

Report 125

Treaties tabled on 7 and 28 February 2012

Resolution MEPC.193(61): (Revised MARPOL Annex III: Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form) Adopted at London on 1 October 2010

Amendments to Appendices I and II to the Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979) done at Bergen on 25 November 2011

Agreement between Australia and the European Union Amending the Agreement on Mutual Recognition in relation to Conformity Assessment (MRA), Certificates and Markings between the European Community and Australia done at Brussels on 23 February 2012

Convention providing a Uniform Law on the Form of an International Will done at Washington D.C. on 26 October 1973

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 18 December 2002

Amendments to the Agreement Establishing the European Bank for Reconstruction and Development, adopted at London on 30 September 2011

Amendment, adopted at Lima on 27 April 2012, to Annex 1 of the Agreement on the Conservation of Albatrosses and Petrels (ACAP) of 19 June 2001

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Membership of the Committee

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(until 14/3/12)

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Mr Jamie Briggs MP

Senator Scott Ludlam

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Senator the Hon Lisa Singh

Mr John Forrest MP

Senator Matthew Thistlethwaite

Ms Sharon Grierson MP

Senator Anne Urquhart

Mr Harry Jenkins MP
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Senator Dean Smith
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Ms Kirsten Livermore MP

Ms Melissa Parke MP

Ms Michelle Rowland MP
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Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report 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 **Resolution MEPC.193(61): (Revised MARPOL Annex III: Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form) Adopted at London on 1 October 2010**

Recommendation 1

The Committee supports the *Resolution MEPC.193(61): (Revised MARPOL Annex III: Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form) Adopted at London on 1 October 2010* and recommends that binding treaty action be taken.

- 3 **Amendments to Appendices I and II to the Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979) done at Bergen on 25 November 2011**

Recommendation 2

The Committee supports the *Amendments to Appendices I and II to the Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979) done at Bergen on 25 November 2011* and recommends that binding treaty action be taken.

4 Agreement between Australia and the European Union Amending the Agreement on Mutual Recognition in relation to Conformity Assessment (MRA), Certificates and Markings between the European Community and Australia done at Brussels on 23 February 2012

Recommendation 3

The Committee supports the *Agreement between Australia and the European Union Amending the Agreement on Mutual Recognition in relation to Conformity Assessment (MRA), Certificates and Markings between the European Community and Australia done at Brussels on 23 February 2012* and recommends that binding treaty action be taken.

5 Convention providing a Uniform Law on the Form of an International Will done at Washington D.C. on 26 October 1973

Recommendation 4

The Committee supports the *Convention providing a Uniform Law on the Form of an International Will done at Washington D.C. on 26 October 1973* and recommends that binding treaty action be taken.

6 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 18 December 2002

Recommendation 5

That the Australian Government work with the states and territories to implement a national preventive mechanism fully compliant with the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 18 December 2002* as quickly as possible on ratification of the Optional Protocol and the exercise of Article 24 of that Protocol.

Recommendation 6

The Committee supports the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 18 December 2002* and recommends that binding treaty action be taken.

7 Amendments to the Agreement Establishing the European Bank for Reconstruction and Development, adopted at London on 30 September 2011

Recommendation 7

The Committee supports the *Amendments to the Agreement Establishing the European Bank for Reconstruction and Development, adopted at London on 30 September 2011* 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 7 and 28 February 2012.
- 1.2 These treaty actions are proposed for ratification and are examined in the order of tabling:
 - **Tabled 7 February 2012**
 - ⇒ *Resolution MEPC.193(61): (Revised MARPOL Annex III: Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form) Adopted at London on 1 October 2010; and*
 - ⇒ *Amendments to Appendices I and II to the Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979) done at Bergen on 25 November 2011.*
 - **Tabled 28 February 2012**
 - ⇒ *Agreement between Australia and the European Union Amending the Agreement on Mutual Recognition in relation to Conformity Assessment (MRA), Certificates and Markings between the European Community and Australia done at Brussels on 23 February 2012;*
 - ⇒ *Convention providing a Uniform Law on the Form of an International Will done at Washington D.C. on 26 October 1973;*
 - ⇒ *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 18 December 2002; and*

⇒ *Amendments to the Agreement Establishing the European Bank for Reconstruction and Development, adopted at London on 30 September 2011.*

■ **Minor Treaty Action**

⇒ *Amendment, adopted at Lima on 27 April 2012, to Annex 1 of the Agreement on the Conservation of Albatrosses and Petrels (ACAP) of 19 June 2001 that enters into force automatically on 26 July 2012.*

- 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:

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

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 were requested by Friday, 9 March 2012 for those treaties tabled 7 February 2012 and Friday, 30 March 2012 for those treaties tabled on 28 February 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 Submissions received and their authors are listed at Appendix A.
- 1.12 The Committee examined the witnesses on each treaty at public hearings held in Canberra on 7 May and 1 June 2012.
- 1.13 Transcripts of evidence from the public hearings may be obtained from the Committee Secretariat or accessed through the Committee's website under the treaty's tabling date, being:
- **7 February 2012**
http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/7february2012/hearings.htm
 - **28 February 2012**
http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/28february2012/hearings.htm
- 1.14 A list of witnesses who appeared at the public hearings is at Appendix B.

Resolution MEPC.193(61): (Revised MARPOL Annex III: Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form) Adopted at London on 1 October 2010

Introduction

- 2.1 On 7 February 2012, the *Resolution MEPC.193(61): (Revised MARPOL Annex III: Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form) Adopted at London on 1 October 2010* was tabled in the Commonwealth Parliament.

Background

- 2.2 The *International Convention for the Prevention of Pollution from Ships* (MARPOL) is one of the key international instruments addressing the problem of marine pollution from ships. MARPOL contains six technical annexes dealing with, respectively: oil; noxious liquid substances in bulk; harmful substances in packaged form; sewage; garbage; and air pollution.¹

¹ National Interest Analysis [2012] ATNIA 3 with attachment on consultation Resolution MEPC.193(61): *Amendments to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL) (Revised MARPOL Annex III: Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form) Adopted at London on 1 October 2010* [2011] ATNIF 31, (Hereafter referred to as 'NIA'), para 1.

- 2.3 The proposed treaty action is tacit acceptance of a revised version of Annex III of MARPOL adopted on 1 October 2010 by the Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) under cover of resolution MEPC.193(61). Annex III establishes Regulations for the prevention of pollution by harmful substances carried by sea. The revision is primarily to maintain consistency with the mandatory IMO International Maritime Dangerous Goods (IMDG) Code.² This code sets out the requirements for packing, marking, labelling, documentation, stowage, and quantity limitations that must be complied with in order to satisfy the Regulations in the revised Annex III and to strengthen port State control requirements.³
- 2.4 Witnesses before the Committee noted that incidents of pollution from harmful substances are 'relatively infrequent' and that 'chemical spills are relatively rare anywhere around the world, particularly large ones'.⁴ In practice:

What we are dealing with here, essentially, is the stowage and packaging of the chemicals on board so that if there is a leak from a particular container there is nothing stored next to it that can cause some sort of reaction and cause a problem. These regulations are about making sure that the different chemicals are segregated on board a ship so that if there is a leak it does not lead to a bigger problem.⁵

Overview and national interest summary

- 2.5 The carriage of harmful substances in packaged form potentially poses a major threat to the marine environment, and has the potential to damage vessels and harm human life. The revised Annex III will ensure that substances are carried in accordance with the latest international standards and will result in an enhanced port State control inspection

2 The International Maritime Dangerous Goods (IMDG) Code was developed as a uniform international code for the transport of dangerous goods by sea covering such matters as packing, container traffic and stowage, with particular reference to the segregation of incompatible substances. http://www.imo.org/blast/mainframe.asp?topic_id=158 accessed 11 April 2012.

3 NIA, para 2.

4 Mr Paul Nelson, Manager, Marine Environment Standards, Marine Environment Division, Australian Maritime Safety Authority, , *Committee Hansard*, 1 June 2012, p. 2.

5 Mr Paul Nelson, Manager, Marine Environment Standards, Marine Environment Division, Australian Maritime Safety Authority, , *Committee Hansard*, 1 June 2012, p. 2.

program which will ensure that operational requirements are complied with at the time of departure by ships from Australian ports.⁶

Reasons for Australia to take the proposed treaty action

- 2.6 Acceptance of the revised Annex III is consistent with Australia's long-standing support for protection of the marine environment and with Australia's active backing of and participation in meetings of the IMO.⁷
- 2.7 MARPOL affirms the Parties' desire to achieve the complete elimination of intentional marine pollution. The revised annex will help achieve this aim by providing greater protection for the marine environment that is vulnerable to pollution by accidental discharge of harmful substances in packaged form.⁸
- 2.8 In addition, acceptance of the revised Annex III is in accordance with Australia's general obligations as a Party to the *United Nations Convention on the Law of the Sea*, which provides for States to adopt generally accepted international rules and standards when implementing laws and regulations to prevent, reduce and control pollution of the marine environment from vessels (Article 211 of UNCLOS).⁹

Obligations

- 2.9 **Regulation 3** clarifies the requirement for durable labelling of harmful substances in packaged form to indicate that they are harmful by specifying that they must be marked or labelled in accordance with the IMDG Code. The method for affixing marks or labels must also be in accordance with the IMDG Code.¹⁰
- 2.10 **Regulation 4** requires documentation related to the carriage of harmful substances to be in accordance with the IMDG Code and revises the text relating to the requirements for a special list, stowage plan or manifest of harmful substances carried on a ship to be made available to the port State authority before a ship's departure.¹¹

6 NIA, para 4.

7 NIA, para 5.

8 NIA, para 6.

9 NIA, para 7.

10 NIA, para 8.

11 NIA, para 9.

- 2.11 **Regulation 8** clarifies the powers of authorised officers to inspect ships during port State control inspections with regard to the operational requirements of the revised Annex III. Under the revised Regulation, such powers are provided regardless of whether or not there are clear grounds for believing that the master or crew are not familiar with essential shipboard procedures. These amendments will have no impact on the number of ships the Australian Maritime Safety Authority (AMSA) inspects as part of its port State control inspection program. The only parties impacted will be the master or crew of a ship that is found not to be familiar with essential shipboard procedures. The existing power to detain such a ship is retained.¹²
- 2.12 **Appendix to the revised Annex III** (containing technical criteria for the identification of harmful substances) has been amended to include details of the degradability and chronic toxicity of substances for fish, crustaceans and algae and other aquatic plants.

Implementation

- 2.13 Minor amendments will be needed to the Marine Orders, Part 94 (Marine Pollution Prevention – Packaged Harmful Substances), to implement the proposed treaty action.¹³

Costs

- 2.14 The revised Annex III will not result in any increased costs or savings to the Australian Government or to the States and Territories.¹⁴

Conclusion

- 2.15 The Committee welcomes the adoption of these regulations. Members are reassured that:

The compliance with the segregation of chemicals on board is very high and there are normally few issues. It is not in anybody's interest to put chemicals side by side that might cause a problem on board the ship, because the safety of the crew as well as the

12 NIA, para 10.

13 NIA, para 14.

14 NIA, para 15.

environment are at issue. So there is very high compliance within the industry internationally on this type of thing.¹⁵

- 2.16 Notwithstanding this reassurance, the Committee notes that there is increasing shipping traffic in Australian waters, primarily as a result of the mining boom and offshore oil and gas exploration. The additional traffic will only increase the chances of accidents at sea involving harmful substances. While these regulations relate to only one aspect of shipboard cargo handling, their adoption will strengthen the efforts of the Australian Maritime Safety Authority to improve ship safety and prevent or reduce marine pollution in Australian waters and internationally.

Recommendation 1

The Committee supports the *Resolution MEPC.193(61): (Revised MARPOL Annex III: Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form) Adopted at London on 1 October 2010* and recommends that binding treaty action be taken.

15 Mr Paul Nelson, Manager, Marine Environment Standards, Marine Environment Division, Australian Maritime Safety Authority, , *Committee Hansard*, 1 June 2012, p. 2.

Amendments to Appendices I and II to the Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979) done at Bergen on 25 November 2011

Background

- 3.1 The proposed treaty action amends Appendices I and II to the *Convention on the Conservation of Migratory Species of Wild Animals* (the Convention), done at Bonn on 23 June 1979. The proposed amendments were adopted by the 10th Conference of the Parties to the Convention, held in Bergen, Norway, from 20 – 25 November 2011.
- 3.2 The Convention includes two appendices listing the species to which the Convention provisions apply. Appendix I lists migratory species which are endangered and Appendix II lists migratory species which have an unfavourable conservation status.¹
- 3.3 The proposed amendments that are the subject of this treaty action list five additional species of migratory animals in Appendix I and three additional species in Appendix II.²

1 National Interest Analysis [2012] ATNIA 1 with attachment on consultation Amendments to Appendices I and II to the *Convention on the Conservation of Migratory Species of Wild Animals* (Bonn, 23 June 1979) done at Bergen on 25 November 2011 [2011] ATNIF 32, (Hereafter referred to as 'NIA'), para 1.

2 NIA, para 1.

Operation of the Convention

3.4 The Convention entered into force generally on 1 November 1983 and Australia has been a Party since 1 September 1991. The Convention seeks to conserve terrestrial, avian and marine species that migrate across or outside national jurisdictional boundaries. Parties to the Convention must protect migratory species listed on Appendices I and II that live within, or pass through, their jurisdiction.³

3.5 Article I of the Convention establishes two categories that define the conservation status of a migratory species: 'endangered' for a migratory species that is in danger of extinction throughout all or a significant proportion of the area of land or water that it inhabits (its range), and 'unfavourable conservation status' where the conditions set out in Article I for a 'favourable conservation status are not being met'.⁴

3.6 The Convention then goes on to place the following obligations on parties to the Convention:

- **Article II(1&2)** All parties to the Convention must acknowledge the importance of conserving migratory species and the need to take action to avoid migratory species becoming endangered.⁵
- **Article II(3)** The parties agree to promote, cooperate and support research relating to migratory species and endeavour to provide immediate protection for migratory species included in Appendix I. Parties shall also endeavour to conclude agreements for the conservation and management of individual migratory species listed in Appendix II.⁶
- **Article III (1, 4 & 5)** parties that are Range States for species listed in Appendix I are required to endeavour to take specific measures to conserve the species and its habitat, to prevent the adverse effects of activities that impede or prevent migration and, wherever possible, to prevent or minimise factors that endanger the species. The taking of Appendix I species is prohibited, subject to limited exceptions.⁷

A Range State is defined in Article I of the Convention as a State that exercises jurisdiction over any part of the range of a migratory species,

3 NIA, para 4.

4 NIA, para 5. See the full NIA for those conditions.

5 NIA, para 12.

6 NIA, para 12.

7 NIA, para 13.

or a State whose flag vessels take that migratory species outside national jurisdictional limits.⁸

- **Article IV (1 & 3):** This lists the obligations of parties in relation to species listed in Appendix II of the Convention. The principal obligation in relation to species included in Appendix II is that parties must endeavour to conclude agreements where these would benefit the species and give priority to those species having an unfavourable conservation status. **Article V** provides guidelines for such agreements.⁹

3.7 In addition to the obligations in the Convention:

- **Article XII(2):** The Convention does not affect the rights or obligations of any party deriving from any existing treaty or convention.¹⁰
- **Article XII(3):** The Convention does not affect the rights of parties to adopt stricter domestic measures concerning the conservation of any listed migratory species.¹¹

The Convention and Australia

3.8 Australia is a Range State for two of the species that are the subject of this treaty action: the giant manta ray and the eastern curlew.¹²

3.9 The giant manta ray (*Manta birostris*) is one of a small number of species of ray with a large, flat disk shape. In Australia's range, the giant manta ray is native to the oceans off Western Australia.¹³ This amendment to the Convention has listed the giant manta ray in both Appendix I and Appendix II of the Convention.¹⁴

3.10 The eastern curlew (*Numenius madagascariensis*) is a migratory wading bird that breeds in Siberia and migrates to Australia annually during the northern winter. In Australia, the eastern curlew's range is limited to

8 *Convention on the Conservation of Migratory Species of Wild Animals* (Bonn, 23 June 1979), Article I.

9 NIA, para 14.

10 NIA, para 15.

11 NIA, para 15.

12 NIA, para 3.

13 International Union for the Conservation of Nature and Natural Resources, *Manta birostris*, <http://www.iucnredlist.org/apps/redlist/details/198921/0>, accessed on 4 June 2012.

14 NIA, para 3.

coastal areas across the whole of Australia.¹⁵ This amendment to the Convention has listed the eastern curlew in Appendix I of the Convention.¹⁶

- 3.11 Domestically, species listed on Appendices I and II are protected under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). As 'migratory' species under the EPBC Act, it becomes an offence to kill, injure, take, trade, keep or move the species in Commonwealth waters. The EPBC Act specifies that the list of migratory species must include all species that are 'from time to time included in the Appendices to the Convention and for which Australia is a Range State under the Convention'. As a result of the listing of the giant manta ray on Appendices I and II to the Convention, the list of migratory species pursuant to section 209 of the EPBC Act needs to be amended to include this species. An amendment to the list of migratory species contained in the EPBC Act is an amendment of a legislative instrument.¹⁷
- 3.12 As a Range State, Australia must endeavour to take specific measures to conserve the giant manta ray species and habitat, to prevent the adverse effects of activities that impede or prevent migration, and, to the extent feasible and appropriate, to prevent or minimise factors that endanger the species.¹⁸
- 3.13 Australia must also cooperate in the development of multilateral conservation agreements where this will benefit the giant manta ray species listed. Australia is a signatory to the Memorandum of Understanding (MoU) on the Conservation of Migratory Sharks, which was developed under the Convention. Including the giant manta ray as part of that MoU may be considered by signatories in the future.¹⁹
- 3.14 All provisions of the EPBC Act relevant to 'listed migratory species', in particular Parts 3 and 13, will apply to both the giant manta ray and the eastern curlew once the list has been amended to include the giant manta ray. Currently, those Parts already apply to the eastern curlew.²⁰

15 International Union for the Conservation of Nature and Natural Resources, *Numenius madagascariensis*, <http://www.iucnredlist.org/apps/redlist/details/106003014/0>, accessed on 4 June 2012.

16 NIA, para 3.

17 NIA, para 18.

18 NIA, para 16.

19 NIA, para 17.

20 NIA, para 19.

- 3.15 The proposed amendments to the Appendices are not expected to impose any additional costs on Australia in terms of meeting its obligations under the Convention. Australia already has a strong protection and conservation management regime in place for migratory species included in Appendices I and II. The proposed amendments will not require any additional domestic management arrangements to be put in place for commercial and recreational fishing operations that may occasionally interact with the giant manta ray. Commercial fishers will be required to report any interactions that may occur with giant manta rays, as they are currently required to do for any listed migratory species.²¹
- 3.16 In early February 2012, the Minister for Sustainability, Environment, Water, Population and Communities, the Hon Tony Burke MP, wrote to the Committee noting that the amendments to the Appendices of the Convention relating to the eastern curlew and the giant manta ray would enter into force 90 days after the Conference of the Parties that adopted them concludes. As such, the amendments entered into force on 23 February 2012.²²
- 3.17 As the Minister acknowledged, the Australian parliamentary calendar precluded the Committee's consideration of the amendments before they came automatically into force. The Minister indicated, however, in the same correspondence that he would delay the concomitant amendments to the list of migratory species under the EPBC Act until the Committee had reviewed for itself the amendments to the Convention Appendices. The Committee notes the unfortunate timing of events but has reviewed the amendments to the Convention Appendices nonetheless.

Conclusion

- 3.18 The Committee concurs with the NIA's assertion that the proposed treaty action is in the national interest as Australia is committed to the international protection and conservation of migratory species and to the national protection of such species whilst they are located in, or pass through, areas within Australia's jurisdiction.²³

21 NIA, para 20.

22 Correspondence, Minister for Sustainability, Environment, Water, Population and Communities, the Hon Tony Burke, MP, to the Chair JSCOT, Mr Kelvin Thomson MP, dated 3 February 2012.

23 NIA, para 3.

- 3.19 The Committee welcomes advice from the Department of Sustainability, Environment, Water, Population and Communities that broad support has been provided by state and territory agencies, conservation organisations and commercial and recreational fishing stakeholders for the inclusion in the Convention Appendices of the eastern curlew (now to Appendix I) and giant manta ray (Appendix I and II).²⁴ This agreement was sought before Australia supported the listing of the endangered eastern curlew and the giant manta ray.
- 3.20 Australia has long been active in international agreements to protect endangered species. In addition to being a Party to the Convention, Australia helped establish the East Asian-Australasian Flyway Partnership and has entered bilateral agreements with Japan, China and South Korea to help protect migratory birds.²⁵ The challenge will be to protect endangered species in the territories or from the fishing fleets of those countries which are not parties to the Convention or other conservation agreements.

Recommendation 2

The Committee supports the Amendments to Appendices I and II to the *Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979)* done at Bergen on 25 November 2011 and recommends that binding treaty action be taken.

24 Mr Nigel Routh, Assistant Secretary, Marine Biodiversity Policy Branch, Marine Division, Department of Sustainability, Environment, Water, Population and Communities, *Committee Hansard*, 1 June 2012, p. 5.

25 Mr Nigel Routh, Assistant Secretary, Marine Biodiversity Policy Branch, Marine Division, Department of Sustainability, Environment, Water, Population and Communities, *Committee Hansard*, 1 June 2012, p. 6.

Agreement between Australia and the European Union Amending the Agreement on Mutual Recognition in relation to Conformity Assessment (MRA), Certificates and Markings between the European Community and Australia done at Brussels on 23 February 2012

Introduction

- 4.1 On 28 February 2012, the *Agreement between Australia and the European Union Amending the Agreement on Mutual Recognition in relation to Conformity Assessment (MRA), Certificates and Markings between the European Community and Australia done at Brussels on 23 February 2012* was tabled in the Commonwealth Parliament.

Background

- 4.2 The proposed treaty is to bring into force the Agreement between Australia and the European Union (EU) amending the Agreement on Mutual Recognition in relation to Conformity Assessment, Certificates and Markings between the European Community and Australia, done at Brussels on 23 February 2012 (the proposed Amending Agreement). The Agreement on Mutual Recognition in relation to Conformity Assessment, Certificates and Markings between the European Community and

Australia ('the MRA') was signed in Canberra on 24 June 1998 and entered into force on 1 January 1999.¹

Overview and national interest summary

- 4.3 The MRA's underlying principle is that Australia and the European Union recognise and accept the technical competence of each other's conformity assessment bodies (CABs) to test and certify specified products for compliance with the standards and regulatory requirements of the other Party.² The goal is to largely eliminate the need for duplicative testing or re-certification of traded goods.³ The MRA provides for the conformity assessment of products to be undertaken in the exporting Party rather than in the importing Party.⁴
- 4.4 The proposed amendments simplify the MRA's administrative arrangements, introduce greater flexibility, remove the rule of origin restriction from the MRA, accord less-than-treaty status to the Sectoral Annexes, and extend the role of the joint committee administering the agreement (the Joint Committee) to amend the Sectoral Annexes in response to regulatory and industry developments.⁵ The proposed amendments will also enable the timely maintenance of the sectoral annexes and allow Australian export businesses in the designated product areas, as well as CABs, to benefit more readily from the MRA's operation.⁶
- 4.5 The Department of Industry, Innovation, Science, Research and Tertiary Education provided further explanation:

The MRA does not require harmonisation of each party's technical regulations nor does it involve recognition of the standards that apply to the other party. The MRA's scope is limited to products which are subject to regulation by government authorities and they are outlined in sectoral annexes. The products covered by the

1 This includes 'European Community' being replaced by 'European Union' in the proposed Amending Agreement, as requested by the European Union.

2 National Interest Analysis [2012] ATNIA 7 with attachment on consultation Agreement between Australia and the European Union Amending the Agreement on Mutual Recognition in relation to Conformity Assessment, Certificates and Markings between the European Community and Australia, done at Brussels on 23 February 2012, (Hereafter referred to as 'NIA') para 3.

3 For a discussion of the advantages of consistent international standards, see: Egan, M, "Setting Standards: Strategic Advantages in International Trade" <bsr.london.edu/files/1293/1467-8616.00202.pdf > accessed 10 April 2012.

4 NIA, para 4.

5 NIA, para 5

6 NIA, para 6.

agreement include medicinal products to which good manufacturing practice requirements apply, medical devices, telecommunications terminal equipment, electromagnetic compatibility, pressure equipment, machinery, low-voltage electrical equipment and automotive products.⁷

- 4.6 This type of agreement is not unique. Australia currently has a similar agreement with Singapore. Within APEC there are also mutual recognition agreements in relation to electrical or electronic products as well as telecommunications equipment. Australia also has a higher-level agreement with New Zealand.⁸

Reasons for Australia to take the proposed treaty action

- 4.7 Since the MRA's entry into force in 1999, certain administrative aspects have proved unwieldy, particularly the requirement that Sectoral Annexes changes undergo the domestic treaty amendment process in both Parties. Many of the Sectoral Annexes are now out of date and do not reflect current Australian or EU requirements, particularly in terms of applicable technical and regulatory arrangements.⁹
- 4.8 Further, the inclusion of the rule of origin provision in Article 4 which specifies that the products covered by the MRA must originate in the Parties, has limited the opportunities for Australian manufacturers and testing bodies to utilise the MRA, and has potentially restricted where our businesses can source their inputs and the markets where Australian CABs can compete for conformity assessment work.¹⁰
- 4.9 It is likely that failure to remove the rule of origin provision and to streamline the administrative aspects of the MRA to enable the Joint Committee to maintain and update the Sectoral Annexes would result in the MRA remaining under-utilised as EU Directives and Australian legislation change over time.¹¹

7 Mr Brian Phillips, Manager, Standards and Conformance Policy Section, Trade and International Branch, Enterprise Connect Division, Department of Industry, Innovation, Science, Research and Tertiary Education, *Committee Hansard*, 7 May 2012, p. 1.

8 Mr Brian Phillips, Manager, Standards and Conformance Policy Section, Trade and International Branch, Enterprise Connect Division, Department of Industry, Innovation, Science, Research and Tertiary Education, *Committee Hansard*, 7 May 2012, p. 2.

9 NIA, para 7.

10 NIA, para 8.

11 NIA, para 9.

Removal of the Rule of Origin Restriction

- 4.10 The current rule of origin in Article 4 of the MRA limits the coverage of the MRA to products originating in the Parties according to non-preferential rules of origin. Products covered by the MRA include: medicinal products to which good manufacturing practice (GMP) requirements apply; medical devices; telecommunications equipment; those requiring electromagnetic compatibility; automotive products; pressure equipment; machinery; and low voltage equipment.¹²
- 4.11 The Amending Agreement will remove the rule of origin restriction of Article 4. However, the restriction in the Sectoral Annex on GMP Inspection and Batch Certification for medicinal products will be retained and a similar restriction inserted into the Sectoral Annex on Medical Devices. The retention of these restrictions will help protect the high quality assurance and safety requirements for high-risk medical products.¹³

Simplification of the MRA

- 4.12 The amendments are designed to simplify the MRA and make it more efficient. They include clarifying and extending the powers of the Joint Committee to include amending the Sectoral Annexes and according less-than-treaty status to the Sectoral Annexes to enable the Joint Committee to update these annexes in a timely manner.¹⁴
- 4.13 Bringing the proposed Amending Agreement into force would also assist in meeting expectations arising out of the less-than-treaty-status Australia-EU Partnership Framework, which was first established in October 2008 and which has as one of its action items the finalisation of the proposed Amending Agreement.¹⁵

Obligations

- 4.14 The proposed Amending Agreement does not significantly alter Australia's core obligations,¹⁶ but will affect the operation and scope of the

12 NIA, para 10.

13 NIA, para 11.

14 NIA, para 12.

15 NIA, para 13.

16 These obligations require Australian regulators in agreed product areas to accept attestations of conformity - including test reports, certificates and authorisations and, where appropriate, marks of conformity - issued in accordance with Australian requirements by specifically designated CABs in the EU.

MRA obligations as they relate to the Sectoral Annexes.¹⁷ The proposed amendments are set out in Article 1 of the proposed Amending Agreement. The key amendments are outlined below.¹⁸

Overarching Framework Agreement

Removal of the Rule of Origin Restriction

- 4.15 The proposed amendment to Article 4 removes the rule of origin restriction and replaces it with a more general 'Scope and Coverage' provision which states that the MRA shall apply to the conformity assessment of products specified in the statement of scope and coverage in each Sectoral Annex.¹⁹

Simplification of the MRA

- 4.16 Article 3(2)(c) has been removed and the Sectoral Annexes no longer require a CAB list. Both Parties will now retain and update their own lists (revised Article 9(1)).²⁰
- 4.17 Proposed amendments to Articles 6(1 & 2), which refer to the powers of the Parties' designating authorities, remove inconsistencies in the language between the two Articles and reflect the inclusion of processes in relation to the suspension of a CAB, previously outlined in Article 6(3) of the MRA which has now been removed.²¹
- 4.18 Article 8(6) is amended so that unless decided otherwise by the Joint Committee, the suspension of a CAB now occurs from the time its competence or compliance is challenged by a Party rather than when suspension has been agreed by the Joint Committee. The suspension runs from this time until either agreement has been reached in the Joint Committee or the challenging Party notifies the other Party and the Joint Committee that it is satisfied with the relevant CAB's competency.²²
- 4.19 Article 9 provides for the exchange of information between the Parties on the implementation of, or changes to, legislative, regulatory and administrative provisions identified in the Sectoral Annexes, as well as the imposition of urgent measures warranted to protect safety, health or the

17 NIA, para 14.

18 NIA, para 15.

19 NIA, para 16.

20 NIA, para 17.

21 NIA, para 18.

22 NIA, para 19.

environment. The proposed amendment expands Article 9(1) to ensure that the Parties maintain an accurate list of CABs. Proposed changes to Article 9(2) and the inclusion of a new Article 9(3) now more clearly reflect the Parties' existing obligations under the World Trade Organization Agreement on Technical Barriers to Trade to provide time to comment where a Party intends to make changes to the legislative, regulatory and administrative provisions relating to the MRA's subject matter.²³

4.20 Article 12 establishes the Joint Committee and provides for its powers and responsibilities. The proposed amendments expand the powers of the Joint Committee, granting it the ability to amend the Sectoral Annexes and to adopt new Sectoral Annexes in accordance with the MRA. The proposed amendments provide processes for the designation of a CAB by a Party and the procedure for objecting to a CAB designated by the other Party. It also gives the Joint Committee power to verify the technical competence of a contested CAB.²⁴

4.21 Amendments to Article 15(1) establish that the Sectoral Annexes have less-than-treaty status. Amendments to Articles 15(3 & 4) allow the Joint Committee to adopt new and amend existing Sectoral Annexes respectively. While the Sectoral Annexes do not have treaty status, changes to them will affect the MRA's scope.²⁵

Sectoral Annex on Medicinal Products GMP Inspection and Batch Certification

4.22 The proposed amendments to the 'Scope and Coverage' section of the Sectoral Annex on Medicinal Products GMP are mainly language changes to ensure consistency following the proposed amendments to the MRA. They do not provide for any new obligations.²⁶

4.23 Section II of this Sectoral Annex has been amended so that the Parties must now maintain their respective lists of official inspection services. Further, a Party may request that the other Party provide the latest lists of official inspection services and this request must be complied with within 30 days of the receipt of the request.²⁷

4.24 Paragraph 7 of Section III covers the ongoing exchange of information between authorities necessary for the ongoing mutual recognition of inspections. This has been amended to include the right of a Party to

23 NIA, para 20.

24 NIA, para 21.

25 NIA, para 22.

26 NIA, para 23.

27 NIA, para 24.

request additional specific information about the capability of official inspection services or their programs where significant changes to regulatory systems have occurred. This is to ensure that these services are sufficiently competent to carry out conformance assessment in accordance with the other Party's regulatory requirements.²⁸

- 4.25 Section IV provides that the Parties may be required to provide information to verify programs for the mutual recognition of inspections, for the entry of a new official inspection service or for significant changes to an existing official inspection service.²⁹

Sectoral Annex on Medical Devices

- 4.26 The 'Scope and Coverage' section of the Sectoral Annex on Medical Devices provides that it will apply to medical devices exported to Australia only if they are 'made in the EU'. As mentioned above, this is a more restrictive rule given the high risk nature of the products involved and will provide confidence that only EU bodies with quality assured and monitored manufacturing practices will fall within the MRA's scope.³⁰
- 4.27 Amendments to paragraph 1 of Section V updating and strengthening confidence-building measures help to ensure that CABs can demonstrate their experience in assessing conformance to Australian requirements. The confidence-building period will be reviewed after two years of the amended Sectoral Annex's operation.³¹
- 4.28 Paragraph 5 of Section V provides that the Sectoral Annex shall not constrain a Party from implementing measures necessary to protect public health and safety.³²

Implementation

- 4.29 No changes to Australian legislation are required by this agreement. State and Territory Governments are responsible for regulating the low voltage equipment, machinery and pressure equipment sectors covered by the MRA. The 1998 Inter-Governmental Cooperation Agreement (IGCA) between the Commonwealth and the States and Territories commits the

28 NIA, para 25.

29 NIA, para 26.

30 NIA, para 27.

31 NIA, para 28.

32 NIA, para 29.

States and Territories to the terms of the MRA. The proposed Amending Agreement does not affect the inter-governmental agreement.³³

Costs

- 4.30 There will be minimal financial costs associated with bringing the proposed Amending Agreement into force.³⁴ Administrative costs under the MRA, including meetings of the Joint Committee, are covered within the normal appropriations for the Department of Industry, Innovation, Science, Research and Tertiary Education, the lead agency for the MRA and the Australian member of the Joint Committee.³⁵
- 4.31 Removing the rule of origin restriction clause for all but two of the Sectoral Annexes will allow Australian firms greater flexibility potentially in sourcing inputs more competitively and give Australian testing and certification bodies greater scope to compete on world markets in relation to products from third countries. The proposed amendments to the MRA can result in potential cost-savings in terms of 'time to market' and fees for testing, inspection and certification. The MRA is designed to ensure, through its procedures for the designation and monitoring of CABs, that these bodies are sufficiently competent to provide the necessary quality of testing, particularly where products are sourced from third countries.³⁶
- 4.32 In the case of the Sectoral Annexes on good manufacturing practice for Medicinal Products and Medical Devices, for Australian importers using overseas manufacturing sites in MRA countries, there will be a significant reduction in regulation and the regulatory cost burden, largely associated with the cost of on-site inspections by the Therapeutic Goods Administration.³⁷ The Therapeutic Goods Administration has advised that, as the proposed amendments to the MRA are largely mechanical, it does not anticipate any additional costs associated with Medicinal Product GMP inspections.³⁸
- 4.33 The Australian Pesticides and Veterinary Medicines Authority (APVMA) has advised that the savings to industry from the amended MRA will be partly offset by the cost of confidence-building and confidence-maintaining measures associated with the proposed Amending

33 NIA, para 30.

34 NIA, para 31.

35 NIA, para 36.

36 NIA, para 32.

37 NIA, para 33.

38 NIA, para 34.

Agreement. However, ongoing maintenance activities have increased the effectiveness of the APVMA's regulatory activities and led to efficiencies and cost-savings.³⁹

Alternative processes for goods assessment

4.34 The Committee notes that the MRA is not the only avenue through which goods can receive approval for entry into the Australian market. This was highlighted by two cases whereby medical goods that were ultimately deemed as sub-standard entered Australia. These were the ASR metal-on-metal hip replacement devices and PIP breast implants. Neither company used the MRA pathway to access the Australian market and the processes that applied to them were not covered by the former agreement and would not necessarily be changed by the current amendments.⁴⁰

4.35 The Therapeutic Goods Administration (TGA) explained what processes were used:

Both the ASR hip [replacement] under our new arrangements and PIP breast implants under our current arrangements are class III high-risk medical devices and would not be covered by this. But a large number of products come on to the market without using the MRA pathway to access the market... Both pathways have scrutiny. They are different pathways.

Level of risk is one defining feature [that determines which pathway is chosen]. Australian regulation has classes of products based on a risk assessment which we make at the TGA and that risk assessment determines the way in which that product will come on to the market if it is approved to come on to the market.⁴¹

4.36 Specifically, on the PIP implants, the issue was that of fraud, which is difficult to regulate for:

PIP breast implants, they were allowed into the Australian market based on a full Australian TGA conformity assessment process. It was not based on any assessment by overseas notified bodies. The

39 NIA, para 35.

40 Ms Jenny Hefford, Chief Regulatory Officer, Therapeutic Goods Administration, *Committee Hansard*, 7 May 2012, p. 3.

41 Ms Jenny Hefford, Chief Regulatory Officer, Therapeutic Goods Administration, *Committee Hansard*, 7 May 2012, p. 3.

difficulty with the PIP case was that it was out-and-out fraud that led to the faulty implants. That is something that is very difficult to regulate for, but that was a process that underwent full TGA scrutiny.⁴²

- 4.37 The metal hip replacements also went through a different process than to that of the MRA:

The ASR [hip replacements] [were] assessed by a European notified body... They issued a certificate in Europe. Under our legislation, that certificate is a way into the Australian marketplace, provided that Australia agrees with that particular assessment – when we get their certificate, we do a check to see that that certificate was issued appropriately. What we do not do, and we did not do with ASR and we do not do for the vast majority of medical devices, is that we do not review the prime evidence or the clinical evidence – the manufacturing data. That responsibility is done by the European regulatory system.⁴³

- 4.38 This is not necessarily a negative, as going through other avenues will still invite scrutiny from other agencies such as the TGA:

The difference between an MRA process and another European process is that both get assessed by a European conformity assessment body. In the case of an MRA, TGA plays no further role in the assessment. We have five days to allow that product into the Australian marketplace if it uses the MRA process. If it uses European assessment process but non-MRA, TGA then intervenes to assess the suitability of the assessment undertaken by the notified body. As we go forward we are proposing to reclassify the ASR hip implant up to class III, which is the highest-risk classification. From 1 July, if this amendment goes through, those particular devices will be excluded from the MRA. All class IIIs, the highest risk devices, will be excluded until there has been confidence building between the Australian government and the relevant European regulators.⁴⁴

- 4.39 When it became known that there were potential problems with the hip replacements, Australian authorities acted to make them unavailable:
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42 Dr Larry Kelly, Group Coordinator, Monitoring and Compliance Group, Therapeutic Goods Administration, *Committee Hansard*, 7 May 2012, pp. 3-4.

43 Dr Larry Kelly, Group Coordinator, Monitoring and Compliance Group, Therapeutic Goods Administration, *Committee Hansard*, 7 May 2012, pp. 4.

44 Dr Larry Kelly, Group Coordinator, Monitoring and Compliance Group, Therapeutic Goods Administration, *Committee Hansard*, 7 May 2012, pp. 3-4.

...in 2009 when we started to collect the solid evidence from the joint registry that showed it was performing worse than devices of the same type that regulatory action was taken. That was nine months before any other country in the world took action against that particular device.⁴⁵

... Australia was the first country to take regulatory action against the ASR. We were the first country to remove the ASR hip from the supply, ahead of European countries.⁴⁶

Conclusion

- 4.40 The Committee supports the proposed amendments to simplify the MRA's administrative arrangements. Greater flexibility within the arrangements and extending the role of the Joint Committee to amend the Sectoral Annexes in response to regulatory and industry developments is a positive change to the agreement.
- 4.41 The Committee notes, however, that not all goods go through the MRA process and that they can enter the Australian market place through other mechanisms. The examples given here – poor quality hip replacements and fraudulent breast implants – show that even with such agreements, vigilance must be maintained by the relevant Australian public authorities to ensure that Australian consumers do not receive sub-standard and dangerous products.

Recommendation 3

The Committee supports the Agreement between Australia and the European Union Amending the Agreement on Mutual Recognition in relation to Conformity Assessment (MRA), Certificates and Markings between the European Community and Australia done at Brussels on 23 February 2012 and recommends that binding treaty action be taken.

45 Dr Larry Kelly, Group Coordinator, Monitoring and Compliance Group, Therapeutic Goods Administration, *Committee Hansard*, 7 May 2012, p. 4.

46 Dr Larry Kelly, Group Coordinator, Monitoring and Compliance Group, Therapeutic Goods Administration, *Committee Hansard*, 7 May 2012, p. 4.

Convention providing a Uniform Law on the Form of an International Will done at Washington D.C. on 26 October 1973

Introduction

- 5.1 On 28 February 2012, the *Convention providing a Uniform Law on the Form of an International Will done at Washington D.C. on 26 October 1973* was tabled in the Commonwealth Parliament.

Background

- 5.2 It is proposed that Australia accede to the *Convention providing a Uniform Law on the Form of an International Will*, done at Washington D.C. on 26 October 1973 ('the Convention').¹ The Convention seeks to harmonise and simplify the process of proving the formal validity of wills that contain international characteristics. These characteristics include situations where the testator's² country of nationality, residence or domicile is different to the country in which the will is executed or where the assets, real property and beneficiaries named in the will are located.³

1 National Interest Analysis [2012] ATNIA 5 with attachment on consultation Convention providing a Uniform Law on the Form of an International Will done at Washington D.C. on 26 October 1973, [2012] ATNIF 1 (Hereafter referred to as 'NIA') para 1. For further information see: Mr. Jean-Pierre Plantard, EXPLANATORY REPORT on the Convention providing a Uniform Law on the Form of an International Will, <http://www.unidroit.org/english/conventions/1973wills/1973wills-explanatoryreport-e.pdf>, accessed 5 April 2012.

2 A testator is a person who makes a valid will.

3 NIA, para 4.

Overview and national interest summary

- 5.3 The Convention seeks to introduce a new form of will (the international will) into the jurisdiction of each Contracting Party by requiring them to adopt the *Uniform Law on the Form of an International Will* ('the Uniform Law'), annexed to the Convention, into their domestic legal scheme.⁴
- 5.4 The key benefit to Australia is that it provides greater legal certainty for testators and beneficiaries. The practical benefit of an international will is most apparent at probate when additional information, such as witness testimony and evidence of foreign law, may not be necessary to prove formal validity. This should be particularly beneficial to testators who may have assets or beneficiaries located in several foreign jurisdictions.⁵ The international will's use is optional and will not replace existing forms of Australian wills. The Convention does not affect existing laws governing domestic succession or the construction and interpretation of wills.⁶

Reasons for Australia to take the proposed treaty action

- 5.5 Accession to the Convention will provide all prospective testators in Australia with the option of choosing a new form of will, the international will. The Uniform Law sets out the form of the international will.⁷ It will also allow Australia to take a practical step towards simplifying the domestic process to prove the validity of wills.⁸
- 5.6 The Convention's streamlining of the proof of formal validity process will provide greater legal certainty for testators and simplicity for executors when seeking probate.⁹ This process is being significantly simplified and shortened because an international will, using the form adopted in the Uniform Law, must be recognised as valid.¹⁰ Such a will can also be

4 NIA, para 5.

5 NIA, para 6.

6 NIA, para 7.

7 NIA, para 8.

8 NIA, para 13.

9 NIA, para 9. Currently, proving the formal validity of a will can become more complex when testamentary arrangements contain international characteristics, for example, if the will was executed overseas or if the witnesses, real property or beneficiaries are located across several international jurisdictions. In such circumstances, the process can be prolonged as documents, witness statements, proof of foreign law and translations may need to be collected from overseas.

10 NIA, para 10. In an unchallenged case, there would be no need to gather and adduce further evidence such as the applicable foreign law or further statements from witnesses to prove formal validity.

chosen by testators who may have no international aspects to their testamentary arrangements.¹¹

- 5.7 The Convention currently has twelve Contracting Parties and an additional eight signatories from a diverse range of countries and Australia has significant demographic and cultural ties to these Parties and signatories. The Contracting Parties and signatories include: Canada, the UK, the US and Italy.¹² There are relatively few parties to the Convention and the Attorney-General's Department concedes that the number is unlikely to increase significantly in the short term.¹³
- 5.8 Australia was not a party to the original negotiations that culminated in the Convention. The lengthy delay in Australia's accession to the Convention, opened to signatures in 1973, arose as Australia pursued reforms to cross-border succession laws through other fora such as the Hague Conference on Private International Law. Action by the Commonwealth, after consultation with state and territory Attorneys-General, to accede to the Convention also waited until domestic succession law reform efforts, such as the Uniform Succession Laws project of the state and territory law Reform Commissions were implemented.¹⁴

Obligations

- 5.9 The main obligation of the Convention, described in **Article I**, is for the Contracting Parties to introduce the Uniform Law into their domestic law. As with other Contracting Parties, Australia may also introduce into domestic law such further provisions as are necessary to give full effect to the Uniform Law. The Uniform Law sets out formal requirements for an international will, including that:
- **Articles 2 to 5:** it must have only one testator, be in writing, be signed by the testator, and be witnessed by two witnesses and a person authorised to act in connection with international wills;
 - **Articles 6 & 7:** particular signature requirements must be met in addition to those provided by the domestic law of the Contracting Party;

11 NIA, para 11.

12 UNIDROIT Wills Convention Status List.

13 Dr Karl Alderson, Assistant Secretary, Justice Policy and Administrative Law Branch, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 11.

14 Correspondence, Attorney-General's Department, 7 June 2012. See also Dr Karl Alderson, Assistant Secretary, Justice Policy and Administrative Law Branch, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 11.

- **Article 8:** in the absence of any mandatory rule pertaining to the safekeeping of the will, the authorised person will mention any safekeeping request by the testator in the certificate provided for in Article 9;
- **Article 9:** the authorised person must attach a certificate in the form prescribed by **Article 10** establishing that the international will complies, with regard to form, with both the requirements of the Convention, and where required, the domestic law under which he or she is empowered;
- **Article 11:** the authorised person is to retain one copy of the certificate and provide another to the testator; and
- **Article 12 & 13:** the certificate shall provide proof of the will's formal validity but an incomplete or missing certificate shall not affect its formal validity.¹⁵

5.10 Under **Article IV** each Contracting Party must also agree to recognise a properly certified international will as valid. Certification of international wills is carried out by an 'authorised person' designated by each Contracting Party to act in connection with international wills within its territory (**Article II**). Contracting Parties must recognise the designation of 'authorised persons' by other Contracting Parties (**Article III**). Accordingly, actions executed by an 'authorised person' in the territory of one Contracting Party will be recognised as valid by other Contracting Parties.¹⁶

5.11 Under **Article V** witness requirements will be governed by the domestic succession laws of the jurisdiction in which the authorised person was designated. The signatures of testators, authorised persons and witnesses shall be exempt from any legalization or like formality under **Article VI(1 & 2)**, although a Contracting Party may confirm a signature's authenticity. Under **Article VII** the safekeeping of international wills shall be governed by the domestic laws in the jurisdiction in which the authorised person was designated. **Article 14** of the Uniform Law provides that domestic succession law regarding the revocation of wills shall also apply to international wills. These provisions allow for the easier integration of the Convention's obligations into the domestic succession law regimes of Contracting Parties.¹⁷

15 NIA, para 14.

16 NIA, para 15.

17 NIA, para 16.

Implementation

- 5.12 The Convention will be implemented through the introduction of legislative amendments to the relevant succession laws of each State and Territory to establish consistency between those laws and the Convention.¹⁸
- 5.13 The legislative amendments will be based on a model Bill that has been drafted by the Parliamentary Counsel's Committee (PCC) in consultation with the States and Territories. The decision to assist implementation with a model Bill was made in July 2010 by the then Standing Committee of Attorneys-General, since renamed the Standing Council on Law and Justice. A model Bill drafted by the PCC will help to ensure as much uniformity as possible between the enacting legislation in each jurisdiction.¹⁹
- 5.14 The model Bill designates 'Australian legal practitioners' and 'public notaries of any Australian jurisdiction' to act as authorised persons within each State or Territory. This broad approach was chosen to ensure that the Convention's adoption would not interfere with current projects to harmonise succession law and legal profession mutual recognition schemes and will make the international will more accessible.²⁰
- 5.15 The States and Territories expect to pass their legislative amendments by the end of 2012. Australia's accession will be timed to ensure consistency with Articles I(1) and XI²¹ and the text of the amendments made to State and Territory succession laws will be submitted to the Depositary Government²² at the time of accession.²³
- 5.16 The Convention and the Uniform Law provide only for an international will's form. They do not make provisions for issues of construction or interpretation. These issues must be dealt with separately according to the law and procedures of the jurisdiction in which probate will be sought. This maintains the current differences between the substantive law in each Australian State and Territory.²⁴
- 5.17 The Convention provides for some formalities, such as the will be in writing, while others, such as those with regards to safe keeping, witness

18 NIA, para 17.

19 NIA, para 18.

20 NIA, para 22.

21 NIA, para 20.

22 The Government of the United States of America.

23 NIA, para 21.

24 NIA, para 23.

requirements and provisions for signatures where a testator cannot sign, are addressed by reference to the Contracting Party's domestic succession laws in which the authorised person is designated. The 'authorised person' is empowered to act in the territory of the Contracting Party in which he or she was designated. A Contracting Party may also designate its diplomatic or consular agents abroad to act in relation to international wills for its own nationals, provided that this is not contrary to the host State's laws. In response to State and Territory governments' requests, Australia will not be seeking to designate our diplomatic or consular agents to act as authorised persons abroad.²⁵

Different countries – different laws: which law prevails?

5.18 The Committee notes that the use of the international will does not necessarily mean that there will be no difference of opinion as to the meaning of the provisions of a will. It remains possible that differing laws in differing countries may yet result in legal interpretation or proceedings. For example, if in another country daughters are considered to be eligible only to receive half of the amount that a son would receive, then the will could still be contested here in Australia. In that case:

you still have available the mechanisms that exist in state and territory law to say, for example, that inadequate provision has been made for a dependent or a family member. This convention says that there is no debate about whether the will was validly made – those sorts of procedures and formalities of who signed it and where they signed it – it takes those out of contention. But then on the substance of it, the mechanisms under state and territory law to say, for example, that this has not made adequate provision for a child of the person remain available.²⁶

Costs

5.19 The NIA claims that accession to the Convention will not result in significant financial implications for Federal, State or Territory governments, nor business or industry. Testators will bear the costs of certifying an international will. The designation of all Australian legal practitioners and public notaries in Australia to act as authorised persons potentially increases competition in this market. Cost schedules and limits

25 NIA, para 24.

26 Dr Karl Alderson, Assistant Secretary, Justice Policy and Administrative Law Branch, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 12.

already exist in some jurisdictions for services provided by public notaries. It is unlikely that the cost of certifying an international will would fall outside of these existing limits. The initial cost of certification to the testator may also be offset by the practical simplification of proving formal validity at probate. This practical benefit may result in financial savings to the estate and the personal representative seeking probate.²⁷

- 5.20 Put in simple terms, the extra costs of the international will to an individual are expected to be more than offset by savings when compared to alternative bureaucratic processes:

In the case of an individual making a will, it would probably add some additional cost because of the procedures to be followed by the lawyer who is making the will. They will need to make sure they are familiar with these provisions; they will need to attach and complete the certificate. So there might be some additional cost to the total cost of executing your will. Set against that is the fact that it is entirely optional to follow this procedure and, normally, a person who chose to enter into one of these international wills would foresee that those executing their will would be likely to face even greater costs in those approving the foreign law and in getting affidavits from the foreign countries. So it allows people to make a judgment in net terms. Potentially, some small additional cost may be outweighed by the saving that is likely to be there for the executors of their will.²⁸

- 5.21 Accession is also unlikely to increase workload in the courts and associated Commonwealth, State and Territory government departments. In unchallenged cases, the use of an international will may reduce the workload of the courts in processing probate claims.²⁹

Conclusion

- 5.22 The greater legal certainty of an international will provides practical benefits for testators and beneficiaries. This should be particularly beneficial to testators who may have assets or beneficiaries located in several foreign jurisdictions. Given Australia's history as a nation of

27 NIA, para 25.

28 Dr Karl Alderson, Assistant Secretary, Justice Policy and Administrative Law Branch, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 12.

29 NIA, para 26.

immigration, there are potentially greater benefits for Australians than for citizens of other countries.

- 5.23 It is worth noting that this agreement will not eliminate all difference of opinion as to the meaning of a will's provisions. It remains possible that differing laws in differing countries may yet result in legal interpretation or proceedings.
- 5.24 Nonetheless, the Committee supports the agreement and recommends binding action be taken.

Recommendation 4

The Committee supports the *Convention providing a Uniform Law on the Form of an International Will done at Washington D.C. on 26 October 1973* and recommends that binding treaty action be taken.



Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 18 December 2002

Introduction

6.1 On 28 February 2012, the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 18 December 2002* was tabled in the Commonwealth Parliament.

Background

6.2 The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was signed by Australia on 19 May 2009. It can be ratified by any State that has ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on 10 December 1984.¹ Australia is a Party to the Convention, which entered into force generally on 26 June 1987 and in Australia on 7 September 1989.²

6.3 Australian law already strongly prohibits all forms of torture. The proposed action recognises the importance of supporting and

1 For further information see: <http://untreaty.un.org/cod/avl/ha/catcidtp/catcidtp.html> accessed 30 March 2012.

2 National Interest Analysis [2012] ATNIA 6 with attachment on consultation, *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 18 December 2002*, [2009] ATNIF 10, (Hereafter referred to 'NIA'), para 1.

strengthening the measures already in place and will further underline our commitment to the Convention's values and protections and support our efforts to ensure that other countries meet the same standard.

Undertaking monitoring of places of detention will achieve a more national and comprehensive approach with a greater ability to identify gaps and issues – particularly to individual Australian jurisdictions.³

- 6.4 Although torture is unlikely to be an issue in the overwhelming majority of circumstances where people are detained in Australia, the Optional Protocol, as its name suggests, has a broader focus as it also refers to other forms of cruel, inhuman or degrading treatment or punishment.⁴

National interest summary

- 6.5 The Optional Protocol provides for a system of regular visits to places of detention by a national body or bodies to be designated by the State Party and also by the United Nations (UN) Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (known as the 'SPT').⁵ The Attorney-General's Department explained:

The SPT is a 25-member committee currently chaired by the United Kingdom's Professor Malcolm Evans. Visits are conducted by a small number of members, usually between two and six, perhaps with an accompanying expert and with secretariat support.⁶

- 6.6 The Optional Protocol aims to strengthen the protection of persons deprived of their liberty against acts of torture and other cruel, inhuman or degrading treatment or punishment. It provides for a mechanism to better ensure that detaining authorities are accountable for conditions in places of detention and for greater international transparency. The model of activity provided for under the Optional Protocol is for dialogue and review between the detaining authority and the visiting body to encourage States to improve conditions where necessary.⁷ The Attorney-General's Department further explained:

3 NIA, para 5.

4 Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 14.

5 NIA, para 3.

6 Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 14.

7 NIA, para 4.

The government expects that SPT monitoring visits would be of one or two week's duration, with visits occurring no more than once every five or so years and probably considerably less frequently. Members of the SPT and the National Preventive Mechanism are to be given such privileges and immunities as are necessary for the independent exercise of their functions. This dual system aims to serve as the basis for constructive dialogue with detaining authorities on the adequacy of the conditions and treatment of people in all places where they are deprived of their liberty.⁸

Reasons for Australia to take the proposed treaty action

- 6.7 The Optional Protocol has now been in force for over five years and has more than sixty States Parties while a further 22 are signatories.⁹ Ratification and implementation will improve outcomes for detainees in Australia by providing a more integrated and internationally recognised oversight mechanism. The Government sees that it will provide an opportunity for organisations involved in detention management and oversight to share problem solving measures and other information, on the conditions and treatment of detainees.¹⁰
- 6.8 Implementation should minimise instances giving rise to concerns about the treatment and welfare of people detained in places of detention in Australia. In addition to the human rights benefits, monitoring has the potential to minimise the costs of addressing such instances, including avoiding litigation costs and compensation payments.¹¹
- 6.9 The Optional Protocol can be an effective mechanism even in jurisdictions which already enjoy preventive monitoring through pre-existing oversight bodies. The New Zealand Human Rights Commission noted in 2010 that the Protocol had been valuable in 'identifying issues and situations that are otherwise overlooked, and in providing authoritative assessments of whether new developments and specific initiatives will meet the international standards for safe and humane detention'.¹² Moreover, in

8 Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 14.

9 States Parties include the United Kingdom, Spain, France, Germany and Brazil. In the Asia-Pacific region, New Zealand, Peru, Mexico, Chile and Cambodia are States Parties. NIA, para 10.

10 NIA, para 7.

11 NIA, para 11.

12 NIA, para 10.

addition to the human rights benefits, monitoring under the optional protocol has the potential to minimise the costs of addressing such instances, including avoiding some costs of litigation and compensation.¹³ The Attorney-General's Department provided some tangible evidence of that benefit:

I sought some information from New Zealand to see what their experience was and the New Zealand ombudsman wrote to me. New Zealand is obviously smaller and it is not a federal system; it may be comparable to a state. The ombudsman said that they estimated the financial liability arising from mistreatment being \$25 million to \$35 million and the cost of their NMP to be \$250,000, which is 1.4 per cent. He described it as a very cheap insurance premium.¹⁴

6.10 Australia will gain from adopting the treaty according to the Attorney-General's Department:

The government also believes it is in Australia's national interest to promote adherence to international human rights standards. Ratification would maintain Australia's leadership on human rights outcomes and credibility in calling on other countries to adhere to internationally accepted standards. Australia's existing systems are comparatively strong. It has nothing to fear and much to gain by being open to international scrutiny and building and maintaining domestic arrangements that are exemplars of effective human rights enforcement.¹⁵

Obligations

6.11 **Article 4(1)** provides that State Parties must allow both the Subcommittee (see below) and the national preventive mechanism to make visits 'to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence'. Specific examples of places of detention are not provided in the Protocol. The definition is deliberately broad, as is its purpose. The Subcommittee's

13 Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 15.

14 Mr Matthew Richard Hall, Assistant Secretary, Human Rights Policy Branch, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 25.

15 Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 15.

practice indicates that its inspections usually focus on usual detention facilities such as prisons, police stations and immigration detention centres, rather than on small places of temporary detention.¹⁶

United Nations Subcommittee

- 6.12 **Article 2** provides for the establishment of a Subcommittee whose membership comprises twenty-five independent and impartial experts who are nationals of States Parties, serving in their individual capacities.
- 6.13 **Article 5** requires that in the election of subcommittee members, due consideration is to be given to an equitable geographic distribution and to the representation of different forms of civilisation and legal systems of the States Parties. Further, no two members of the Subcommittee may be nationals of the same State.
- 6.14 **Article 11** prescribes the main functions of the Subcommittee which are:
- to visit places of detention and make recommendations to States Parties about protecting people deprived of their liberty against torture and other forms of ill-treatment; and
 - to advise and assist States Parties in the establishment, maintenance and strengthening of their national preventive mechanisms, including through the provision of technical advice and training and by making recommendations to States Parties regarding the mechanisms' capacity and mandate.¹⁷
- 6.15 **Article 13(3)** stipulates that visits are to be conducted by at least two members of the Subcommittee who may be accompanied by experts. The Subcommittee currently has a programme for visits to take place approximately once every five years.¹⁸
- 6.16 **Articles 12 and 14** require that States Parties guarantee unrestricted access to places of detention; access to all relevant information, including on conditions of detention; and the opportunity to conduct private interviews with detainees and other relevant persons. States Parties may only object to a detention facility visit if urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder warrant a temporary delay.¹⁹ Article 12 also requires the State Parties to examine the

16 NIA, para 12.

17 NIA, para 13.

18 NIA, para 14.

19 NIA, para 15.

Subcommittee's recommendations and discuss implementation measures.²⁰

- 6.17 **Article 16** requires that Subcommittee reports are generally confidential unless the State Party requests publication or itself makes part of the report public. In addition, if the State Party has refused to cooperate with the Subcommittee, the Committee Against Torture may, following consultation with the State Party, decide to make a public statement or publish the Subcommittee's report.²¹

National Preventive Mechanism

- 6.18 **Article 3** requires States Parties to establish, maintain or designate one or several independent visiting bodies as their National Preventive Mechanism.
- 6.19 **Article 17** provides that the national preventive mechanism be established within one year of the Protocol's entry into force, or of ratification or accession.²² The mechanism may consist of decentralised units as long as they conform to the Protocol's requirements.²³
- 6.20 **Article 18** requires that States Parties must guarantee the functional independence of the national preventive mechanism and the independence of its personnel and make available the necessary resources for the performance of its functions.²⁴
- 6.21 **Article 19** obliges States Parties to grant the national preventive mechanism, at a minimum, the power to: regularly examine the treatment of detainees; make recommendations to relevant authorities with the aim of improving the treatment and conditions of detainees and to prevent torture and other ill-treatment; and the power to submit proposals and observations concerning existing or draft legislation.²⁵
- 6.22 **Article 20** requires States Parties to grant the national preventive mechanism: information concerning the numbers of detainees and the location of their places of detention; a right of access to places of detention and to information concerning the treatment of detainees and their conditions of detention; the opportunity to conduct private interviews

20 NIA, para 17.

21 NIA, para 17.

22 NIA, para 22.

23 NIA, para 18.

24 NIA, para 19.

25 NIA, para 19.

with detainees; the liberty of choosing where it will visit and whom it will interview; and the right to contact and meet with the Subcommittee.²⁶

- 6.23 **Articles 22 and 23** oblige relevant Government authorities to examine the reports and recommendations of the national preventive mechanism, enter into dialogue with the national preventive mechanism on the implementation of its recommendations and publish and disseminate the annual report of its national preventive mechanism.²⁷
- 6.24 **Article 24** provides that States Parties may make a declaration upon ratification, postponing the implementation of their obligations with respect to either the Subcommittee or the national preventive mechanism, but not both. This postponement is valid for up to three years and, with the consent of the Committee Against Torture, may be extended for a further two years.²⁸

Protections, Confidentiality, Privileges and Immunities

- 6.25 **Articles 15 and 21** provide that there is to be no sanction or prejudice exercised against any person or organisation for communicating any information to the Subcommittee or national preventive mechanism.²⁹
- 6.26 **Articles 16(2) and 21** state that personal data may not be published by the Subcommittee or the national preventive mechanism without the express consent of the individual concerned.³⁰ Article 21 also provides that confidential information collected by a national preventive mechanism is privileged.³¹
- 6.27 **Article 35** requires that the members of the Subcommittee and of the national preventive mechanism must be allowed such privileges and immunities as are necessary for the independent exercise of their functions. For the Subcommittee, the privileges and immunities are those specified in section 22 of the *Convention on the Privileges and Immunities of the United Nations*, done at New York on 13 February 1946.³²

26 NIA, para 20.

27 NIA, para 21.

28 NIA, para 22.

29 NIA, para 23.

30 NIA, para 23.

31 NIA, para 23.

32 NIA, para 24.

Implementation

- 6.28 It is expected that necessary legislative or administrative arrangements to provide for Subcommittee visits will be put in place by States Parties before they ratify the Optional Protocol. For this reason, the Australian Government proposes that a declaration would be made on ratification pursuant to Article 24, that Australia's obligations under the Protocol in relation to the national preventive mechanism would be delayed by three years.³³ This approach has been adopted by countries such as the United Kingdom and Germany. This delay is expected to provide a clear and reasonable timeframe for managing any necessary administrative and legislative changes to effectively implement the Protocol.³⁴
- 6.29 Australia's inspection systems, while substantial, do not fully meet the Optional Protocol requirements. It is anticipated that implementation will involve designating a range of existing inspection regimes at the jurisdictional level, utilising a cooperative approach between the Commonwealth and the States and Territories.³⁵ A working group of officials from all jurisdictions, reporting to the Standing Committee on Law and Justice, has been formed to carry forward implementation arrangements.³⁶

Obligations relating to the Subcommittee

- 6.30 Existing legislation is sufficient to provide for the required privileges and immunities of Subcommittee members performing their duties in Australia. The *Convention on the Privileges and Immunities of the United Nations* is given effect in Australia by the *International Organisation (Privileges and Immunities) Act 1963* and the *United Nations (Privileges and Immunities) Regulations 1986*. However, some changes to Commonwealth, State and Territory laws and policies will be required to clearly enable the Subcommittee to carry out its functions.³⁷

Obligations relating to the National Preventive Mechanism

- 6.31 It is anticipated that at least some existing monitoring and complaints bodies will be designated to form the Australian National Preventive Mechanism. At present, existing bodies carry out visits or inspections to most major categories of detention, including prisons, and immigration

33 NIA, para 25.

34 NIA, para 26.

35 NIA, para 27.

36 NIA, para 28.

37 NIA, para 29.

detention centres. Reliance on these existing bodies to fulfil national preventive mechanism obligations would be possible provided that the necessary and, in many cases, relatively minor changes are made to the structure, mandate or powers of these bodies in order to comply with the Optional Protocol.³⁸

- 6.32 The agencies that would form the National Preventive Mechanism, and the arrangements between these for the purposes of the Protocol have not been settled. Some gaps exist, particularly relating to police cells and detainee transfer vehicles, and more may be identified on further review. These gaps might be removed by expanding the mandate of an existing independent body or establishing a new independent body to specifically carry out the national preventive mechanism functions with respect to these detention facilities. Time will be needed to make and implement across each jurisdiction the necessary decisions and arrangements for the national preventive mechanism including to prepare and pass relevant legislative amendments, undertake training and to agree upon and institute effective liaison and cooperation arrangements.³⁹

Delay in Implementation: Article 24

- 6.33 As mentioned, the Australian Government proposes that a declaration be made on ratification, pursuant to Article 24, that Australia's obligations under the Protocol in relation to the national preventive mechanism be delayed by three years. In Australia, most places of detention and by far the greatest number of people detained are the responsibility of states and territories. Thus to ensure all jurisdictions are ready, the Government will work towards domestic implementation during the three years allowed post ratification:

Since 2009, the Commonwealth, states and territories have undertaken considerable work in researching and considering the nature of the commitments required under the optional protocol and reviewing what arrangements can be put in place to give effect to Australia's international obligations. Importantly, the Commonwealth, state and territory attorneys-general agreed to continue to work towards ratification of the optional protocol at the April 2012 meeting of the Standing Council on Law and Justice. The number of jurisdictions involved has and will continue to add time to this process, hence the proposal set out in the national interest analysis to delay domestic implementation for up

38 NIA, para 30.

39 NIA, para 31.

to three years post ratification. Some submissions have called for earlier action, but the government thinks the approach and timetable proposed are practical and sensible in the context of cooperative action that needs to be taken across nine jurisdictions.⁴⁰

6.34 Furthermore:

...successive governments in Australia have taken the view that we do not enter into international treaty obligations until all of the provisions of the treaty are already implemented and able to be complied with. So if, for example, we were to ratify before the NPM was set up – the NPM being quite a complex interjurisdictional model with legislation required in every jurisdiction – then we would be undertaking the obligations that apply to the NPM before we had an OPCAT compliant NPM in place. So the delay really reflects the period of time necessary in a complex federal system like Australia to set up a body that is up and running, functioning, and compliant with the OPCAT by the time that three-year period is finished...

Three years does seem like a long time in some respects but negotiating with states and territories can also take a long time.⁴¹

Is the Delay Justified?

6.35 A number of critics have argued that there is no justification for Australia to make a declaration under Article 24. They believe that it is not necessary to have all the inspection regimes and the national preventive mechanism fully settled before implementation commences, as Amnesty International told the Committee:

With the substantive existing bodies already in existence, arrangements can be put in place whilst modifications occur rather than causing significant delays at the expense of human rights.... The complete establishment of agencies and their jurisdiction takes years to materialise, however, this is no reason to delay the adoption of transitional measures of implementation.⁴²

40 Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 15.

41 Mr Matthew Richard Hall, Assistant Secretary, Human Rights Policy Branch, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 18.

42 Amnesty International, *Submission 15*, p. 3.

6.36 The Australian Centre for Disability Law points out that the Optional Protocol is designed to be a flexible and non-punitive institution building treaty – so there is no need to delay commencement.⁴³ In fact, by seeking the maximum postponement possible, there will be ‘a negative signal about Australia’s commitment to human rights...’.⁴⁴ As Professor Harding cautions, a declaration under Article 24 should:

not be taken as a permit for ratifying and then doing little else for three years.⁴⁵

6.37 The Committee is conscious that the complexities of Australia’s federal system will delay finalisation of the arrangements. Australian government policy too is that action to bring a treaty into force will not be taken until any implementing legislation has been passed, either by the Commonwealth or by state or territory governments.⁴⁶ While recognising the practical restraints, the Committee agrees with the Australian Human Rights Commission that jurisdictions should be encouraged to establish their preventive mechanisms ahead of time.⁴⁷ At the very least, a three year time limit does provide a clear deadline for having the arrangements in place in all jurisdictions.⁴⁸ The Committee urges the Australian Government and the states and territories to finalise establishment of the National Preventive Mechanism as soon as possible and to consult widely with civil society as they do so. The Committee recommends accordingly.

43 Public Interest Advocacy Centre Ltd (PIAC), *Submission 18*, pp. 8-9.

44 PIAC, *Submission 18*, p. 11.

45 Professor Richard Harding, *Submission 4*, p. 6.

46 *Signed, Sealed and Delivered: Treaties and Treaty Making: Officials Handbook*, 10th Edition, July 2010, para 13.

47 Australian Human Rights Commission (AHRC), *Submission 13*, p. 12.

48 See Human Rights Law Centre, *Submission 6*, p. 3.

Recommendation 5

That the Australian Government work with the states and territories to implement a national preventive mechanism fully compliant with the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 18 December 2002* as quickly as possible on ratification of the Optional Protocol and the exercise of Article 24 of that Protocol.

OPCAT implementation experience so far

6.38 So far, overseas experience at implementation has been generally positive:

Overseas experience has been that adopting OPCAT preventative mechanisms has complemented existing individual complaints investigation and resolution systems. For example, in the United Kingdom the Chief Inspector of Prisons, an NPM body since 2009, now also carries out systemic reviews. Reviews have been conducted into the treatment of women and children, into suicide in detention and in health care. Creating a broader national and international sharing of experiences, processes and issues is already stimulating the adoption of effective practices from one jurisdiction to another, and New Zealand has noted an intention to pursue a similar approach to that of the UK and examine a number of systemic issues.⁴⁹

Australian Immigration Detention Centres

6.39 Although the detention of asylum seekers is not something within the Attorney-General's portfolio, the Department believes that:

[OPCAT] should not impact on that issue, in that there is already quite a wide system of monitoring of immigration detention centres. While there may be some changes as a result of this [treaty], and dialogue with bodies about how to improve that level of detention, ratification should not be a determining factor in whether or not Australia's system of mandatory detention remains, for example.⁵⁰

49 Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 15.

50 Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 16.

Costs

- 6.40 The UN is responsible for the Subcommittee's expenditure. A special fund has been set up by the UN, financed by voluntary contributions of governments, non-government organisations and other public or private entities. It is not presently proposed that Australia make a contribution to this fund.⁵¹
- 6.41 There should be minimal costs for Australia associated with facilitating visits by the Subcommittee to places of detention. The Subcommittee considers that State Parties should be visited once every four to five years on average. Based on the visits to State Parties to date, Subcommittee visits last between one and two weeks and target a small selection of places of detention (for example, the country visit to Sweden focused on one police detention facility, four police stations, and three prisons during a five day visit).⁵²
- 6.42 Costs in establishing and administering its national preventive mechanism should be ongoing and relatively stable. A preliminary assessment undertaken for the Attorney-General's Department confirmed that the cost of a National Preventive Mechanism in Australia will be the lowest if reliance is placed on use of existing bodies to undertake this role. Individual jurisdictions should bear their own costs because of their responsibility for the welfare of detainees. As significant changes are not expected to be necessary, the costs are expected to be modest. Further consultation with States and Territories on costs will be conducted.⁵³

Financial Benefits of Signing

- 6.43 Jurisdictions also stand to benefit financially from improved risk management and flow on effects from regular monitoring of their places of detention. Jurisdictions such as New Zealand have stated that preventing ill-treatment of detainees contributes to a costs saving in the use of the legal and health care systems arising from incidents of ill-treatment.⁵⁴ The Public Interest Law Clearing House agrees:

inspections and monitoring creates costs savings by improving conditions for those held in detention, leading to less litigation,

51 NIA, para 32.

52 NIA, para 33.

53 NIA, para 34.

54 NIA, para 35.

and fewer complaints, injuries and hopefully fewer deaths in custody.⁵⁵

- 6.44 The Australian Human Rights Commission also argues that preventive monitoring can contribute to a reduction in claims for compensation and associated costs of mistreatment:

As external accountability is strengthened, there is likely to be a decrease in incidences of mistreatment which give rise to compensation paid in settlements... It is estimated that over the past decade, the Australian Government has spent more than \$16 million in compensation to people who experienced mistreatment in immigration detention.⁵⁶

- 6.45 The Public Interest Advocacy Centre (PIAC) has tried to quantify the costs of claims against police, claims against police or correctional institutions in relation to detention or custody, the costs of inquests on deaths in custody or care and the costs of awards, settlements and claims in relation to immigration detention.⁵⁷ PIAC reports, for example, that costs to the New South Wales Police for compensation in the context of unlawful arrests or detention are just under \$4.1 million for 2009-2010. PIAC notes that the Department of Immigration and Citizenship reported that in 2010-2011 it spent \$31.2 million on legal expenses and as of 30 June 2011 had 40 civil compensation claims before the courts.⁵⁸

PIAC states and the Committee agrees that it is very difficult to accurately estimate the costs to Australian jurisdictions of investigating and litigating incidents and practices in detention leading to allegations of ill-treatment. However, any reduction in the incidents giving rise to these costs through compliance with the Optional Protocol will be of benefit to the public purse and make a further strong argument for the ratification and speedy implementation of the Protocol.

JSCOT's previous deliberations and recommendation

- 6.46 The Optional Protocol was previously referred to the Committee by the Senate in 2003 for inquiry and report. The Committee Report (Number 58, tabled on 24 March 2004) contained a majority recommendation against

55 Public Interest Law Clearing House, *Submission 23*, p. 2.

56 AHRC, *Submission 13*, p. 9.

57 PIAC, *Submission 18*, p. 10.

58 PIAC, *Submission 18*, Appendix.

signature or ratification of the Optional Protocol.⁵⁹ The main concern of the majority report was that mandating Subcommittee visits to a jurisdiction such as Australia, in the absence of compelling reasons, was not an appropriate use of the United Nations' resources.⁶⁰ The Committee's previous consideration was also undertaken before the Optional Protocol had come into force generally.⁶¹

- 6.47 Australia has many mechanisms in place for oversight and inspection of places of detention which might be expected to have already detected and addressed the practices of concern under the Optional Protocol. Analysis since 2004 has shown, however, that there are varying levels of oversight both between different types of detention, and between jurisdictions. There are also some gaps in monitoring – the key area of significance being detention in police detention facilities – which could be addressed by implementing the Optional Protocol.⁶²

Conclusion

- 6.48 Notwithstanding its recommendation in 2003 that Australia should not ratify the Optional Protocol, the Committee believes that it is now appropriate for Australia to ratify the Optional Protocol.
- 6.49 In 2003, the function of having an international visiting mechanism working collaboratively with a domestic equivalent was untried. Since then, international experience has shown that the Subcommittee is operating successfully in the way anticipated by the Optional Protocol.⁶³ The Attorney-General's Department noted positive tangible outcomes of ratification for other countries and that both the UK and New Zealand have found the operations of the Subcommittee and a national preventative mechanism to be valuable and of benefit.⁶⁴

59 Joint Standing Committee on Treaties, *Report 58: Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, March 2004, Canberra.

60 NIA, para 8.

61 NIA, para 10.

62 NIA, para 9.

63 Mr Matthew Richard Hall, Assistant Secretary, Human Rights Policy Branch, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 17.

64 Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, pp. 16-17.

- 6.50 Secondly, although there were concerns with the efficiency of UN operations in 2003, better practices have – at least in part – ameliorated some of the UN resourcing concerns that were then current.⁶⁵
- 6.51 The Committee agrees that there are advantages to Australia in engaging with agreements such as this. Our ratification of the Optional Protocol may also encourage other countries to engage with the process, thereby strengthening human rights protections internationally.

Recommendation 6

The Committee supports the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 18 December 2002* and recommends that binding treaty action be taken.

65 Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, pp. 16-17.

Amendments to the Agreement Establishing the European Bank for Reconstruction and Development, adopted at London on 30 September 2011

Introduction

- 7.1 On 28 February 2012, the *Amendments to the Agreement Establishing the European Bank for Reconstruction and Development, adopted at London on 30 September 2011* were tabled in the Commonwealth Parliament.
- 7.2 The proposed amendments to Article 1 and Article 18 of the *Agreement Establishing the European Bank for Reconstruction and Development* will allow the European Bank for Reconstruction and Development (the Bank) to expand its geographic scope to the Southern and Eastern Mediterranean region and allow the use of Special Funds in potential recipient countries. The proposed amendments were approved by the Bank's Board of Governors on 30 September 2011.¹
- 7.3 The proposed amendments will enter into force seven days after the date of the Bank's formal communication confirming the requisite number of members have accepted them. The proposed amendment to Article 1 (that aims to include the designated Southern and Eastern Mediterranean countries) must be accepted by all members before it can enter into force. The proposed amendment to Article 18 requires the consent of not less

¹ National Interest Analysis [2012] ATNIA 8 with attachment on consultation. Amendments to the Agreement Establishing the European Bank for Reconstruction and Development adopted at London on 30 September 2011, [2011] ATNIF, (Hereafter referred to as 'NIA'), para 1.

than three-fourths of the Bank's members, having not less than four-fifths of total voting power.²

Background

- 7.4 The European Bank for Reconstruction and Development,³ established in 1991, has fostered the transition towards open market oriented economies and promoted private and entrepreneurial initiatives in 29 countries of operation from central Europe to central Asia following the widespread collapse of communist regimes. The Bank is owned by 61 countries, the European Union and the European Investment Bank. Australia is a financing member of the Bank, which means that Australia contributed to the Bank's capital resources by purchasing shares.⁴
- 7.5 The Bank provides project financing for banks, industries and businesses (including publicly-owned companies) through new ventures and investments in existing companies. This can occur through loan and equity finance, guarantees, leasing facilities and/or trade finance.⁵
- 7.6 Unlike the lending of the International Monetary Fund (IMF), the Bank's lending is directed at private sector businesses rather than governments. The Treasury explained:
- ...the Bank is generally working with private sector entities rather than sovereigns. It has conditions around what sorts of countries it will operate in and looks at their democratic record, transparency and openness. It obviously has guidelines around procurement accountability and those sorts of things on its lending, but unlike the IMF, it is not lending to support sovereign programs; it is supporting private sector initiatives. Their conditions are basically on those companies, and they are around accountability and transparency rather than putting policy conditions on a country in exchange for lending into that country's sovereign operations.⁶
- 7.7 The Bank's share capital is provided by its members. The subscribed capital base totals €30 billion (€6 billion paid-in and €24 billion callable).⁷
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2 NIA, para 2.

3 See 'European Bank for Reconstruction and Development' <http://www.ebrd.com/pages/homepage.shtml>, accessed 3 April 2012.

4 NIA, para 5.

5 NIA, para 15.

6 Mr Shaun Anthony, Manager, Development Banks Unit, International Finance and Development Division, Department of Treasury, *Committee Hansard*, 7 May 2012, p. 7.

7 NIA, para 18.

To be eligible for Bank funding, a project must be located in one of the Bank's countries of operation, as defined in Article 1 of the Agreement, have strong commercial prospects, involve significant equity contributions in cash or in kind from the project sponsor, benefit the local economy, help develop the private sector and satisfy banking and environmental standards. Projects are approved by the Bank's Board of Directors before funds are disbursed.⁸

7.8 Sectors supported by the Bank include: agribusiness; energy efficiency; financial institutions; manufacturing; municipal and environmental infrastructure; natural resources; power and energy; property and tourism; telecommunications, information technology and media; and transport.⁹

7.9 Australia's contribution to the Bank is relatively limited, and is part of the aid budget.¹⁰ However, it is in Australia's interest to remain a shareholder. The Treasury explained:

...we only have a fairly small shareholding of 1.01 per cent of the Bank. Nevertheless, we try to use our influence to encourage the Bank to reflect on its role and strategic direction.¹¹

Reason for and effect of amendments

7.10 In response to the events in the Middle East and North Africa in 2010 and 2011 – the so-called 'Arab Spring' – the Bank was called upon by the international community to extend its geographic scope to support the transition of the Southern and Eastern Mediterranean countries to market economies.¹²

7.11 In February 2011, G20 Finance Ministers stated that they stood ready to support Egypt and Tunisia with responses coordinated with international institutions and regional development banks. At their meeting on 10 September 2011, G8 Finance Ministers welcomed the Bank's proposal to extend the geographic mandate of the Bank and called for a transitional facility to be implemented rapidly.¹³

8 NIA, para 16.

9 NIA, para 17.

10 Mr Patrick Colmer, General Manager, International Finance and Development Division, Department of Treasury, *Committee Hansard*, 7 May 2012, p. 7.

11 Mr Patrick Colmer, General Manager, International Finance and Development Division, Department of Treasury, *Committee Hansard*, 7 May 2012, p. 6.

12 NIA, para 6.

13 NIA, para 7.

- 7.12 On 30 September 2011, the Bank's Board of Governors voted unanimously to amend the Agreement to expand the scope of the Bank's operations to the Southern and Eastern Mediterranean.¹⁴
- 7.13 This expansion is to occur in a three stage process:
- Stage 1 - 'Cooperation Funds', funded by voluntary member contributions will be used to provide technical cooperation and project preparation. This stage has begun and Australia and other donors have voluntarily contributed.
 - Stage 2 - 'Special Funds', resourced by the Bank from its capital funds and potentially additional voluntary contributions received from members, will be established to deliver a full range of the Bank's investment operations in the new region. This stage requires a sufficient number of member countries to accept the proposed amendments to Article 18. The proposed amendments to Article 18 clarify that Special Funds can be used in recipient countries and potential recipient countries.
 - Stage 3 - The final stage requires the acceptance of the proposed amendments to Article 1 by all member countries. The proposed amendment to Article 1 expands the scope of the Agreement to include 'countries of the Southern and Eastern Mediterranean'. This will allow countries in the new region to become fully fledged countries of operation and recipients of the Bank's capital resources.¹⁵
- 7.14 Potential countries of operation from the new region in the foreseeable future are Egypt, Morocco, Jordan and Tunisia. Egypt and Morocco have been members of the Bank since 1991. However, as 'non-operational' countries (that is, outside the current scope of Article 1), they have not been eligible for the Bank's lending. The Executive Director who represents Australia on the Bank's Board of Directors also represents Egypt. Jordan and Tunisia became members of the Bank in December 2011.¹⁶

Overview and national interest summary

- 7.15 The Government assesses that it is in Australia's national interest to accept the proposed amendments to allow the Bank to extend its operations to eligible countries in the Southern and Eastern Mediterranean and thus
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14 NIA, para 8.

15 NIA, para 9.

16 NIA, para 10.

support their transition to democracy. Egypt, Morocco, Jordan and Tunisia have taken steps so that they may potentially benefit from the Bank's expansion. The Bank is well-placed to support countries that are transitioning towards open and democratic market economies. Through its role in supporting private sector activity, the Bank can potentially add value to the work of other multilateral banks and donors operating in the region. The proposed amendments do not impose any obligatory costs on Australia, although Australia has already made a voluntary contribution to Cooperation Funds.¹⁷

7.16 There is also a foreign policy imperative in supporting these amendments. The Treasury explained:

...full acceptance by all member countries will benefit those countries in the southern and eastern Mediterranean, which in turn will contribute to development and stability in an area of high geopolitical importance... I note that the expansion to the bank is strongly supported by a range of other members, including the US and Europe, and that those countries are vigorously pursuing its implementation.¹⁸

Reasons for Australia to take the proposed treaty action

Advantages of the proposed treaty action

7.17 Australia supports the expansion of the Bank's activities to the Southern and Eastern Mediterranean. It reflects positively on Australia to be a member of such a well functioning and useful organisation.¹⁹ Acceptance of the proposed amendments would also be consistent with Australia's G20 commitment to encourage Multilateral Development Banks to play an enhanced role in addressing global financial challenges.²⁰

Effect if Australia does not take treaty action

7.18 In accordance with Article 56, the proposed amendment to Article 1 will not come into force unless it is adopted by all members of the Bank. If Australia does not accept the proposed amendments, the countries of the

17 NIA, para 4.

18 Mr Patrick Colmer, General Manager, International Finance and Development Division, Department of Treasury, *Committee Hansard*, 7 May 2012, p. 6.

19 NIA, para 5.

20 NIA, para 12.

Southern and Eastern Mediterranean will not be able to become countries of operations in the Bank.²¹

- 7.19 The proposed amendment to Article 18 will only come into force when not less than three-fourths of the members (including at least two specified countries from Central and Eastern Europe), having not less than four fifths of the total voting power of members, have accepted the proposed amendment. Non-acceptance by Australia could delay entry into force of the proposed amendment to Article 18.²²

Obligations

- 7.20 Australia will not incur any new obligations as a result of the proposed amendments to the Agreement. However, Australia may be called to vote on whether a country qualifies as a potential recipient country under Article 18(1)(i).²³ The Treasury explained the processes through which such a vote would take place:

The issues that were looked at in terms of expanding the countries of the operation were particularly around whether the Bank would be able to add value working alongside other partners in those countries. The Bank would also be looking at whether those countries met the criteria of a country of operations. For the Bank to be putting that to a vote, they would be looking at whether there was a democratic transition occurring in that country and whether that country met the requirements that the Bank imposed in terms of democracy and private sector freedom before the bank would be willing to take them on as countries of operation. From Australia's point of view in advising the governor, we would be looking at whether we saw the Bank's particular expertise as adding value and supporting the transition of that economy to a more modern market based economy.²⁴

Criteria for assistance

- 7.21 The Committee was concerned about the democratic status of some of the countries being considered by the Bank for assistance. There were concerns expressed that in countries like Egypt or Tunisia minority groups
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21 NIA, para 13.

22 NIA, para 14.

23 NIA, para 19.

24 Mr Shaun Anthony, Manager, Development Banks Unit, International Finance and Development Division, Department of Treasury, *Committee Hansard*, 7 May 2012, p. 7.

were not being given their full expression of democratic rights and that there was a lack of freedom of the media.

- 7.22 In response to questions about the nature of the democracy being practiced in the recipient countries, i.e. if human rights, gender equality or respect for minorities was being recognised, Treasury responded:

There aren't established criteria for the governor's vote on additional countries entering as countries of operation, but it is open to the governor to consider whatever factors they consider to be appropriate... It would be open to Australia's governor to take into account any factors they thought were relevant to whether Australia believed a country should be a country of operations.²⁵

Australia has a representative in the Bank who is either an executive director or an alternate executive director. That person works permanently in the Bank and does a lot of work with the bank and on providing advice back to us on individual issues involving the Bank... The situation is that we rely on our people on the ground and in the Bank headquarters – they are certainly aware of a lot more of the detail about how these decisions are made – but I think we get a reasonable service by providing advice back to the government through that process... The Bank has a range of ways of monitoring those sorts of issues.²⁶

Implementation

- 7.23 The *European Bank for Reconstruction and Development Act 1990* (Cth) will need to be amended in order to give effect to the proposed amendments, as the Agreement is set out in Schedule 1 to the Act. Section 6 of the Act allows Schedule 1 to be amended by regulation.²⁷

Costs

- 7.24 The proposed amendments to the Agreement will not impose obligatory costs on the Australian Government, State and Territory governments, business or industry. The Bank may ask donors for an additional

25 Mr Shaun Anthony, Manager, Development Banks Unit, International Finance and Development Division, Department of Treasury, *Committee Hansard*, 7 May 2012, p. 8.

26 Mr Patrick Colmer, General Manager, International Finance and Development Division, Department of Treasury, *Committee Hansard*, 7 May 2012, p. 9.

27 NIA, para 20.

voluntary contribution to 'Special Funds'; however, Australia will not be obliged to contribute.²⁸ Treasury explained:

At the moment, as I said, we have 1.01 per cent of the shares in the bank. The total value of that is around €237 million. Most of that is a contingent liability. We have only paid in €62.6 million, which is around \$77 million, as at January. The bank has that capital. It has not required to make any further calls and is operating on the paid-in capital. We do not anticipate any further calls or funding requirements as a result of this extension.²⁹

Conclusion

- 7.25 The Committee agrees that newly emerging democracies should be supported to help transform their economies. Acceptance of the proposed amendments are also consistent with Australia's G20 commitment to encourage Multilateral Development Banks to play an enhanced role in addressing global financial challenges and the Committee supports the amendments proposed here.
- 7.26 Australia's contribution is relatively modest, but does allow us to have some influence in this institution. This influence is to be welcomed and encouraged.
- 7.27 The Committee is, however, concerned about the democratic status of some of the countries being considered by the Bank for assistance. The Committee would expect that Australia, the European Union, United States and other shareholders of the Bank would work to ensure that countries which are granted assistance are in fact meeting international human rights standards before assistance is provided.

28 NIA, para 21.

29 Mr Patrick Colmer, General Manager, International Finance and Development Division, Department of Treasury, *Committee Hansard*, 7 May 2012, p. 7.

Recommendation 7

The Committee supports the *Amendments to the Agreement Establishing the European Bank for Reconstruction and Development, adopted at London on 30 September 2011* and recommends that binding treaty action be taken.

Amendment, adopted at Lima on 27 April 2012, to Annex 1 of the Agreement on the Conservation of Albatrosses and Petrels (ACAP) of 19 June 2001

Introduction

- 8.1 Minor treaty actions are generally technical amendments to existing treaties which do not impact significantly on the national interest.
- 8.2 Minor treaty actions are presented to the Joint Standing Committee on Treaties with a one-page explanatory statement. The Committee has the discretion to formally inquire into these treaty actions or indicate its acceptance of them without a formal inquiry and report. Minor treaty actions are listed on the Committee's website.

Minor treaty action

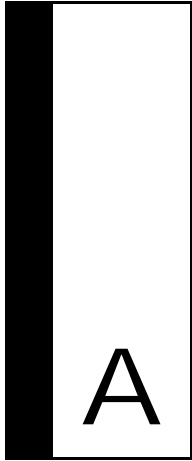
- 8.3 The minor treaty action considered in this chapter is the Category Three treaty: *Amendment, adopted at Lima on 27 April 2012, to Annex 1 of the Agreement on the Conservation of Albatrosses and Petrels (ACAP) of 19 June 2001* that enters into force automatically on 26 July 2012.
- 8.4 This treaty action amends the list of species contained in Annex 1 of ACAP. Annex 1 lists all species to which ACAP (including conservation measures as adopted by the Meeting of the Parties) applies. The proposed

amendment adds a northern hemisphere species, the Balearic shearwater (*Puffinus mauretanicus*), to the Annex.

- 8.5 The practical, financial and legal effect of the amendment for Australia is negligible. The Balearic shearwater's range does not overlap with fisheries within Australian territory or any part of Australia's jurisdiction. Its inclusion under Annex 1 of ACAP is not expected to require any change to Australia's negotiating positions in regional fisheries management organisations to which we are a Party, nor any changes to the practices of Australian fishers.
- 8.6 Australia's endorsement of the proposed amendment is consistent with Australia's active participation in ACAP. Importantly, the listing of the species will expand ACAP's coverage of northern hemisphere species. Since ACAP is open for accession by any range State, this listing will increase the number of countries eligible to join ACAP. This could result in an increased number of Parties to ACAP, increasing support for the conservation of both northern and southern hemisphere albatrosses and petrels.
- 8.7 The Committee determined not to hold a formal inquiry into this treaty action and agreed that binding treaty action may be taken.

Kelvin Thomson MP

Chair



Appendix A – Submissions

Treaties tabled on 7 February 2012

- 1 Minister for Environment and Climate Change

Treaties tabled on 28 February 2012

- 1 Justice Action
- 2 Professor Ben Saul
- 3 Edmund Rice Centre for Justice and Community Education
- 4 Professor Richard Harding
- 5 Illawarra Legal Centre
- 6 Human Rights Law Centre
- 7 Graduate Women Victoria
- 8 Youth Justice Coalition
- 9 Castan Centre for Human Rights Law
- 10 Prisoners' Legal Service Inc
- 11 Hunter Community Legal Centre
- 12 Australian Centre for Disability Law (ACDL)
- 13 Australian Human Rights Commission
- 14 NSW Young Lawyers Human Rights Committee
- 15 Amnesty International Australia
- 16 Association for the Prevention of Torture (APT)

- 17 The Office of Police Integrity (Victoria) (OPI)
- 18 Public Interest Advocacy Centre Ltd
- 19 Victorian Foundation for Survivors of Torture Inc
- 20 Law Council of Australia
- 21 NSW Ombudsman
- 22 Ombudsman of New South Wales, Victoria, Tasmania, Queensland,
South Australia, Northern Territory and the Commonwealth
- 22.1 Commonwealth and ACT Ombudsman
- 23 Public Interest Law Clearing House NSW (PILCH)
- 24 Civil Liberties Australia
- 25 Australian Lawyers Alliance
- 26 Tasmanian Ombudsman
- 27 Marrickville Legal Centre
- 28 National Aboriginal and Torres Strait Islander Legal Services (NATSILS)
- 29 Refugee Council of Australia
- 30 Ms Sjharn Leeson
- 31 UnitingJustice Australia
- 32 Victorian Ombudsman
- 33 Australian Federation of Graduate Women Inc
- 34 Attorney-General's Department
- 34.1 Attorney-General's Department
- 35 Therapeutic Goods Administration
- 36 Confidential
- 37 United Nations Association of Australia



Appendix B – Witnesses

Monday, 7 May 2012 - Canberra

Attorney-General's Department

Dr Karl Alderson, Assistant Secretary, Justice Policy and Administrative Law Branch, Access to Justice Division

Mr Stephen Fox, Principal Legal Officer, Human Rights Policy Branch, International Law and Human Rights Division

Mr Matthew Hall, Assistant Secretary, Human Rights Policy Branch, International Law and Human Rights Division

Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division

Ms Kate Smyth, Senior Legal Officer, International Law and Human Rights Division

Ms Angela Teh, Legal Officer, Private International Law Section, Justice Policy and Administrative Law Branch, Access to Justice Division

Australian Pesticides and Veterinary Medicines Authority (APVMA)

Dr Ronald Bruce Johnson, Manager, Manufacturing Quality and Licensing Section, Veterinary Medicines Program

Department of Foreign Affairs and Trade

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

Department of Industry, Innovation, Science, Research and Tertiary Education

Ms Catherine Overy, Assistant Manager, Standards and Conformance Policy Section, Trade and International Branch, Enterprise Connect Division

Mr Brian Phillips, Manager, Standards and Conformance Policy Section, Trade and International Branch, Enterprise Connect Division

Mr Paul Trotman, General Manager, Trade and International Branch, Enterprise Connect Division

Department of Treasury

Mr Shaun Anthony, Manager, Development Banks Unit, International Finance and Development Division

Mr Patrick Colmer, General Manager, International Finance and Development Division

National Association of Testing Authorities, Australia (NATA)

Mr John Mitchell, Manager, Government Relations

Therapeutic Goods Administration

Ms Jenny Hefford, Chief Regulatory Officer

Dr Larry Kelly, Group Coordinator, Monitoring and Compliance Group

Friday, 1 June 2012 - Canberra**Australian Maritime Safety Authority**

Mr Paul Nelson, Manager, Environment Protection Standards

Department of Foreign Affairs and Trade

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

Department of Infrastructure and Transport

Mr Ahmed Ruhullah, Acting Section Head, Maritime Policy Section, Maritime Policy Reform Branch, Surface Transport Policy Division

Department of Sustainability, Environment, Water, Population and Communities

Ms Narelle Montgomery, Assistant Director, Species Conservation Section, Marine Biodiversity Policy Branch, Marine Division

Mr Nigel Routh, Assistant Secretary, Marine Biodiversity Policy Branch,
Marine Division