member countries and committed jurisdictions. This Agreement with some modification adopts the text of the OECD TIEA.¹¹

5 Bermuda though largely self-governing is an overseas territory of the United Kingdom. NIA, para. 4.

6 NIA, paras 4 and 5.

7 NIA, para. 5.

8 NIA, para. 8; Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 22.

9 OECD Global Forum on Taxation in Berlin, 3-4 June 2004, Outcome/Conclusion of Meeting, viewed 13 March 2006, <www.oecd.org>.

10 NIA, para. 11.

11 NIA, para. 12.

Investment between Australia and Bermuda

- 6.8 In 2004, Bermuda invested \$A2.2 billion into Australia, making it the fourth leading investor that year, behind the United States of America, the Netherlands and Canada. Bermuda was ranked in Australia's list of top five countries with which to enter into a TIEA.¹²
- 6.9 It is estimated that \$A5 billion is annually moved out of Australia to tax havens globally. The Australian Taxation Office (ATO), the Australian Crime Commission, and the Australian Federal Police have commenced a major investigation of the use of offshore tax havens for alleged money laundering and tax evasion. TIEAs will aid investigators to collect evidence and determine the extent and nature of tax evaded.¹³
- 6.10 The ATO informed the Committee that Bermuda has already introduced legislation into its Parliament to give effect to the Agreement.¹⁴
- 6.11 The ATO also relayed the motivations behind entering into the Agreement with Bermuda:

The outcome we are seeking is a reduction in international tax avoidance and evasion and that is one of the reasons why we have a multi-pronged approach to this area. Certainly one of the outcomes we are seeking is enhancing the community's confidence in the way the ATO is dealing with this area ... An important part of this work is working with other agencies. Our approach is co-ordinated in the Taxation Office by a tax haven task force that was set up a number of years ago. Our strategy has been to increase our active compliance focus on promoters and their offshore facilitation and distribution networks that we might find in Australia. Sometimes we might find an offshore service provider operation maybe through someone in Australia. We would focus on them as well as the participants in the tax haven based arrangements.¹⁵

12 Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 23.

13 NIA, para. 14.

14 Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, pp. 23-24.

15 Mr Graham Whyte, *Transcript of Evidence*, 27 February 2006, p. 26.

Australia's TIEA network

- 6.12 Australia is currently negotiating TIEAS with: Antigua and Barbuda, Jersey, Guernsey, the Isle of Man, the British Virgin Islands, the Cayman Islands, Anguilla, the Netherlands Antilles and Granada. Preliminary discussions are also underway with Vanuatu.¹⁶
- 6.13 The Treasury informed the Committee of the benefits of creating a network of TIEAs:

The emergence of a network of TIEAs between the OECD countries and offshore financial centres assists international efforts for countries to work together to integrate economic and financial architecture, to support and benefit from global growth and development. This focus is consistent with the principal objectives underpinning Australia's engagement in international development bodies and its more direct aid programs. These factors are key elements to the development of sustainable economies and international efforts to introduce systems that support financial stability. Furthermore, enhanced transparency and effective information exchange necessarily support existing international efforts to counter scope for money laundering and other criminal activity through the Financial Action Task Force and related initiatives.¹⁷

Overview

- 6.14 The Agreement is the first of its kind for Australia and the third such agreement to be signed in the world.¹⁸ The Agreement paves the way for entering into similar agreements with other jurisdictions that have committed to work with OECD member countries under the auspices of the Global Forum on Taxation. Developing a network of TIEAs will enhance transparency and information exchange to the benefit of Australia and other committed jurisdictions.¹⁹

16 Mr Graham Whyte, *Transcript of Evidence*, 27 February 2006, p. 27.

17 Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 23.

18 The United States of America and the Netherlands have also signed a TIEA. Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, pp. 22-23.

19 NIA, paras 7 & 8.

- 6.15 This and subsequent TIEAs make it harder to tax evade using tax havens. This in turn helps protect Australia's revenue base, improve the transparency and integrity of the tax system, and promote legitimate economic exchange between jurisdictions.²⁰
- 6.16 At the recent Global Forum held in Melbourne in 2005, the Chair of the OECD's Committee on Fiscal Affairs welcomed the signature of this Agreement as a landmark model. This echoes the view of the international community that this Agreement is a positive move towards good international governance.²¹
- 6.17 Safeguards have been built into the OECD TIEA model to protect the legitimate interests of taxpayers. The Treasury informed the Committee:

Australia and Bermuda cannot engage in 'fishing expeditions' or request information that is unlikely to be relevant to the tax affairs of a specific taxpayer. The agreement specifies the type of information Australia needs to provide when seeking information from Bermuda, to demonstrate the relevance of the information to the request. The same proviso applies to Bermuda while seeking information from Australia ... A request for information can be declined if the information will disclose a trade or business secret or if the information is protected by attorney-client privilege ... or contrary to public policy...The information can be disclosed to third parties or third countries only if the jurisdiction supplying the information gives consent in writing.²²

Consultation

- 6.18 Consultation was undertaken with Government agencies. The ATO was consulted in the development of the Agreement and also negotiated the Agreement. State and Territory Governments were consulted through the Commonwealth-State/Territory Standing Committee on Treaties.²³

20 NIA, para 6; Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, pp. 22 & 24.

21 NIA, paras 9 & 10.

22 Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 24.

23 NIA, Consultation Annex.

Legislation

- 6.19 The *International Tax Agreements Act 1953* (Cth) will be amended to give effect to Australia's obligations under the Agreement.²⁴

Costs

- 6.20 Administration costs are likely to arise from Australia's information requests and will be absorbed into the ATO's existing exchange of information program.²⁵ Additional resources may also be required to deal with the expected complexities of obtaining information from Bermuda.²⁶
- 6.21 Under the Memorandum of Understanding between the ATO and the Bermuda Ministry of Finance, certain costs may be payable by the ATO to Bermuda's revenue authorities. These include reasonable costs for:
- engaging experts, interpreters or translators
 - litigation in relation to a specific request for information
 - obtaining depositions or testimony.²⁷
- 6.22 Compliance costs for Australian taxpayers are estimated to be minimal as it is unlikely that Australia will receive many requests for information from Bermuda.²⁸
- 6.23 Overall, it is estimated that the TIEA program will generate an additional full time equivalent requirement of one employee.²⁹

Entry into force and withdrawal

- 6.24 The Agreement will enter into force on the date of the last notification in writing by both Australia and Bermuda once all domestic procedures have been completed.³⁰

24 NIA, para. 25.

25 NIA, para. 29.

26 NIA, para. 26.

27 NIA, para. 27.

28 NIA, para. 28.

29 NIA, para. 29.

- 6.25 The Agreement will take effect from 1 January 2006 with respect to matters regarding serious tax evasion and from 1 January 2008 for all other tax matters covered by the Agreement. The OECD proposes that it may take countries up to three years to implement TIEAs. Australia's implementation of this Agreement is in line with the OECD's proposed timeframe.³¹
- 6.26 The Agreement applies only to those external territories listed in Article 4(1)(b) of the Agreement.³²
- 6.27 The Agreement may be terminated by written notice and would take effect in both jurisdictions on the first day of the month following the expiration of six months after the date the other Party receives the notice.³³

Conclusion and recommendation

- 6.28 The Committee supports Australia's compliance with the OECD's policy on tax information sharing to eliminate tax evasion and welcomes Australia's adoption of the OECD's model TIEA.
- 6.29 The Committee acknowledges that the Agreement is an international landmark model and a positive move towards international good governance.

Recommendation 4

The Committee supports the Agreement between the Government of Australia and the Government of Bermuda [as authorised by] the Government of the United Kingdom of Great Britain and Northern Ireland on the exchange of information with respect to taxes (Washington, 10 November 2005) and recommends that binding treaty action be taken.

30 NIA, para. 1.

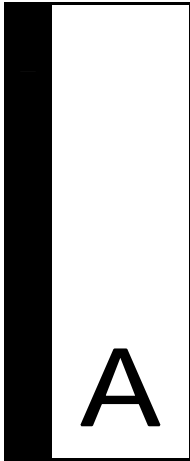
31 NIA, para. 2.

32 NIA, para. 3.

33 NIA, paras 32-33.

Dr Andrew Southcott MP

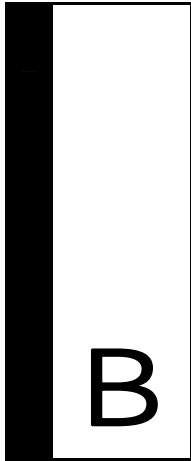
Committee Chair



Appendix A - Submissions

Treaties tabled in February 2006

- 1 Australian Patriot Movement
- 1.1 Australian Patriot Movement
- 1.2 Australian Patriot Movement
- 1.3 Australian Patriot Movement
- 1.4 Australian Patriot Movement
- 2 Australian Hydrographic Service
- 3 Australian Taxation Office



Appendix B - Witnesses

Monday, 27 February 2006 – Canberra

Attorney-General's Department

Dr Rachel Bacon, Acting Assistant Secretary, Office of International Law

Australian Hydrographic Service

Captain Roderick Nairn, Hydrographer of Australia and Commander Hydrographic Meteorological and Oceanographic Force Element Group

Australian Taxation Office

Mr Graham Whyte, Assistant Commissioner (International Relations)

Civil Aviation Safety Authority

Mr Eugene Holzapfel, Manager, Manufacturing and Certification

Department of Environment and Heritage

Mr Julien Colomer, Acting Assistant Director, Migratory and Marine Species Section, Marine Division

Department of Foreign Affairs and Trade

Ms Elizabeth Donaldson, Executive Officer, United States and Canada Section

Ms Jeannie Henderson, Director, United States and Canada Section

Ms Elizabeth Peak, Executive Officer, International Law and Transnational Crime Section, Legal Branch

Mr Andrew Rose, Executive Officer, International Law and Transnational Crime Section, Legal Branch, International Organisations and Legal Division

Mr Hans Saxinger, Director, New Zealand Section, South Pacific, Africa and Middle East Division

Mr Michael Jonathan Thwaites, Executive Director, Treaties Secretariat

Department of the Treasury

Mr Paul McBride, Manager, Tax Treaties

Mr Michael Rawstron, General Manager

Department of Transport and Regional Services

Ms Louise Brooks, Acting Section Head, International Section, Aviation Operations

Mr John Doherty, Executive Director, Aviation and Airports Division