
The Parliament of the Commonwealth of Australia

Report 67

Treaties tabled on 21 June 2005

Agreement on Social Security between the Government of Australia and the Government of Ireland

Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America to amend and extend the Agreement concerning the conduct of scientific balloon flights for civil research purposes

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Canberra

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Membership of the Committee

| | | |
|--------------|---|--|
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| Deputy Chair | Mr Kim Wilkie (MP) | |
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| | |
|-------------------------|------------------|
| Secretary | Gillian Gould |
| Inquiry Secretary | Stephanie Mikac |
| Research Officers | Serica Mackay |
| Administrative Officers | Heidi Lushtinetz |



Terms of reference

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

| | |
|-------|--|
| ADFA | Australian Defence Force Academy |
| CASA | Civil Aviation Safety Authority |
| CSIRO | Commonwealth Scientific Industrial Research Organisation |
| Cth | Commonwealth |
| DSP | Disability Support Pension |
| NIA | National Interest Analysis |
| NASA | National Aeronautics and Space Administration |
| UK | United Kingdom of Great Britain and Northern Ireland |



List of recommendations

2 Agreement on social security between the Government of Australia and the Government of Ireland

Recommendation 1

The Committee supports the *Agreement on social security between the Government of Australia and the Government of Ireland* (Dublin, 9 June 2005) and recommends that binding treaty action be taken.

3 Exchange of Notes constituting an Agreement between Australia and United States of America to amend and extend the Agreement concerning the conduct of scientific balloon flights for civil research purposes

Recommendation 2

The Committee supports the *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America to amend and extend the Agreement concerning the conduct of scientific balloon flights for civil research purposes* 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 two proposed treaty actions tabled in Parliament on 21 June 2005.¹ These treaty actions are:
- *Agreement on Social Security between the Government of Australia and the Government of Ireland (Dublin, 9 June 2005)*
 - *Exchange of notes constituting an Agreement between the Government of Australia and the Government of the United States of America to amend and extend the Agreement concerning the conduct of scientific balloon flights for civil research purposes*

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/21june2005/tor.htm

¹ *House of Representatives Votes and Proceedings*, 21 June 2005, pp. 449-450; *Senate Journal*, 21 June 2005, p. 765.

- 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 and Chief Ministers 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 16 August 2005. A list of witnesses who appeared before the Committee at the 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/21june2005/hearings.htm

² The Committee's review of the proposed treaty actions was advertised in *The Australian* on 29 June 2005. 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.

Agreement on social security between the Government of Australia and the Government of Ireland

Introduction

- 2.1 The *Agreement on social security between the Government of Australia and the Government of Ireland*¹ (the Agreement), when entered into force, will replace the existing agreement that entered into force in 1992.²
- 2.2 The Agreement is part of a network of bilateral social security agreements that Australia has with other countries³ and is the last social security agreement to be revised.⁴ The Agreement provides for access to certain Australian and Irish social security benefits and portability of these benefits between the countries.⁵

1 Bilateral social security agreements with the following countries have also been revised to incorporate similar changes: Austria, Canada, Malta, the Netherlands, Portugal and Spain; NIA, para. 15.

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

3 Australia has similar bilateral social security agreements in place with: Austria, Canada, Chile, Croatia, Cyprus, Denmark, Germany, Ireland, Italy, the Netherlands, New Zealand, Portugal, Slovenia, Spain and the United States of America; NIA, para. 9.

4 Mr Peter Hutchinson, *Transcript of Evidence*, 16 August 2005, p. 2.

5 NIA, para. 7.

- 2.3 Australia's social security partners pay approximately \$540 million per annum in pensions into Australia and Australia pays approximately \$194 million per annum in pensions into other countries.⁶

Features of the Agreement

- 2.4 The proposed Agreement makes a number of changes to the existing agreement. These changes are:
- the Disability Support Pension (DSP) is restricted to people who are considered to be severely disabled, that is people assessed as having no capacity to work or no prospects for rehabilitation within two years of being granted a DSP
 - the rate of benefit will remain the same for the first 26 weeks for temporary visitors to Australia. When a person departs Australia, on a temporary basis, the rate of benefit will remain the same for the first 26 weeks of their absence
 - double coverage provisions have been included to ensure that employers in both countries do not make two superannuation contributions for an employee working in either country temporarily.⁷
- 2.5 The first change brings the Agreement into line with Australia's other revised bilateral social security agreements. Existing DSPs will not be affected by the changed provision. Other changes are intended to reduce the incidence of overpayments to pensioners who undertake temporary visits between Australia and Ireland.⁸
- 2.6 The Agreement provides for shared responsibility in the provision of benefits between the Parties and also allows people to lodge claims from either Australia or Ireland. The Agreement will overcome restrictions on portability of payments between Australia and Ireland and provide for mutual administrative assistance to determine entitlements for recipients.⁹ The Agreement also allows for the

6 Mr Peter Hutchinson, *Transcript of Evidence*, 16 August 2005, p. 2.

7 NIA, paras 13-14.

8 NIA, paras 9 and 12.

9 NIA, para. 7; Mr Peter Hutchinson, *Transcript of Evidence*, 16 August 2005, p. 2.

recognition of periods of working life residence in both countries in determining a claimant's benefits.¹⁰

- 2.7 For Australia, the Agreement will cover the social security legislation relating to the age pension, disability support pension for severely disabled persons, pension payable for widowed persons, and the law relating to the superannuation guarantee.¹¹
- 2.8 For Ireland, the Agreement will include coverage of legislation relating to the old age (contributory) pension, retirement pension, widow and widower (contributory) pensions, invalidity pension, orphan's (contributory) allowance, bereavement grant and the liability for the payment of employment and self employment contributions.¹²
- 2.9 The existing agreement provides for benefits for approximately 588 former Irish residents now residing in Australia and over 200 former Australian residents now residing in Ireland. This equates to approximately \$1.4 million per annum in pensions paid into Australia from Ireland and \$1.1 million in pensions paid into Ireland from Australia.¹³ The majority of people that will benefit from the Agreement are pensioners.¹⁴

Implementation and costs

- 2.10 The Agreement will be implemented, pursuant to sections 8 and 25 of the *Social Security (International Agreements) Act 1999 (Cth)* (the Act). The Act will be amended to include the schedule containing the text of the Agreement.¹⁵

10 NIA, paras 7 and 12.

11 NIA, para. 17; Mr Peter Hutchinson, *Transcript of Evidence*, 16 August 2005, p. 2.

12 NIA, para. 17.

13 Mr Peter Hutchinson, *Transcript of Evidence*, 16 August 2005, p. 2.

14 NIA, para. 8.

15 NIA, para. 39.

- 2.11 The Agreement will provide administrative savings of \$0.24 million. Associated departmental administrative costs will be absorbed.¹⁶ Savings are expected to result from fewer claims for severely disabled pensions over a number of years, once the Agreement enters into force.¹⁷

Consultation

- 2.12 Consultation about the Agreement was conducted throughout Australia with Australian-Irish community groups, relevant community welfare organisations and State and Territory Governments. The Committee understands that no issues were raised by the groups consulted in relation to the Agreement.¹⁸

Entry into force and withdrawal

- 2.13 The date scheduled for entry into force of the Agreement is 1 January 2006.¹⁹ The Agreement may be terminated by either Party with twelve months notice, through the exchange of diplomatic notes. In the case of termination of the Agreement, benefit recipients and approved claimants will preserve their right to receive benefits. The double coverage provisions will also be preserved.²⁰

Future bilateral social security agreements

- 2.14 The Australian Government is currently negotiating a number of bilateral social security agreements with other countries. These countries include Norway, Switzerland, Japan and Korea. Preliminary discussions have also occurred or are taking place with Greece, Hungary, Latvia and Sweden.²¹

16 NIA, para. 40.

17 Mr Peter Hutchinson, *Transcript of Evidence*, 16 August 2005, p. 3.

18 NIA, Consultation Annex.

19 NIA, para. 3; Mr Peter Hutchinson, *Transcript of Evidence*, 16 August 2005, p. 3.

20 NIA, para. 44.

21 Mr Peter Hutchinson, *Transcript of Evidence*, 16 August 2005, p. 5.

2.15 The Committee was informed that there has been no social security agreement with the United Kingdom (UK)²² since the previous agreement was terminated in 2001. Mr Hutchinson from the Department of Family and Community Services informed the Committee that:

We do not have an agreement with the UK, and that is because the UK refuses to renegotiate the agreement to include indexed UK pensions to Australia.²³

Conclusion and recommendation

- 2.16 The Committee acknowledges that the Agreement will bring the bilateral social security agreement with Ireland into line with Australian Government policy on disability support pensions.
- 2.17 The Committee believes that the proposed Agreement will contribute to strengthening bilateral relations with Ireland and continue to provide choice of retirement destination for people from both countries.
- 2.18 The Committee welcomes the Australian Government's discussions and negotiations with other potential social security bilateral partner countries.

Recommendation 1

The Committee supports the *Agreement on social security between the Government of Australia and the Government of Ireland* (Dublin, 9 June 2005) and recommends that binding treaty action be taken.

22 Please note the long title is: United Kingdom of Great Britain and Northern Ireland.

23 Mr Peter Hutchinson, *Transcript of Evidence*, 16 August 2005, p. 5.

Exchange of Notes constituting an Agreement between Australia and United States of America to amend and extend the Agreement concerning the conduct of scientific balloon flights for civil research purposes

Introduction

- 3.1 The *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America to amend and extend the Agreement concerning the conduct of scientific balloon flights for civil research purposes* (the Agreement) will allow for the continued cooperation between Australia and the United States on scientific balloon flights.¹

¹ National Interest Analysis (NIA), para. 6.

Background

- 3.2 The Agreement amends and extends a predecessor agreement between Australia and the United States on the same subject.² Since the expiration of the predecessor agreement in 2002, balloon flights have continued under a non-legally binding arrangement between the Commonwealth Scientific and Industrial Research Organisation (CSIRO) and the National Aeronautics and Space Administration (NASA).
- 3.3 In practice, the National Scientific Balloon Facility (a NASA facility managed by the Physical Science Lab of New Mexico State University) uses the Alice Springs Balloon Launching Station.³ The School of Physics, Environmental and Mathematical Sciences at the University of New South Wales, Australian Defence Force Academy (ADFA) campus, is responsible for overseeing all operations at the Balloon Launching Station.⁴
- 3.4 On launching a scientific balloon, it is partially filled with helium and released with the payload suspended beneath it.⁵ As the balloon rises, the helium expands and fills out the balloon until it reaches its float altitude. When inflated, some balloons can be approximately the same size as the Melbourne Cricket Ground.⁶ The float altitude is about 40 kilometres, which takes the balloon above 99.5 per cent of the Earth's atmosphere.⁷
- 3.5 Over 100 flights have been conducted from the Alice Springs Balloon Launching Station.⁸ Scientific findings of balloon launches from Alice Springs include the first gamma ray emission from a spinning neutron star, the discovery of a gamma ray annihilation line from a black hole at the galactic centre, observations of the supernova star

2 *Exchange of Notes Constituting an Agreement between the Government of Australia and the Government of the United States concerning the Conduct of Scientific Balloon Flights* [1992] ATS 26. Entered into force 19 June 1992 and terminated 19 June 2002.

3 National Scientific Balloon Facility: <<http://www.nsbfnasa.gov/>>

4 Alice Springs Balloon Launching Station: <<http://www.ph.adfa.edu.au/balloons/nasansbf.html>>

5 The payload contains the instruments to record the information as well as the command and control mechanism for the balloon.

6 Associate Professor Ravi Sood, *Transcript of Evidence*, 16 August 2005, p. 9.

7 Mr John Dunn, *Transcript of Evidence*, 16 August 2005, p. 9.

8 Mr John Dunn, *Transcript of Evidence*, 16 August 2005, p. 8.

which exploded in 1987 which have not been repeated since and high resolution images of the galactic centre.⁹

Features of the Agreement

3.6 Key features of the Agreement include:

- the Government of the US agrees to coordinate any necessary support activities with other countries and to comply with the relevant provisions of Article 8 of the Convention on International Civil Aviation (Article 2)
- civil law claims cannot be brought by either Party against each other for the injury, death or damage resulting from activities under the Agreement, except where it is caused by wilful misconduct. Criminal proceedings can still be brought (Article 5)
- the Government of the United States will be responsible for and pay compensation for meritorious third party claims relating, for example, to personal injury or property damage resulting from activities carried out on behalf of the Government of the United States under the Agreement (Article 6)
- the Parties are only obliged to transfer such data and goods as are necessary to fulfil their respective responsibilities under the Agreement (Article 9). Such data and goods are to be used exclusively for the purposes of the Agreement (Article 9(4))
- all activities carried out under the Agreement by both Parties must be in accordance with their national laws, including those relevant to export controls and the transfer of classified information (Article 9(1))
- technical data with respect to operational matters under the Agreement and data relating to the safe conduct of the program will be made available without restriction, unless contrary to the Parties' national laws (Article 9(2))

⁹ Associate Professor Ravi Sood, *Transcript of Evidence*, 16 August 2005, pp. 9-10.

- the Government of the US retains title to equipment, materials, supplies and other movable property provided by or acquired in Australia at its own expense, for the purposes of this Agreement (Article 10). Movable property provided by or purchased in Australia under the Agreement can only be disposed of within Australia, with the permission of CSIRO (Article 10)
- the dispute resolution clause refers matters of disputes to program managers in the cooperating agencies at first instance and then to the Parties at second instance (Article 16).

3.7 The Committee heard evidence on the safety mechanisms used in bringing down scientific balloons. Given that payloads often weigh between two and three tonnes, the Committee was reassured to hear that the Civil Aviation Safety Authority (CASA) requires there be alternative methods for bringing down the payload:¹⁰

Normally, there is a radio command. If that fails, there is a pressure command, so if the balloon starts to come down into the airplanes then it automatically terminates. Then there is a timer command. If I say that my balloon needs to be up there for three days for scientific purposes, at the end of the three days a timer on it will automatically go off and terminate the flight. The probability of all three failing is remote.¹¹

3.8 The Balloon Launching Station's location in the Southern Hemisphere is advantageous for viewing the centre of the galaxy and other scientifically valuable objects which are not accessible from the Northern Hemisphere.¹²

3.9 For this reason, experiments conducted from Alice Springs are in astronomy and astrophysics, as well as atmospheric physics and cosmic ray experiments that relate to astrophysics.¹³ The Committee was informed that the experiments were purely scientific in nature and that no weaponry was tested under the Agreement. Each payload experiment is assessed by the Department of Defence and the Department of Foreign Affairs and Trade before approval is given to NASA to conduct that campaign.¹⁴

10 Civil Aviation Safety Regulations 1998, Part 101.185. Available from <<http://www.casa.gov.au/rules/1998casr/101/index.htm>>

11 Associate Professor Ravi Sood, *Transcript of Evidence*, 16 August 2005, p. 12.

12 Associate Professor Ravi Sood, *Transcript of Evidence*, 16 August 2005, p. 11.

13 Associate Professor Ravi Sood, *Transcript of Evidence*, 16 August 2005, p. 11.

14 Mr John Dunn, *Transcript of Evidence*, 16 August 2005, pp. 12-13.

3.10 Leading up to campaigns, the Australian and American teams will work together and share information required in preparation for the launch. During campaigns, the Australian team facilitates and supports the launch. A member of the Australian team will be in attendance for the entire campaign period. Where there is doubt as to whether the launch should take place, it is the responsibility of the Australian member to make the final decision.¹⁵

3.11 Other factors influencing the decision to launch a balloon include the time of year and the weather. The Committee was informed that the time of year the balloon is launched will depend on the type of experiment.¹⁶ For instance, an experiment which lasts for two to three days and requires the balloon to stay in the same position will be launched in 'turnaround time'. Professor Sood of the University of New South Wales explained that:

During six months of the year the winds are blowing very hard easterlies and for the other six months they are blowing very hard westerlies. So twice a year they change around and there is a period of about four weeks when the winds are extremely light. If you want an exposure time of, say, two to three days, that is the time do it - in April and October.¹⁷

3.12 The Committee heard evidence that the best time of the year to launch ultra long duration balloons is December-January because of the strong winds blowing towards the west.¹⁸ As strong winds will tend to keep the same latitude, when a balloon is launched into it, the balloon will also keep that latitude. This makes recovery of the balloon easier, as it returns to Alice Spring usually within 100 kilometres of its original launching point, after having gone around the world.¹⁹

15 Mr John Dunn, *Transcript of Evidence*, 16 August 2005, p. 14.

16 Associate Professor Ravi Sood, *Transcript of Evidence*, 16 August 2005, p. 13.

17 Associate Professor Ravi Sood, *Transcript of Evidence*, 16 August 2005, p. 14.

18 Associate Professor Ravi Sood, *Transcript of Evidence*, 16 August 2005, p. 14.

19 Associate Professor Ravi Sood, *Transcript of Evidence*, 16 August 2005, p. 14.

Implementation and costs

- 3.13 No new legislation is required to give effect to the terms of the Agreement.²⁰
- 3.14 The Agreement is not expected to give rise to any additional costs.²¹

Consultation

- 3.15 The NIA advises that State, Territory and most Federal Government Ministers²² were advised of the proposed extension of the Agreement.
- 3.16 The NIA further advises that the Minister for Transport and Regional Services noted that CSIRO and NASA need to comply with CASA's Safety Regulation, part 101 and in particular, Subpart E which covers the requirements for operations of this nature in Australian airspace. The NIA notes that both NASA and CSIRO are aware of these regulations and will ensure that they are adhered to when conducting the experiments in association with the balloon flights.²³
- 3.17 The Commonwealth Treasury recommended minor changes to Article 14 to ensure consistency with a taxation agreement between Australia and the United States.²⁴ These changes were incorporated into the Agreement.

Entry into force

- 3.18 Under Article 18, the Agreement will enter into force following the exchange of notes between the Government of Australia and the Government of the United States.²⁵

20 NIA, para. 3.

21 NIA, para. 18.

22 Federal Government Ministers consulted: The Treasurer; the Attorney-General, Foreign Affairs; Transport and Regional Services; Industry, Tourism and Resources; Immigration, Multicultural and Indigenous Affairs; Communications, Information Technology and the Arts; Defence; Agriculture, Fisheries and Forestry; Environment and Heritage; and Justice and Customs.

23 NIA, Consultation Annex, para. 3.

24 NIA, Consultation Annex, para. 5.

25 NIA, para. 3.

3.19 Representatives from the Department of Education, Science and Training informed the Committee that the provisional application of the Agreement before its entry into force, foreshadowed in paragraphs 4 and 5 of the NIA, would no longer be required.²⁶ This is a result of the postponement of NASA's next campaign from December 2005 to the second half of 2006.²⁷

Conclusion and recommendation

3.20 The Committee recognises the value of the Agreement as a continuation of longstanding cooperation between Australia and the United States in the operation of scientific balloon flights. The Committee further recognises the value of such cooperative arrangements to Australia's scientific community and welcomes any further collaboration in this area.

Recommendation 2

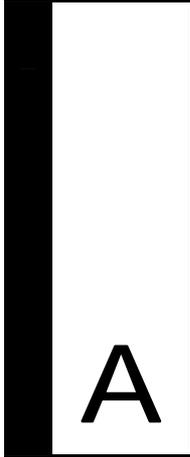
The Committee supports the *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America to amend and extend the Agreement concerning the conduct of scientific balloon flights for civil research purposes* and recommends that binding treaty action be taken.

Dr Andrew Southcott MP

Committee Chair

²⁶ Ms Sara Cowan, *Transcript of Evidence*, 16 August 2005, pp. 7-8.

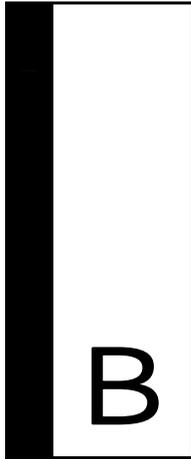
²⁷ Ms Sara Cowan, *Transcript of Evidence*, 16 August 2005, p. 8.



Appendix A - Submissions

Treaties tabled on 21 June 2005

- 1 NSW Government
- 2 Government of Western Australia
- 3 Queensland Government
- 4 ACT Government
- 5 Legislative Council, Tasmania



Appendix B - Witnesses

Tuesday, 16 August 2005 - Canberra

Attorney-General's Department

Ms Susan Downing, Acting Principal Legal Officer, International Trade Law and General Advising Branch

Australian Government Department of Education, Science and Training

Mrs Jessica Hall, Acting Director, International Science and Training Relations Section, International Science Branch, Science Group

Ms Sara Cowan, Branch Manager, International Science Branch, Science Group

Commonwealth Scientific and Industrial Research Organisation (CSIRO)

Mr John Dunn, Director, NASA Administration and Finance, Industrial Physics Division

Department of Family and Community Services

Mr Peter Anthony Hutchinson, Director, Agreements Section, International Branch

Mrs Peta Anne Murray, Assistant Director, Agreements Section, International Branch

Department of Foreign Affairs and Trade

Mr Michael Jonathan Thwaites, Executive Director, Treaties Secretariat

Mr Michael Bliss, Director, International Law and Transnational Crime Section, Legal Branch

Mr Henry Fox, Director, Western Europe Section

Ms Jeannie Henderson, Director, United States and Canada Section, Americas Branch, Americas and Europe Division

Department of the Treasury

Mr Nigel Murray, Manager, Superannuation, Retirement and Savings Division

University of New South Wales

Associate Professor Ravi Sood, Associate Professor in Physics and Station Director, Balloon Launching Station, Alice Springs