

# Report 129

## **Treaties tabled on 19 and 26 June 2012**

Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Location of a Republic of Singapore Air Force Helicopter Squadron at the Australian Army Aviation Centre Oakey done at Singapore on 1 June 2012

Agreement between the Government of Australia and the Government of the Kingdom of Bahrain on the Exchange of Information with Respect to Taxes done at Manama on 15 December 2012

Agreement between the Government of Australia and the Government of the Principality of Andorra on the Exchange of Information with Respect to Taxes done at New York on 24 September 2011

Agreement Establishing the International Fund for Agricultural Development (Rome, 13 June 1976)

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## Membership of the Committee

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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 on:

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



## List of recommendations

### 2 Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Location of a Republic of Singapore Air Force Helicopter Squadron at the Australian Army Aviation Centre Oakey done at Singapore on 1 June 2012

#### Recommendation 1

The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Location of a Republic of Singapore Air Force Helicopter Squadron at the Australian Army Aviation Centre Oakey done at Singapore on 1 June 2012* and recommends that binding treaty action be taken.

### 3 Two Tax Information Exchange Agreements

#### Recommendation 2

The Committee supports the *Agreement between the Government of Australia and the Government of the Kingdom of Bahrain on the Exchange of Information with Respect to Taxes done at Manama on 15 December 2011* and recommends that binding treaty action be taken.

#### Recommendation 3

The Committee supports the *Agreement between the Government of Australia and the Government of the Principality of Andorra on the Exchange of Information with Respect to Taxes done at New York on 24 September 2011* and recommends that binding treaty action be taken.

**4 Agreement Establishing the International Fund for Agricultural Development (Rome, 13 June 1976)**

**Recommendation 4**

The Committee supports the *Agreement Establishing the International Fund for Agricultural Development (Rome, 13 June 1976)* and recommends that binding treaty action be taken.



## Introduction

### Purpose of the report

- 1.1 This report contains the Joint Standing Committee on Treaties' review of treaty actions tabled on 19 June 2012 and 26 June 2012.
- 1.2 These treaty actions are proposed for ratification and are examined in the order of tabling:
  - **Tabled 19 June 2012**
    - ⇒ *Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Location of a Republic of Singapore Air Force Helicopter Squadron at the Australian Army Aviation Centre Oakey done at Singapore on 1 June 2012*
    - ⇒ *Agreement between the Government of Australia and the Government of the Kingdom of Bahrain on the Exchange of Information with Respect to Taxes done at Manama on 15 December 2012*
    - ⇒ *Agreement between the Government of Australia and the Government of the Principality of Andorra on the Exchange of Information with Respect to Taxes done at New York on 24 September 2011*
  - **Tabled 26 June 2012**
    - ⇒ *Agreement Establishing the International Fund for Agricultural Development (Rome, 13 June 1976)*
- 1.3 The Committee's resolution of appointment empowers it to inquire into any treaty to which Australia has become signatory, on the treaty being tabled in Parliament.

- 1.4 The treaties, and matters arising from them, are evaluated to ensure that ratification is in the national interest, and that unintended or negative effects on Australians will not arise.
- 1.5 Prior to tabling, major treaty actions are subject to a *National Interest Analysis* (NIA), prepared by Government. This document considers arguments for and against the treaty, outlines the treaty obligations and any regulatory or financial implications, and reports the results of consultations undertaken with State and Territory Governments, Federal and State and Territory agencies, and with industry or non-government organisations.
- 1.6 A Regulation Impact Statement (RIS) may accompany the NIA. The RIS provides an account of the regulatory impact of the treaty action where adoption of the treaty will involve a change in the regulatory environment for Australian business. The treaties examined in this report do not require an RIS.
- 1.7 The Committee takes account of these documents in its examination of the treaty text, in addition to other evidence taken during the inquiry program.
- 1.8 Copies of each treaty and its associated documentation may be obtained from the Committee Secretariat or accessed through the Committee's website at:  
[http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=jsct/under\\_review.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/under_review.htm)

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

- 1.9 The treaty actions reviewed in this report were advertised on the Committee's website from the date of tabling. Submissions for the treaties tabled on 19 June and 26 June 2012 were requested by Friday, 27 July 2012, with extensions available on request.
- 1.10 Invitations were made to all State Premiers, Chief Ministers and to the Presiding Officers of each Parliament to lodge submissions. The Committee also invited submissions from individuals and organisations with an interest in the particular treaty under review.
- 1.11 The Committee examined the witnesses on each treaty at a public hearing held in Canberra on 13 August 2012.

- 1.12 Transcripts of evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee's website under the treaty's tabling date, being:
- **19 June 2012**  
[http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=jsct/19june2012/hearings.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/19june2012/hearings.htm)
  - **26 June 2012**  
[http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=jsct/26june2012/hearings.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/26june2012/hearings.htm)
- 1.13 A list of witnesses who appeared at the public hearings is at Appendix A.



# Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Location of a Republic of Singapore Air Force Helicopter Squadron at the Australian Army Aviation Centre Oakey done at Singapore on 1 June 2012

## Introduction

- 2.1 The proposed treaty action is to replace the *Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Location of a Republic of Singapore Air Force Helicopter Squadron at the Army Aviation Centre Oakey, done at Canberra on 21 October 1996 and which entered into force on 19 November 1997, (the 1997 Agreement)*,<sup>1</sup> which is due to expire on 31 December 2012.<sup>2</sup>
- 2.2 Since 1997, the Republic of Singapore Air Force (RSAF) helicopter squadron (126 Squadron) has been deployed at the Army Aviation Centre, Oakey (AAC), Queensland. This squadron operates the Eurocopter AS332M Super Puma (commonly referred to as the Puma) helicopter.

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1 National Interest Analysis [2012] ATNIA 11 with attachment on consultation *Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Location of a Republic of Singapore Air Force Helicopter Squadron at the Australian Army Aviation Centre Oakey done at Singapore on 1 June 2012*, 2012 ATNIF 7, (Hereafter referred to as 'NIA'), para 1.

2 NIA, para 2.

## National interest summary

2.3 The purpose of the Agreement is to allow for continued location of a RSAF helicopter squadron at the AAC, Queensland, which has been ongoing since 1997. Access to the AAC is greatly valued by Singapore, given its lack of domestic training areas, and is a major element of our contribution to the bilateral defence relationship.<sup>3</sup> Access is vital to the RSAF to enable them to develop and maintain their military capability.<sup>4</sup>

2.4 Use of the AAC under the proposed Agreement is part of Australia's broader policy to allow access to Australian Department of Defence (ADOD) facilities by the Singapore Armed Forces (SAF) (which includes the RSAF). Permitting access to the AAC benefits Australia by enhancing the bilateral defence relationship, improving the effectiveness of the RSAF as an exercise and training partner and as a potential partner or contributor to regional security operations, and promoting Australia's broader policy of increasing regional security.<sup>5</sup>

2.5 The existing 1997 Agreement is:

just one part of the relationship. We exchange students at our staff colleges, at our training institutions. We run exchanges for our junior officers and our NCOs [Non-Commissioned Officers] to go to Singapore to learn the way they do some of their training, and we reciprocate back in Australia. We do some joint exercises and Singaporeans are serving alongside of us in Afghanistan and have provided a reasonable amount of support to us, including medical and dental teams, an unmanned aerial vehicle and the imagery analysts to interpret the data that that provides, as well as logistics and specialist officers. So we have a broad, rich, valuable relationship with the Singapore armed forces.<sup>6</sup>

2.6 Apart from personnel, the 1997 Agreement is part of a broader suite of cooperative security arrangements with Singapore. The Department of Defence explained:

Firstly, under the Five Power Defence Arrangements, we have access to Singaporean facilities and land in certain designated areas. We currently maintain a Royal Australian Navy liaison office in Sembawang naval wharfs and Royal Australian Navy

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3 NIA, para 3.

4 NIA, para 5.

5 NIA, para 4.

6 Colonel Duncan Hayward, Director, Army International Engagement, Army Operations, Deputy Chief of Army Division, Army Headquarters, Department of Defence, *Committee Hansard*, 13 August 2012, p. 5.

liaison managed accommodation in Sembawang, and we maintain deployment facilities and access rights to Paya Lebar Air Base. Additionally, Australia gains access on a regular basis to the Murai Urban Training Facility in Singapore, and our Rifle Company Butterworth, in Malaysia, regularly deploys to Murai, at least once per rotation. They are normally, I believe, three-month rotations for Rifle Company Butterworth to conduct training. And, as I think was mentioned before, Australia sends one officer to participate in the Goh Keng Swee command and staff course in Singapore.<sup>7</sup>

[The Australian] Army greatly values our access to the Singaporean urban ops training facility. It is world class and is something that we have not replicated here. For our infantry soldiers to rotate through there is of great benefit to Army and something that we wish to maintain.<sup>8</sup>

## Reasons for Australia to take the proposed treaty action

- 2.7 The following information of the claimed benefits to Australia of the proposed treaty action is taken from the National Interest Analysis (NIA).
- 2.8 The training conducted by the RSAF at the AAC under the current 1997 Agreement and proposed Agreement does not usually involve the Australian Defence Force (ADF), and the RSAF personnel do not use ADF aircraft.<sup>9</sup>
- 2.9 The type of training described by the Department of Defence is 'raise, train and sustain'<sup>10</sup> and is considered to be 'basic conversion training'. This training includes Search and Rescue. The aircraft used by the RSAF are

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7 Mr Martin Kennedy, Acting Director-General, South East Asia Branch, International Policy Division, Department of Defence, *Committee Hansard*, 13 August 2012, pp. 6-7.

8 Colonel Duncan Hayward, Director, Army International Engagement, Army Operations, Deputy Chief of Army Division, Army Headquarters, Department of Defence, *Committee Hansard*, 13 August 2012, p. 7.

9 Colonel Peter Steel, Director, Exercise Planning, Joint Exercises and Evaluation Branch, Headquarters Joint Operations Command (formerly Commandant of the Army Aviation Centre, Oakey), Department of Defence, *Committee Hansard*, 13 August 2012, p. 2.

10 Mr Martin Kennedy, Acting Director-General, South East Asia Branch, International Policy Division, Department of Defence, *Committee Hansard*, 13 August 2012, p. 3.

troop lift helicopters that transport troops, equipment and cargo. These helicopters are not combat aircraft.<sup>11</sup>

- 2.10 There are significant indirect benefits to Australia from the access provided to Singapore. The SAF is a significant exercise partner, possessing highly sophisticated technology, some of which is not in service with the ADF.<sup>12</sup> In addition, many of the RSAF assets used at the AAC, in particular aircraft, are employed elsewhere in bilateral and multilateral exercises involving Australia. Enabling the RSAF to generate and maintain capability in Australia therefore directly enhances the ADF's ability to exercise with the SAF, thereby contributing to our own capability development goals.<sup>13</sup>
- 2.11 Heightened SAF capability is also of benefit to Australia in that it makes the SAF more effective as a coalition partner and as a contributor to regional security. Granting access to the AAC is part of Australia's contribution to the broader bilateral defence relationship with Singapore. Australia gains considerable benefits from this relationship. One example is access to SAF facilities in Singapore and to SAF courses. Providing the RSAF access to the AAC for these reasons is consistent with Australia's broader policy of regional engagement, whereby positive defence relations with countries in the region are developed. These relationships develop the ADF's military capability and help to support Defence partnerships in the region, which are vital for the promotion of Australia's strategic objectives. The proposed Agreement will also benefit Australian commercial enterprises through access to commercial arrangements with the RSAF.<sup>14</sup>
- 2.12 Due to the ongoing use of the AAC by the RSAF since 1997, failure to renew the 1997 Agreement by entering into the proposed Agreement would undermine Australia's longstanding political, defence and trade relationship with Singapore. This is particularly true given that the proposed Agreement is broadly similar to the 1997 Agreement. The proposed Agreement will maintain and extend existing requirements
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11 Colonel Peter Steel, Director, Exercise Planning, Joint Exercises and Evaluation Branch, Headquarters Joint Operations Command (formerly Commandant of the Army Aviation Centre, Oakey), Department of Defence, *Committee Hansard*, 13 August 2012, p. 4.

12 Evidence provided at the public hearing indicates that this access to highly sophisticated technology is an indirect benefit to Australia through the broader Singaporean armed forces – Australian armed forces relationship rather than through this specific Agreement. See the comments made by Colonel Peter Steel, Director, Exercise Planning, Joint Exercises and Evaluation Branch, Headquarters Joint Operations Command (formerly Commandant of the Army Aviation Centre, Oakey), Department of Defence, *Committee Hansard*, 13 August 2012, p. 2.

13 NIA, para 5.

14 NIA, para 6.

under the 1997 Agreement, including those governing the day-to-day activities of the RSAF helicopter squadron at the AAC.<sup>15</sup>

## Obligations

- 2.13 The Agreement defines the obligations, division of responsibilities and costing arrangements between Australia and Singapore for the deployment of up to 16 helicopters and accompanying RSAF personnel to the AAC until 31 December 2027.<sup>16</sup>
- 2.14 The Agreement reflects changes to policy during the past 15 years and brings these arrangements in line with similar agreements and arrangements between Australia and Singapore, in particular, the *Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Use of Shoalwater Bay Training Area and the Use of Associated Facilities in Australia*, done at Singapore on 31 May 2009.
- 2.15 One of the most significant changes set out in the proposed Agreement is improving the definition of 'explosives' to bring it in line with ADOD policy. The Department of Defence explained:

Under the old agreement explosives were simply referred to as including ammunition, bombs and rockets containing an explosive charge or propellant. The new definition, which has been brought in since the previous Oakey agreement was concluded, now has more detail in it:

*'Explosives' are substances manufactured with a view to producing an explosion or pyrotechnic effect. These include, but are not limited to: bombs and warheads; missiles; artillery, mortar, rocket and small arms ammunition; demolition charges; pyrotechnics; clusters and dispensers; cartridge and propellant actuated devices; flares; squibs; chaff and all similar or related items or components explosive in nature.*

In broad terms, it is designed to be a far more all-encompassing definition, and is something that has become best practice since this agreement was first drafted 15 years ago.<sup>17</sup>

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15 NIA, para 7.

16 NIA, para 8.

17 Mr Martin Kennedy, Acting Director-General, South East Asia Branch, International Policy Division, Department of Defence, *Committee Hansard*, 13 August 2012, p. 2.

- 2.16 Notwithstanding this amendment, there are no explosives stored at the Oakey base.<sup>18</sup>
- 2.17 Other significant changes include:
- increasing the number of RSAF helicopters stationed at the AAC to 16;<sup>19</sup>
  - updates throughout the treaty to reflect changed responsibilities for base and airspace management at the AAC and within the ADOD; and
  - the addition of more extensive provisions, including those relating to ADOD procedures with regard to the RSAF helicopter squadron noise abatement procedures, facilities, security, disciplinary policies, the use of Australian commercial enterprises and financial arrangements. The proposed increased number of aircraft is regarded as being sustainable by the ADOD without disrupting Australian training or operational requirements at the AAC.<sup>20</sup>
- 2.18 **Article 1** sets out definitions of key terms used in the proposed Agreement.<sup>21</sup>
- 2.19 **Article 2** sets out the scope of the proposed Agreement.<sup>22</sup>
- 2.20 **Article 3** sets out obligations relating to the conduct of the RSAF helicopter squadron activities at the AAC for the purpose of training to maintain flying skills and operational capabilities.
- All RSAF activities in Australia shall be conducted in accordance with Australian laws, regulations, policies and procedures, and RSAF activities at the AAC are to be conducted in accordance with the rules, procedures and standard operating procedures applied to other users of the Centre, including the ADOD.<sup>23</sup>
- 2.21 **Article 4** sets out the RSAF helicopter squadron's composition, in terms of aircraft, equipment and personnel. It restricts the helicopter squadron to 16 helicopters, unless otherwise mutually determined, and requires the RSAF to advise all details of the aircraft forming the RSAF helicopter squadron to the Commander AAC.
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18 Mr Martin Kennedy, Acting Director-General, South East Asia Branch, International Policy Division, Department of Defence, *Committee Hansard*, 13 August 2012, p. 4.

19 Apart from the Eurocopter Puma, 'Chinook' helicopters may also be deployed under the proposed Agreement. Colonel Peter Steel, Director, Exercise Planning, Joint Exercises and Evaluation Branch, Headquarters Joint Operations Command (formerly Commandant of the Army Aviation Centre, Oakey), Department of Defence, *Committee Hansard*, 13 August 2012, p. 3.

20 NIA, para 9.

21 NIA, para 10.

22 NIA, para 10.

23 NIA, para 11.

- Australia is obliged to facilitate the entry and exit of contractors to and from Australia in a manner consistent with the Exchange of Notes constituting a *Status of Forces Agreement between the Government of Australia and the Government of the Republic of Singapore*, done at Singapore on 10 February 1988 (the SOFA). Proposed paragraph 9 of Article 4 prohibits the RSAF from using or storing explosives and other weapons without prior written ADOD approval.<sup>24</sup>
- 2.22 **Article 5** governs RSAF flying operations at the AAC.
- RSAF flying operations at the AAC shall not be undertaken unless compliance with relevant rules and procedures can be assured to the satisfaction of Australia.<sup>25</sup>
- 2.23 **Article 6** provides that the provision of ADOD administrative and other support to the RSAF Helicopter Squadron is to be mutually determined in an Implementing Arrangement.<sup>26</sup>
- 2.24 **Article 7** obliges Singapore to arrange private residential accommodation for its personnel and dependants in Australia.<sup>27</sup>
- 2.25 **Article 8** requires the Parties to consult on any implications for facilities related to the RSAF helicopter squadron operations.
- Australia may provide additional land on which Singapore may build new facilities required by the RSAF helicopter squadron, but is not obliged to do so.<sup>28</sup>
- 2.26 **Article 9** requires the RSAF to inform the Commander AAC in writing before introducing or removing aircraft, vehicles and equipment to or from the AAC and to provide reasons where such material is removed back to Singapore.<sup>29</sup>
- 2.27 **Article 10** deals with security. The ADOD holds the primary responsibility for security of the AAC. Singapore shall be responsible for any increased charges incurred by the ADOD as a result of providing security for facilities used by RSAF.
- Paragraph 2 requires Australia and Singapore to comply with the *Agreement between the Government of Australia and the Government of the Republic of Singapore for the Reciprocal Protection of Classified Information*
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24 NIA, para 12.

25 NIA, para 13.

26 NIA, para 14.

27 NIA, para 15.

28 NIA, para 16.

29 NIA, para 17.

*transmitted between the Australian Department of Defence and the Singapore Ministry of Defence, done at Canberra on 15 October 1996.*<sup>30</sup>

- 2.28 **Article 11** applies the disciplinary and criminal jurisdiction provisions set out in the SOFA to RSAF personnel and accompanying dependants.<sup>31</sup>
- 2.29 **Article 12** requires the RSAF to ensure that all RSAF personnel are medically and dentally fit prior to their arrival in Australia and requires the RSAF to be responsible for the continuing medical and dental support of RSAF personnel in Australia.<sup>32</sup>
- 2.30 **Article 13** requires Singapore to demonstrate a practical commitment to supporting Australian Commercial Enterprises and to require its contractors to demonstrate such a commitment, subject to certain limitations.<sup>33</sup>
- 2.31 **Article 14** requires Singapore to pay for goods, services and facilities provided by the ADOD for the conduct of RSAF activities pursuant to the proposed Agreement on a full cost recovery basis.<sup>34</sup>
- 2.32 **Article 15** sets out how claims will be handled by the Parties. The SOFA is to apply to the settlement of claims.<sup>35</sup>
- 2.33 **Article 16** requires that disputes arising under the proposed Agreement or any Implementing Arrangements be settled in the first instance by negotiation between the Parties through nominated liaison officers.<sup>36</sup>

## Implementation

- 2.34 No changes to national laws, regulations or policies are required to implement the Agreement. The proposed Agreement will not effect any change to the existing roles of the Australian Government or the State and Territory governments.<sup>37</sup>

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30 NIA, para 18.

31 NIA, para 19.

32 NIA, para 20.

33 NIA, para 21.

34 NIA, para 22.

35 NIA, para 23.

36 NIA, para 24.

37 NIA, para 25.

## Costs

2.35 The Agreement does not impose any foreseeable direct financial costs on Australia, except that Australia may compensate Singapore for the residual value of any RSAF facilities that Australia intends to use following termination of the Agreement. Australia also does not receive any direct financial benefit under the proposed Agreement, except through the contracting of Australian commercial enterprises. All support provided by Australia to activities under the proposed Agreement is on a full cost recovery basis except for shared support, which is calculated on a pro-rata basis of direct costs. Termination or expiration of the proposed Agreement will not extinguish any debts incurred while the proposed Agreement is in force.<sup>38</sup>

## Indirect financial benefits of the deployment

2.36 In terms of maintenance and supporting Australian commercial enterprises, the Singaporeans are described as 'model tenants'. The Department of Defence explained further:

...the Singapore Air Force is required under the terms of the agreement to source from Australian commercial enterprises services to repair and maintain aircraft deployed in Australia pursuant to the proposed agreement. More than fifteen years ago the Singapore Air Force was not there, but there is a whole raft of things that are now opportunities for businesses that would not be there were it not for the presence of Singapore.<sup>39</sup>

...of the workforce that provides the maintenance support to the Singaporean helicopter fleet at Oakey, [a] minimum of two-thirds of that workforce are to be Australian nationals. Singapore exceeds that obligation, with approximately 90 per cent of the workforce being Australian national. With regards to a dollar figure, at the beginning of each year of the agreement, a commercial support estimate is conducted on how much maintenance support will be required of those helicopters. For the last two years it has run between \$11 million and \$15 million as an estimate of the obligation for the Singaporeans to include as

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38 NIA, para 26.

39 Mr Martin Kennedy, Acting Director-General, South East Asia Branch, International Policy Division, Department of Defence, *Committee Hansard*, 13 August 2012, p. 2.

Australian content. On both occasions they have exceeded that obligation.<sup>40</sup>

- 2.37 The Committee also heard evidence that the RSAF deployment to Oakey brings financial benefits to the local area.

...it has been our experience over the last fifteen years that we have observed a valuable net benefit not just for those directly contracted services but also for the local community. It pretty much goes without saying that the Singaporean personnel, those family members who accompany them and the contractors employed to help the additional support requirements that Singapore has will in turn be members of the local community; they will buy things from local businesses and use their services. So in that regard we are confident that it is good for the local community.<sup>41</sup>

## Conclusion

- 2.38 The Committee has heard strong evidence that the existing 1997 Agreement forms part of a positive security relationship between the Republic of Singapore and the Commonwealth of Australia. The Singaporeans are seen as 'model tenants', and have been more than fulfilling their obligations under the Agreement as it stands. Apart from formal commitments to support Australian commercial enterprises through aircraft maintenance and the like, the deployment of the RSAF helicopter squadron has also brought economic benefits to the local community.

- 2.39 The security relationship between Singapore and Australia – of which this Agreement is a part – also contributes positively to the ADF gaining access to sophisticated technology and Singaporean training facilities. This relationship stands as a positive example of the Defence Department's international engagement with South-east Asia.

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40 Colonel Charles Kevin Packham, Director of Operations and Training Area Management, Defence Support Operations, Army, Australian Defence Force, Department of Defence, *Committee Hansard*, 13 August 2012, p. 5.

41 Mr Martin Kennedy, Acting Director-General, South East Asia Branch, International Policy Division, Department of Defence, *Committee Hansard*, 13 August 2012, p. 2.

- 2.40 Given the apparent success of the 1997 Agreement through the positive evidence the Committee has received, the Committee supports the continuation of the RSAF deployment at Oakey through the proposed Agreement and recommends that binding treaty action be taken.

### **Recommendation 1**

**The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Location of a Republic of Singapore Air Force Helicopter Squadron at the Australian Army Aviation Centre Oakey done at Singapore on 1 June 2012* and recommends that binding treaty action be taken.**



## Two Tax Information Exchange Agreements

### Introduction

- 3.1 The proposed treaty actions are to bring into force the *Agreement between the Government of Australia and the Government of the Kingdom of Bahrain on the Exchange of Information with Respect to Taxes done at Manama on 15 December 2011* and the *Agreement between the Government of Australia and the Government of the Principality of Andorra on the Exchange of Information with Respect to Taxes done at New York on 24 September 2011*.<sup>1</sup>
- 3.2 Australia has signed 33 Tax Information Exchange Agreements (TIEAs) to date.<sup>2</sup> The Committee has previously reviewed Australian TIEAs in Reports 73, 87, 99, 102, 107, 112, 114, 120 and 123.

### Overview and national interest summary

- 3.3 The key objective of the TIEAs is to establish a legal basis for the exchange of tax information between the Australia and Bahrain, and Australia and Andorra.<sup>3</sup> Both Andorra and Bahrain are, in a general sense, considered

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1 National Interest Analysis [2012] ATNIA 12 with attachment on consultation *Agreements between the Government of Australia and the Government of the Kingdom of Bahrain on the Exchange of Information with Respect to Taxes done at Manama on 15 December 2011* [2011] ATNIF 34; and the *Government of Australia and the Government of the Principality of Andorra on the Exchange of Information with Respect to Taxes done at New York on 24 September 2011* [2011] ATNIF 20 (hereafter referred to as 'NIA'), para 1.

2 The full list of countries can be found at: <http://www.ato.gov.au/content/00161158.htm>, accessed 17 July 2012. Further additional information can be found at: <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2012/Aus-Tax-Treaties/HTML/Tax-Information-Exchange-Agreements>, accessed 17 July 2012.

3 NIA, para 4.

to be low-tax jurisdictions and this makes these two Agreements desirable from an Australian perspective.<sup>4</sup>

- 3.4 The Agreements will help Australia protect its revenue base by allowing the Commissioner of Taxation to request and receive information held in Bahrain and Andorra and will help improve the integrity of the tax system by discouraging tax evasion by individuals and other entities. The Agreements also incorporate a number of important safeguards to protect the legitimate interests of taxpayers, including requirements in relation to confidentiality and legal privilege.<sup>5</sup>
- 3.5 The Agreements are part of Australia's efforts to conclude TIEAs with jurisdictions that have committed to work with member countries of the Organisation for Economic Cooperation and Development (OECD) to improve transparency and establish effective procedures for the exchange of tax information.<sup>6</sup>
- 3.6 While some countries have expressed no desire to enter into TIEA negotiations,<sup>7</sup> this work is on-going. The Treasury explained:

We have an ongoing negotiation program which consists of around thirty-nine countries and jurisdictions. There are a few jurisdictions, three in particular – Cyprus, Panama and the Seychelles – that we are interested in signing agreements with. Those efforts to talk to those countries are ongoing. The [Australian Tax Office] ATO is performing a risk analysis to determine which of those countries that are on the list might present the greatest problems so that they can be prioritised in terms of negotiations. We have a list. We are not talking to everybody at this point. There are some countries that we are particularly interested in and it is just a matter of giving each of those jurisdictions priority.<sup>8</sup>

## Reasons for Australia to take the proposed treaty action

- 3.7 The following information of the claimed benefits to Australia of the proposed treaty action is taken from the National Interest Analysis (NIA).

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4 Mr Gregory Wood, Manager, International Tax Treaties Unit, International Tax & Treaties Division, Treasury, *Committee Hansard*, 13 August 2012, pp. 9-10.

5 NIA, para 5.

6 NIA, para 6.

7 Mr Gregory Wood, Manager, International Tax Treaties Unit, International Tax & Treaties Division, Treasury, *Committee Hansard*, 13 August 2012, pp. 10-11.

8 Mr Gregory Wood, Manager, International Tax Treaties Unit, International Tax & Treaties Division, Treasury, *Committee Hansard*, 13 August 2012, p. 10.

- 3.8 TIEAs are an important tool in Australia's efforts to combat offshore tax evasion. The Agreements promote fairness and enhance Australia's ability to administer and enforce its domestic tax laws.<sup>9</sup>
- 3.9 The Agreements are part of Australia's ongoing commitment to the OECD's work on eliminating harmful tax practices that contribute to international tax avoidance and evasion.<sup>10</sup> Australia has taken a leadership role in this work and is currently the Chair of the Global Forum on Transparency and Exchange of Information for Tax Purposes, which has a membership of more than 100 jurisdictions.<sup>11</sup> The Treasury explained further:
- ...the fundamental purpose of the Global Forum [is] to get as many countries as possible to sign agreements of this type, which are generally bilateral agreements. Since about 2009, 700 or 800 tax information exchange agreements have been signed on a worldwide basis. The Global Forum can take a lot of credit for that result, and Australia has shown a leadership role in acting as the Chair of the Global Forum and promoting standards and helping the countries who are members of the Global Forum to achieve those outcomes.<sup>12</sup>
- 3.10 Since 2002, more than 100 jurisdictions have committed to the implementation of OECD standards of transparency and tax information exchange. These standards, when implemented, help to ensure the availability of information needed by tax authorities to determine a taxpayer's correct tax liability. TIEAs are the key bilateral means that facilitate the provision of such information by low-tax jurisdictions.<sup>13</sup>
- 3.11 Experience has shown the TIEAs to be effective. The Australian Taxation Office (ATO) provided some tangible examples to the Committee.
- Our main tax information exchange agreement partners are the British Virgin Islands, Bermuda, the Isle of Man and Jersey. As of this month, fifty-three exchange of information requests had been issued under the tax information exchange agreements. Ten are currently active and five were withdrawn. That leaves thirty-eight requests which have been finalised; and, on the basis of those

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9 NIA, para 7.

10 Further information can be found at 'OECD - Tax Information Exchange Agreements': [http://www.oecd.org/document/7/0,3746,en\\_2649\\_33767\\_38312839\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/7/0,3746,en_2649_33767_38312839_1_1_1_1,00.html), accessed 17 July 2012.

11 NIA, para 8.

12 Mr Gregory Wood, Manager, International Tax Treaties Unit, International Tax & Treaties Division, Treasury, *Committee Hansard*, 13 August 2012, p. 11.

13 NIA, para 9.

cases, we have issued six amended assessments to the value of \$52 million. Our auditors have also identified a further \$127 million as potential omitted income via request[s] made under the tax information exchange agreements.<sup>14</sup>

- 3.12 Furthermore, the TIEAs act as a deterrent to those individuals who would otherwise seek to minimise their taxation commitments through transfers to low-taxation jurisdictions. The ATO commented:

There is a deterrent effect. Many individuals who previously used secrecy jurisdictions to avoid their tax obligations are abandoning them. From 2005 to 2011 there was a decrease in the entities transacting, for example, with Vanuatu from around 2,600 to around 300. This tells us that those previously involved in arrangements in Vanuatu have discontinued their dealings and also that they have not moved to another secrecy jurisdiction. Since the financial year 2007-2008 there has been a \$12 billion reduction in fund flows to thirteen high-risk secrecy jurisdictions and fund flows returning to Australia from the same secrecy jurisdictions have increased by seven per cent, or around \$5 billion in the 2010-11 financial year as compared to 2007-08.<sup>15</sup>

- 3.13 Although there may be other reasons for this decline – such as the global financial crisis<sup>16</sup> – the Committee recognises that these figures are quite significant.
- 3.14 The Australian Transaction Reports and Analysis Centre (AUSTRAC) reports a small flow of funds between Australia and Andorra and a significant flow of funds between Australia and Bahrain. While most financial flows to and from low-tax jurisdictions are legitimate, the legal frameworks and systems that make low-tax jurisdictions attractive for legitimate purposes may also be used in arrangements designed to evade paying tax elsewhere. In particular, the use of secrecy laws to conceal assets and income that are subject to Australian tax is of concern.<sup>17</sup>
- 3.15 It is in Australia's interest to continue to develop its network of TIEAs with low-tax jurisdictions as it will make it harder for taxpayers to avoid or evade Australian tax and discourage those taxpayers from participating in illegitimate tax arrangements by increasing the probability of detection.
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14 Miss Anna Cyran, Exchange of Information Officer, Transparency Practice – Large Business & International, Australian Taxation Office, *Committee Hansard*, 13 August 2012, p. 10.

15 Miss Anna Cyran, Exchange of Information Officer, Transparency Practice – Large Business & International, Australian Taxation Office, *Committee Hansard*, 13 August 2012, p. 10.

16 Mr Neil Cossins, Director, Exchange of Information Unit, Transparency Practice – Large Business & International, Australian Taxation Office, *Committee Hansard*, 13 August 2012, p. 10.

17 NIA, para 11.

This will help protect Australia's revenue base and improve the integrity of the tax system while enhancing the reputations of Bahrain and Andorra as locations for legitimate business activity.<sup>18</sup>

- 3.16 Bahrain and Andorra's commitment to implement the Agreements is a positive step in their respective relationships with Australia. The OECD has identified Bahrain and Andorra as jurisdictions that have committed to and substantially implemented the internationally agreed standard for the exchange of information relating to tax.<sup>19</sup>

## Obligations

- 3.17 The Andorra Agreement uses the term 'Contracting Parties'. The Bahrain Agreement uses the term 'Contracting States' but otherwise impose the same obligations.<sup>20</sup>
- 3.18 **Article 5(1)** obliges the competent authorities of the Contracting Parties (or States) to provide, on request, information that is foreseeably relevant to the administration and enforcement of the other Party's domestic tax laws, including the collection of taxes and the investigation or prosecution of tax matters.<sup>21</sup>
- 3.19 **Article 5(2)** provides that where the information in the possession of the Requested Party (or State) is insufficient to comply with a request, the Requested Party (or State) must use its powers to obtain and provide the information, even if it is not needed for the Requested Party's (or State's) domestic tax purposes.<sup>22</sup>
- 3.20 **Article 5(3)** requires the provision of information in the form of depositions of witnesses and authenticated copies of original records if specifically requested by the competent authority of an Applicant Party (or State), to the extent allowable under the laws of the Requested Party (or State).<sup>23</sup>
- 3.21 **Article 5(4)** obliges each Contracting Party (or State) to ensure its competent authority has the authority to obtain and provide information held by banks, other financial institutions and any person acting in an agency or fiduciary capacity, as well as information regarding ownership

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18 NIA, para 12.

19 NIA, para 13.

20 NIA, para 14.

21 NIA, para 15.

22 NIA, para 16.

23 NIA, para 17.

of companies, partnerships, trusts, foundations, 'Anstalten'<sup>24</sup> and other persons.<sup>25</sup>

- 3.22 **Article 5(6)** obliges the Contracting Parties (or States) to provide the requested information as promptly as possible. Additionally, the Agreements oblige the Contracting Parties (or States) to acknowledge receipt of requests for information.<sup>26</sup>
- 3.23 **Article 6** provides that one Contracting Party (or State) may, on request, permit interviews with individuals and the examination of records within its jurisdiction by officials of the other Contracting Party (or State), with the written consent of the persons concerned.<sup>27</sup>
- 3.24 **Article 7** provides the grounds for the refusal of requests, including where requests are not in conformity with the respective Agreement or if the Applicant Party (or State) would be unable to obtain the requested information under its own laws.<sup>28</sup>
- 3.25 **Article 8** obliges the Contracting Parties (or States) to keep information received under the proposed Agreements confidential.<sup>29</sup>
- 3.26 **Article 9** provides that, unless the competent authorities of the Contracting Parties (or States) otherwise agree, the Requested Party (or State) will bear the ordinary costs associated with responding to requests for information, with extraordinary costs to be borne by the Applicant Party (or State).<sup>30</sup>
- 3.27 **Article 10** requires the Contracting Parties (or States) to implement legislation necessary to give effect to the Agreements.<sup>31</sup>
- 3.28 **Article 11** obliges each Contracting Party (or State) to refrain from imposing prejudicial or restrictive measures on residents or nationals of either Contracting Party (or State) on the basis that the other Contracting Party (or State) does not engage in effective exchange of information and/or because it lacks transparency in the operation of its law, regulations or administrative practices.<sup>32</sup>
- 3.29 **Article 12** requires the Contracting Parties (or States) to jointly endeavour to resolve difficulties concerning the interpretation or application of the
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24 Institutions similar to trusts or foundations.

25 NIA, para 18.

26 NIA, para 19.

27 NIA, para 20.

28 NIA, para 21.

29 NIA, para 22.

30 NIA, para 23.

31 NIA, para 26.

32 NIA, para 24.

proposed Agreements and provides that they may also decide upon other forms of dispute resolution.<sup>33</sup>

## Implementation

- 3.30 No further legislation or regulation is required in order to implement the proposed Agreements, as Australia is able to fulfil its obligations under existing legislation, specifically, Section 23 of the *International Tax Agreements Act 1953*.<sup>34</sup>
- 3.31 The implementation of the proposed Agreements will not affect the existing roles of the Commonwealth or the States and Territories in tax matters.<sup>35</sup>

## Costs

- 3.32 The Agreements will have a small administrative and financial impact on the ATO. Neither country is likely to routinely need Australian information for their own tax purposes. It is likely that most requests for information will originate from Australia. Some resources may need to be allocated by the ATO to provide technical assistance to these jurisdictions in relation to their exchange of information procedures.<sup>36</sup>
- 3.33 The ATO and the relevant authorities of Bahrain and Andorra have negotiated Memoranda of Understanding, under which certain costs associated with Australian requests for information will be borne by the ATO.<sup>37</sup>
- 3.34 Australian residents are unlikely to incur significant compliance costs as it is unlikely Australia will receive many requests for information from either country and consequently, be required to collect information from Australian residents.<sup>38</sup>
- 3.35 Overall, it is estimated that the administrative and financial impact of the proposed Agreements will be absorbed by the ATO's existing exchange of information program, which currently administers similar arrangements (TIEAs and double-taxation agreements) with more than seventy

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33 NIA, para 25.

34 NIA, para 26.

35 NIA, para 27.

36 NIA, para 28.

37 NIA, para 29.

38 NIA, para 30.

countries. As the proposed Agreements are intended to help reduce tax avoidance and evasion by Australian taxpayers, they could result in the generation of additional revenue for Australia.<sup>39</sup>

## Conclusion

- 3.36 The Committee has examined a number of these Agreements, and understands their utility. The evidence provided by both the Treasury and the ATO provides substance to this view. There is tangible evidence that funds have been recovered, and that these Agreements have a deterrent effect which causes individuals to reconsider transferring their assets to low-taxation jurisdictions.
- 3.37 The Committee supports the continued negotiation of TIEAs and recommends that binding action be taken on both these Agreements.

### Recommendation 2

**The Committee supports the Agreement between the Government of Australia and the Government of the Kingdom of Bahrain on the Exchange of Information with Respect to Taxes done at Manama on 15 December 2011 and recommends that binding treaty action be taken.**

### Recommendation 3

**The Committee supports the Agreement between the Government of Australia and the Government of the Principality of Andorra on the Exchange of Information with Respect to Taxes done at New York on 24 September 2011 and recommends that binding treaty action be taken.**

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<sup>39</sup> NIA, para 31.

## Agreement Establishing the International Fund for Agricultural Development (Rome, 13 June 1976)

### Introduction

- 4.1 The Australian Government is proposing that Australia accede to the *Agreement Establishing the International Fund for Agricultural Development* (the Agreement), which establishes the International Fund for Agricultural Development (the Fund).
- 4.2 Australia has been a previous member of the Fund, joining when the Fund was established.<sup>1</sup> Australia withdrew in 2004.<sup>2</sup>

### The Fund

- 4.3 The Fund was established in 1977, implementing a recommendation of the 1974 World Food Conference. The World Food Conference recommendation was made at a time when serious food shortages were being experienced in sub-Saharan Africa.<sup>3</sup>
- 4.4 The Fund's objective is to make available financial resources, in the form of loans or grants, for agricultural development in developing Member States.<sup>4</sup> Specifically, the Fund's stated objective is:

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1 Joint Standing Committee on Treaties, *Report 60*, tabled 16 June 2004, para. 5.9.

2 National Interest Analysis (2012) ATNIA 13 with attachment on *consultation Agreement Establishing the International Fund for Agricultural Development (Rome, 13 June 1976)* [2012] ATNIF 11, (hereafter referred to as 'NIA'), para. 4.

3 Joint Standing Committee on Treaties, *Report 60*, tabled 16 June 2004, para. 5.4.

4 NIA, para. 3.

...provide financing primarily for projects and programs specifically designed to introduce, expand or improve food production systems and to strengthen related policies and institutions within the framework of national priorities and strategies, taking into consideration: the need to increase food production in the poorest food deficit countries; the potential for increasing food production in other developing countries; and the importance of improving the nutritional level of the poorest populations in developing countries and the conditions of their lives.<sup>5</sup>

- 4.5 The National Interest Analysis (NIA) indicates that the Fund currently has a strong focus on smallholder farmers, who are disproportionately represented amongst the world's poor. The NIA claims that the Fund supports 36 million people to secure food supplies by increasing productivity, enabling access to markets, and gaining microfinance.<sup>6</sup>
- 4.6 The Fund is administered by a Governing Council made up of representatives from each member state. To run the Fund, the Governing Council elects an Executive Board.<sup>7</sup>
- 4.7 The Fund's activities are financed by the member states of the Fund. New members of the fund make an initial financial contribution to the Fund which is to be used to achieve the objective of the Fund.<sup>8</sup>
- 4.8 Member states are then invited to make additional contributions to the Fund when it is necessary or desirable.<sup>9</sup>
- 4.9 The approval of expenditure on projects and programmes is made by the Executive Board in accordance with the policies, criteria and regulations laid down by the Governing Council of the Fund.<sup>10</sup>
- 4.10 Contributions by member states are made without restrictions as to use. The contributions can only be refunded upon the termination of the Fund's operation.<sup>11</sup>

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5 *Establishing the International Fund for Agricultural Development* (Rome, 13 June 1976) [2012] ATNIF 11, p. 4.

6 NIA, para. 7.

7 NIA, para. 8.

8 NIA, para. 10.

9 NIA, para. 13.

10 NIA, para. 10.

11 NIA, para. 15.

## Australia and the Fund

- 4.11 Australia's decision to withdraw from the Fund in 2004 was examined by a previous incarnation of this Committee. The Committee's views on the withdrawal are detailed in *Report 60*, tabled on 16 June 2004.
- 4.12 *Report 60* identifies a number of reasons for Australia's withdrawal from the Fund.
- 4.13 The first was the Fund's lack of focus on the South-east Asia and Pacific region, despite the majority of the world's poor living in these regions. At the time, only seven per cent of the Fund's projects and programmes were in the South-east Asia and Pacific region.<sup>12</sup>
- 4.14 The second reason identified was that the type of assistance provided by the Fund was also provided by other organisations such as the World Bank and the Asian Development Bank, each of which had an established presence in the region, and were also in receipt of Australian aid funding.<sup>13</sup>
- 4.15 A third reason identified in *Report 60* was the structural inefficiency inherent in the Fund's then requirement that it implement its activities through other international institutions, such as the World Bank and the United Nations (UN) Office for Project Services.<sup>14</sup>
- 4.16 Australia's proposed withdrawal from the Fund was seen as a serious critique of the operations of the Fund. Should Australia withdraw, it would be the only OECD country not to be a member for the Fund.<sup>15</sup> By the time of the Committee's inquiry, the Fund had initiated efforts to address Australia's concerns.<sup>16</sup> Nevertheless, *Report 60* recommended Australia withdraw from the Fund.<sup>17</sup>
- 4.17 Witnesses from the Australian Agency for International Development (AusAID) reported that Australia was:
- ...the only country to withdraw from IFAD. Russia was never a member and has never been a member. It is the only other G20 member who is now not a member, along with Australia. But there are a number of other countries who have the status of being either a non-financial member – for example, New Zealand – or a

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12 Joint Standing Committee on Treaties, *Report 60*, tabled 16 June 2004, para. 5.16.

13 Joint Standing Committee on Treaties, *Report 60*, tabled 16 June 2004, para. 5.28.

14 Joint Standing Committee on Treaties, *Report 60*, tabled 16 June 2004, para. 5.40.

15 NIA. para. 8.

16 Joint Standing Committee on Treaties, *Report 60*, tabled 16 June 2004, para. 5.20.

17 Joint Standing Committee on Treaties, *Report 60*, tabled 16 June 2004, para. 5.112.

non-member. But they are a relatively small grouping of countries.<sup>18</sup>

- 4.18 According to AusAID, Australia's withdrawal from the Fund had a significant impact, prompting significant reforms:

That action, we believe, has contributed to the current reform agenda that IFAD has embarked upon, and which is showing some great progress. So we are confident that the withdrawal of a major OECD nation did have quite a dramatic impact. The IFAD management now is quite different to the management in 2004, so we are working with a different group of people, and they have been very responsive to our engagement with them, including that the IFAD president visited Australia in 2009 and met with a range of Australian government stakeholders.<sup>19</sup>

- 4.19 In 2011, AusAID conducted a review of the fund and found that:

...since 2004, the Fund's reform process has resulted in improvements to strategic planning, project quality and impact, knowledge management and innovation. The Fund is now considered by donors and developing countries to be an increasingly effective, results focussed, value for money development partner.<sup>20</sup>

- 4.20 Figure 5.1 below indicates the distribution of the Fund's resources across the globe. The distribution of the Fund's resources to South-east Asia and the Pacific has clearly improved as the region is now a significant recipient of resources.

**Figure 5.1: Distribution of Fund resources, 2011**

Region	Resources (US\$)
West and Central Africa	826.0 million
East and Southern Africa	1,145.6 million
Asia and the Pacific	1,449.5 million
Latin America and the Caribbean	461.7 million
Near East, North Africa and Europe	698.3 million

Source Annual Report 2011, International Fund for Agricultural Development, pp 15-39.

18 Rebecca Bryant, Assistant Director General, Food Security, Infrastructure, Mining and Trade Branch, Australian Agency for International Development, *Committee Hansard*, 13 August 2012, p. 15.

19 Rebecca Bryant, Assistant Director General, Food Security, Infrastructure, Mining and Trade Branch, Australian Agency for International Development, *Committee Hansard*, 13 August 2012, p. 15.

20 NIA. para. 4.

- 4.21 In relation to the uniqueness of the service delivered by the Fund, the Fund's latest Strategic Framework identifies the Fund's niche in focussing on rural development through small scale agriculture.<sup>21</sup> In relation to the Fund's engagement with the South-east Asia and Pacific region, the Fund has opened twelve offices in the region, compared to the absence of a presence when Australia withdrew from the Fund.<sup>22</sup>
- 4.22 Finally, since Australia's withdrawal from the Fund, the Agreement has been amended to remove the requirement that the Fund implement its activities through other international institutions.<sup>23</sup>

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

- 4.23 Based on the improvements implemented by the Fund since Australia's withdrawal, AusAID argues that rejoining the Fund will:

...allow Australia to expand its existing support for food security and rural development and help the world's most vulnerable fight hunger. This aligns with the Australian Government's aid policy, which places priority on food security as a vehicle for sustainable economic growth and poverty reduction.<sup>24</sup>

- 4.24 Further:

Making financial contributions to the Fund is an effective way in which the Australian Government can seek to reduce poverty in the world, consistent with its aid program mandate. The Fund has a strong focus on smallholder farmers, who are disproportionately represented among the world's most vulnerable. IFAD initiatives support more than 36 million poor people around the world to secure food supplies by increasing productivity, access to markets and gaining microfinance.<sup>25</sup>

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21 International Fund for Agricultural Development, *Strategic Framework 2011 – 2015*, p. 26.

22 International Fund for Agricultural Development, *Contacts page*, <http://www.ifad.org/contacts.htm#pi>, accessed on 15 August 2012.

23 See in particular the sections on the operation of the Fund in the Agreement, pp. 12-14.

24 NIA. para. 5.

25 NIA. para. 6.

## Obligations

- 4.25 The Agreement requires Members to make initial financial contributions to the Fund, and enables further additional contributions, to be used to achieve the objective of the Agreement. Financing by the Fund is governed by the policies, criteria and regulations laid down by the Governing Council of the Fund with decisions regarding the selection and approval of projects and programmes made by the Executive Board in accordance with those policies, criteria and regulations.<sup>26</sup>
- 4.26 AusAID identifies a number of benefits resulting from Australia rejoining the Fund. In the NIA, AusAID argues that member states will benefit from Australia's research skills in areas such as poverty, nutrition and health outcomes.<sup>27</sup>
- 4.27 The Committee believes it is necessary to qualify this statement as, in accordance with the requirements in the Agreement, Australia will be providing funding, not expertise, to the Fund. Member states will only benefit to the extent that Australian experts and organisations may now be used by the Fund in implementing its programmes.<sup>28</sup>

## Implementation

- 4.28 The original domestic legislation which implemented the Agreement was the *International Fund for Agricultural Development Act 1977 (Cth)* (the 1977 Act). This was not repealed subsequent to Australia's withdrawal from the Agreement.<sup>29</sup>
- 4.29 If Australia accedes to the Agreement, relatively minor changes to the 1977 Act will need to be made. Specifically, the amending legislation will need to reflect the version of the Agreement to which Australia would be acceding, including all amendments to the Agreement that have taken effect since its entry into force generally on 30 November 1977.<sup>30</sup>
- 4.30 The requisite privileges and immunities are contained in the *International Organisations (Privileges and Immunities) Act 1963 (Cth)* and the *Specialized Agencies (Privileges and Immunities) Regulations 1986 (Cth)*. These

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26 NIA. para. 10.

27 NIA, para. 7.

28 Under the terms of the Agreement, Australians were prevented from working for the Fund while Australia was not a member state.

29 NIA. para. 26.

30 NIA. para. 27.

instruments were also not repealed subsequent to Australia's denunciation and withdrawal of the Agreement.<sup>31</sup>

## Costs

- 4.31 The resources of the Fund consist of initial contributions, additional contributions, special contributions from non-member States and from other sources and funds derived from operations or otherwise accruing to the Fund.<sup>32</sup>
- 4.32 Australia would be required to make an initial contribution to the resources of the Fund consisting of an amount agreed between it and the Governing Council at the time of the approval of its membership.<sup>33</sup> Australia's proposed initial financial contribution is \$120 million.<sup>34</sup>
- 4.33 In order to assure continuity in the Fund's operations, the Governing Council is required to periodically review – at intervals it considers appropriate – the adequacy of the resources available to the Fund. If, as a result of such a review, the Governing Council deems it necessary or desirable, it may invite Members to make additional contributions to the Fund's resources. Decisions under this section are taken by a two-thirds majority of the total number of votes of the Governing Council.<sup>35</sup>
- 4.34 At any time the Governing Council may authorize a Member to increase its contributions.<sup>36</sup> Contributions are made without restriction as to use and can only be refunded upon the termination of the Fund and following the discharge of liabilities to creditors.<sup>37</sup>
- 4.35 Witnesses for AusAID also implied during the public hearing on 13 August 2012 that Australia will be in a position to influence how its contribution to the Fund will be spent:

Once we conclude the accession process, once we are admitted formally as members and once we sit down with IFAD management and other donors to start negotiating how the money will be spent – that is, in response to Australia coming back and

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31 NIA, para. 28.

32 NIA, para. 13.

33 NIA, para. 14.

34 Paul Wojciechowski, Assistant Director General, Multilateral Policy and Partnerships Branch, Australian Agency for International Development, *Committee Hansard*, 13 August 2012, p. 15.

35 NIA, para. 15.

36 NIA, para. 16.

37 NIA, para. 17.

becoming a strong donor – we will insist on ongoing improvements to the efficiency and effectiveness of the organisation. We are likely to insist, for example, on quite a large management say on the executive council. It is not simply a case of signing off a cheque: it really is a negotiation in terms of successful replenishment, meaning a certain outcome to donors not only in food security and reduction of poverty but also in how the organisation functions, how it aligns with the priorities of the Australian aid program and how it aligns with priorities of other organisations to make sure that those organisations do not step on each other's toes.<sup>38</sup>

- 4.36 By way of clarification, the Committee notes that any such influence will be informal, as the Executive Board will exercise the authority to determine where Australia's contributions are spent.<sup>39</sup>
- 4.37 It is worth noting that AusAID expects that Australia will become a member of the Executive Board, and will thus be in a position to influence the Fund's spending priorities.<sup>40</sup> Certainly, Australia's proposed initial financial contribution of \$120 million<sup>41</sup> will make Australia one of the largest contributors to the Fund, and should have a significant impact on Australia's campaign to be elected to the Executive Board.
- 4.38 Finally, the Committee notes that, although this has not been mentioned in the NIA, the circumstances of Australia's denunciation and renewed application for membership means that, if Australia is accepted back as a member the Fund, Australia will have paid its initial financial contribution twice: in 1977 and 2012.

## Conclusion

- 4.39 The International Fund for Agricultural Development faces a significant, possibly insurmountable, challenge if it is to achieve its stated objective. The situation in relation to food affordability was summarised by an AusAID witness as follows:

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38 Paul Wojciechowski, Assistant Director General, Multilateral Policy and Partnerships Branch, Australian Agency for International Development, *Committee Hansard*, 13 August 2012, p. 15.

39 See for example NIA. para. 8.

40 Rebecca Bryant, Assistant Director General, Food Security, Infrastructure, Mining and Trade Branch, Australian Agency for International Development, *Committee Hansard*, 13 August 2012, p. 16.

41 Paul Wojciechowski, Assistant Director General, Multilateral Policy and Partnerships Branch, Australian Agency for International Development, *Committee Hansard*, 13 August 2012, p. 15.

I think it is incorrect to say that we have not made any inroads since 2008-09 when we experienced one of the worst food price crisis that we can recall. We had over one billion people suffering from hunger, but it is now around 850 million. So in the last four years we have seen a fall in the number of hungry people and some progress made towards [Millennium Development Goal 1]<sup>42</sup>, which sets a target of reducing hunger by 50 per cent by 2015. It is true that food prices continue to be volatile.<sup>43</sup>

4.40 In fact, food prices have risen six per cent since February this year.<sup>44</sup>

4.41 AusAID witnesses identified two factors contributing to the continued volatility of food prices:

- the increasing size of the middle class across the globe. The middle-class is consuming more and different food to the poor, affecting the cost and availability of food in lower income brackets;<sup>45</sup> and
- the use to which arable land is being put. Africa has significant quantities of arable land that is not being used to grow food.<sup>46</sup>

4.42 With crop failures in the United States and Russia during the northern summer due to record high temperatures and drought, the price of food is already on the rise again. The Fund has noted predictions that events of this sort will increase due to the influence of climate change.<sup>47</sup>

4.43 Organisations like the Fund are likely to be needed more than ever in the years to come. The Committee supports Australia's accession to the Agreement.

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42 The Millennium Development Goals were commissioned by the United Nations Secretary-General in 2002 to develop a concrete action plan for the world to reverse the grinding poverty, hunger and disease affecting billions of people. Millennium Development Goal 1 is the eradication of extreme poverty and hunger.

43 Rebecca Bryant, Assistant Director General, Food Security, Infrastructure, Mining and Trade Branch, Australian Agency for International Development, *Committee Hansard*, 13 August 2012, p. 14.

44 Rebecca Bryant, Assistant Director General, Food Security, Infrastructure, Mining and Trade Branch, Australian Agency for International Development, *Committee Hansard*, 13 August 2012, p. 14.

45 Rebecca Bryant, Assistant Director General, Food Security, Infrastructure, Mining and Trade Branch, Australian Agency for International Development, *Committee Hansard*, 13 August 2012, p. 14.

46 Bob Quiggin, Director, Food Security Policy Section, Infrastructure, Mining and Trade Branch, Australian Agency for International Development, *Committee Hansard*, 13 August 2012, p. 14.

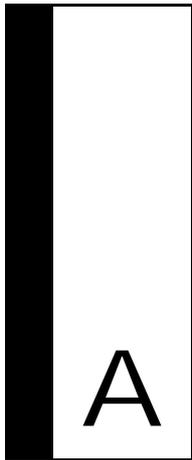
47 International Fund for Agricultural Development, 2007, *IFAD – a key Player in Adapting to Climate Change*.

**Recommendation 4**

**The Committee supports the *Agreement Establishing the International Fund for Agricultural Development (Rome, 13 June 1976)* and recommends that binding treaty action be taken.**

**Kelvin Thomson MP**

**Chair**



## Appendix A – Witnesses

**Monday, 13 August 2012 - Canberra**

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

Ms Rebecca Bryant, Assistant Director General, Food Security,  
Infrastructure, Mining and Trade Branch

Mr Kevin Playford, Director, Development Banks Section, Multilateral  
Policy and Partnership Branch

Mr Bob Quiggin, Director, Food Security Policy Section, Food Security,  
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Mr Paul Wojciechowski, Assistant Director General, Multilateral Policy  
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### **Australian Taxation Office**

Mr Neil Cossins, Director, Transparency Practice, Large Business and  
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Miss Anna Cyran, Exchange of Information Officer, Transparency  
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### **Department of Defence**

Colonel Duncan Hayward, Director Army International Engagement,  
Army Operations, Deputy Chief of Army Division, Army Headquarters

Mr Martin Kennedy, Acting Director-General, South East Asia Branch,  
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Colonel Kevin Packham, Director of Operations and Training Area  
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Colonel Peter Steel, Director Exercise Planning, Joint Exercises and  
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Commandant of the Army Aviation Centre, Oakey)

Ms Emmanette Viney, Legal Officer, Directorate of International Government Agreements and Arrangements, Australian Defence Force Legal Service, Defence Legal

**Department of Foreign Affairs and Trade**

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

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Mr Aaron Bennett, Analyst, International Tax Treaties Unit, International Tax and Treaties Division

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