

Report 141

Treaties tabled on 19 March and 13 May 2014

Treaty between the Government of Australia and the Government of the Kingdom of Great Britain and Northern Ireland for Defence and Security Cooperation (Perth, 18 January 2013)

Agreement between the Government of Australia and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA (Canberra, 28 April 2014)

Amendments, adopted on 10 May 2013, to Annex III of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Geneva, 10 May 2013)

Amendment to the Agreement Establishing the South Pacific Commission: Resolution, adopted by the Eighth Conference of the Pacific Community, on extending the territorial scope of the Pacific Community to include Timor-Leste (Suva, 19 November 2013)

Amendments, adopted by the 11th Conference of the Parties, to Annex IX of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Geneva, 6 May 2013)

Amendments, adopted at London on 17 May 2013, to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 IMO Resolution MEPC.238(65) (London, 17 May 2013)

Amendments, adopted at London on 21 June 2013, to the International Convention for the Safety of Life at Sea, 1974, as amended IMO Resolution MSC.350(92) (London, 21 June 2013)

Amendments, adopted at London on 21 June 2013, to Annex B to the Protocol of 1988 Relating to the International Convention on Load Lines, 1966, as amended IMO Resolution MSC.356(92) (London, 21 June 2013)

Amendments, adopted at London on 17 May 2013, to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 IMO Resolution MEPC.235(65) (London, 17 May 2013)

Amendments, adopted at London on 17 May 2013, to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 IMO Resolution MEPC.236(65) (London, 17 May 2013)

Amendments, adopted at London on 21 June 2013, to the International Convention for Safe Containers, 1972 IMO Resolution MSC.355(92) (London, 21 June 2013)

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Contents

- Membership of the Committeevi
- Resolution of Appointment viii
- List of abbreviations ix
- List of recommendations x

- 1 Introduction**
- Purpose of the report..... 1
- Conduct of the Committee’s review 3

- 2 Treaty between the Government of Australia and the Government of the Kingdom of Great Britain and Northern Ireland for Defence and Security Cooperation**
- Introduction 5
- Background 6
- Overview and national interest summary 7
- Reasons for Australia to take the proposed treaty action..... 7
- Obligations 8
- Implementation..... 10
- Costs 11
- Conclusion 11

3	Agreement between the Government of Australia and the Government of the United States of America to Improve International Tax Compliance and Implement FATCA	
	Introduction	13
	Background	15
	Extraterritorial application of laws.....	16
	Interaction between FATCA and Australian laws	17
	Compliance costs.....	17
	Timing	19
	Overview and national interest summary	19
	Obligations	20
	The Agreement	21
	Annex I.....	22
	Conclusion	23
4	Nine Minor Treaty Actions	
	Minor treaty actions	25
	Amendments, adopted 10 May 2013, to Annex III of the Rotterdam convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.....	25
	Amendment, adopted by the 8 th Conference of the Pacific Community, to the agreement establishing the South Pacific Commission.....	26
	Amendments, adopted by the 11 th Conference of the Parties, to Annex IX of the Basel Convention on the control of Transboundary Movements of Hazardous Wastes and their Disposal	28
	Three Related Minor Treaty Actions	29
	Amendments, adopted at London on 17 May 2013, to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (London 17 May 2013)	30
	Amendments, adopted at London on 17 May 2013, to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (London 17 May 2013)	30
	Amendments, adopted at London on 21 June 2013, to the <i>International Convention for Safe Containers, 1972</i> (London, 21 June 2013).....	30

Appendix A – Submissions31

Appendix B – Witnesses.....33



Membership of the Committee

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Senator James McGrath (*from 1/7/14*)

Senator Dean Smith (*until 30/6/14*)

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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 abbreviations

ATO	Australian Taxation Office
AUKMIN	Australia-United Kingdom Ministerial
CSC	Convention for Safe Containers
FATCA	Foreign Account Tax Compliance Act
IOPP	International Oil Pollution Prevention
IRS	Inland Revenue Service
MARPOL	<i>The International Convention for the Prevention of Pollution from Ships</i>
NATO	North Atlantic Treaty Organization
NIA	National Interest Analysis
OECD	Organisation for Economic Cooperation and Development
RIS	Regulation Impact Statement
RO	Recognised Organizations
SOLAS	<i>International Convention for the Safety of Life at Sea</i>
SPC	South Pacific Commission



List of recommendations

2 Treaty between the Government of Australia and the Government of the Kingdom of Great Britain and Northern Ireland for Defence and Security Cooperation

Recommendation 1

The Committee supports the *Treaty between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland for Defence and Security Cooperation* 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 the following treaty actions tabled on 19 March 2014 and 13 May 2014:
- ⇒ *Treaty between the Government of Australia and the Government of the Kingdom of Great Britain and Northern Ireland for Defence and Security Cooperation* (Perth, 18 January 2013); and
 - ⇒ *Agreement between the Government of Australia and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA* (Canberra, 28 April 2014).
- 1.2 In addition, the Report contains the Committee's views on nine Minor Treaty Actions:
- ⇒ Amendments, adopted 10 May 2013, to *Annex III of the Rotterdam convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade* (Geneva, 10 May 2013);
 - ⇒ Amendment, adopted by the 8th Conference of the Pacific Community, to the *Agreement establishing the South Pacific Commission* (Suva, 19 November 2013);
 - ⇒ Amendments, adopted by the 11th Conference of the Parties, to *Annex IX of the Basel Convention on the control of Transboundary Movements of Hazardous Waste and their Disposal* (Geneva, 6 May 2013);
 - ⇒ Amendments, adopted at London on 17 May 2013, to the Annex of the Protocol of 1978 relating to the *International Convention for the Prevention of Pollution from Ships, 1973* (London, 17 May 2013);

- ⇒ Amendments, adopted at London on 21 June 2013, to the International Convention for the Safety of Life at Sea, 1974, as amended (London, 21 June 2013);
 - ⇒ Amendments, adopted at London on 21 June 2013, to Annex B to the Protocol of 1988 relating to the International Convention on Load Lines, 1966, as amended (London, 21 June 2013);
 - ⇒ Amendments, adopted at London on 17 May 2013, to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (London 17 May 2013);
 - ⇒ Amendments, adopted at London on 17 May 2013, to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (London 17 May 2013); and
 - ⇒ Amendments, adopted at London on 21 June 2013, to the International Convention for Safe Containers, 1972 (London, 21 June 2013).
- 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.
- 1.7 The Committee takes account of these documents in its examination of the treaty text, in addition to other evidence taken during the inquiry program.
- 1.8 Copies of each treaty and its associated documentation may be obtained from the Committee Secretariat or accessed through the Committee's website at:
- http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/Treaty_tabled_on_19_March_2014;

- http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/13_May_2014.

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 11 April 2014 and 30 May 2014.
- 1.10 Invitations were made to all State Premiers, Territory Chief Ministers and to the Presiding Officers of each Parliament to lodge submissions. The Committee also invited submissions from individuals and organisations with an interest in the particular treaty under review.
- 1.11 The Committee held public hearings into these treaties in Canberra on Monday 16 June 2014. Additionally, a public hearing was held for one of the minor treaty actions on Monday 12 May 2014.
- 1.12 The transcripts of evidence from the public hearings may be obtained from the Committee Secretariat or accessed through the Committee's website under the treaties' tabling dates, being:
- 19 March 2014; and
 - 13 May 2014.
- 1.13 A list of submissions received and their authors is at Appendix A.
- 1.14 A list of witnesses who appeared at the public hearings is at Appendix B.

Treaty between the Government of Australia and the Government of the Kingdom of Great Britain and Northern Ireland for Defence and Security Cooperation

Introduction

- 2.1 This chapter reviews the proposed *Treaty between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland for Defence and Security Cooperation* (the Treaty).
- 2.2 The Treaty aims to formalise defence cooperation between the Parties into an overarching legally-binding agreement. Australia currently has defence cooperation treaties with Turkey and France.¹
- 2.3 According to the National Interest Analysis (NIA), the Treaty does not raise any domestic or international defence policy concerns.² The NIA also stresses the importance of taking binding treaty action to signify Australia's commitment to the Parties' bilateral defence relationship.³

1 National Interest Analysis [2013], *Treaty between the Government of Australia and the Government of the Kingdom of Great Britain and Northern Ireland for Defence and Security Cooperation*, done at Perth, 18 January 2013 [2013] ATNIF 3 (hereafter referred to as 'NIA'), para 7.

2 NIA, para 8; also see Mr Michael Carey, Senior Legal Officer, Directorate of International Government Agreements and Arrangements, Defence Legal, Department of Defence, *Committee Hansard*, Canberra, 16 June 2014, p. 1.

3 NIA, para 8.

Background

- 2.4 The Treaty was initially proposed in 2011 by the former United Kingdom Secretary of State, Dr Liam Fox, during his visit to Australia for Australia-United Kingdom Ministerial (AUKMIN) Consultations.⁴ The decision of both Parties to proceed with negotiations was motivated by a common acknowledgement that the current economic environment and emerging global security issues required the close cooperation of like-minded states. In this context, it was recognised that the benefits of the historically strong defence relationship between the Parties could be maximised through a formal treaty, in addition to annual Ministerial consultations between Defence and Foreign Ministers.⁵
- 2.5 Defence engagement with the United Kingdom currently occurs under a range of less-than-treaty-status (non-legally binding) arrangements that cover specific topics including science and technology, capability development, logistics, personnel exchanges and security of information. It has taken the Parties two years to develop the Treaty.⁶ During the hearing the Committee was assured of the strength of the Parties' working relationship and it was indicated that any delay in the development of a formal treaty was a 'reflection of how close the relationship is'.⁷
- 2.6 The proposed Treaty will be binding in international law. During the hearing the Australian Department of Defence explained how the Treaty will affect current implementation arrangements:
- The undertakings and the commitments made within this document themselves are legally binding, and it therefore creates a greater solidity and touchstone for the engagement that we conduct. The existing arrangements ... are not legally binding, and the arrangements that we can implement under this will not in and of themselves be legally binding but will refer back to this document, which is legally binding. The implementation arrangements will not be legally binding.⁸
- 2.7 Australia has similar defence cooperation treaties with Turkey and France.⁹ The Committee previously reviewed both these treaties and

4 NIA, para 7.

5 NIA, para 7.

6 Mr Tom Hamilton, Assistant Secretary Global Interests, International Policy Division, Australian Department of Defence, *Committee Hansard*, Canberra, June 16 2014, p. 1.

7 Mr Hamilton, Department of Defence, *Committee Hansard*, Canberra, June 16 2014, p. 4.

8 Mr Carey, Department of Defence, *Committee Hansard*, Canberra, 16 June 2014, p. 3.

9 *Framework Agreement between the Government of Australia and the Government of the Republic of Turkey on Cooperation in Military Fields* (Canberra, 13 June 2006)

concluded that binding treaty action should be taken.¹⁰ The Committee did not recommend any amendments to the text of either treaty. Asked if the agreements with France and Turkey differed from the Treaty currently before the Committee, the Department stated:

[t]hey are not exactly the same in the scope of what they cover and the details. They are similar in the way that they are a legally binding framework for cooperation with those countries.¹¹

Overview and national interest summary

2.8 The Treaty will formalise and improve the co-operative framework between the Parties to support interoperability.¹² This will be particularly relevant as Australia transitions away from operational cooperation in Afghanistan towards the preservation of interoperability, including through the auspices of the North Atlantic Treaty Organization (NATO).¹³

Reasons for Australia to take the proposed treaty action

2.9 The NIA states that binding treaty action should be taken because the proposed Treaty:

- provides a single overarching legally-binding agreement;¹⁴
- provides strategic direction for the Parties' relationship into the future;
- re-energises the bilateral cooperation between the Parties on military capabilities and military equipment development;¹⁵
- enables interaction on materiel projects of common interest, particularly where military requirements between the Parties align;

(<<http://www.austlii.edu.au/au/other/dfat/treaties/2009/24.html>>); *Agreement between the Government of Australia and the Government of the French Republic Regarding Defence Cooperation and Status of Forces* (Paris, 14 December 2006)

(<<http://www.austlii.edu.au/au/other/dfat/treaties/2009/18.html>>), accessed 26 May 2014/

10 Joint Standing Committee on Treaties, *Report 86*, August 2007 and *Report 95*, October 2008, Canberra.

11 Mr Hamilton, Department of Defence, *Committee Hansard*, Canberra, June 16 2014, p. 4.

12 NIA, para 4.

13 NIA, para 6; Mr Hamilton, Department of Defence, *Committee Hansard*, Canberra, June 16 2014, p. 1.

14 NIA, para 5.

15 NIA, para 6.

- provides opportunities for collaborative procurement in the future; and
- represents a commitment to the Parties' bilateral defence relationship.¹⁶

2.10 The NIA concludes that the Treaty does not raise any domestic or international defence policy concerns.¹⁷ The Department stated that a number of countries in the Asian-Pacific region were notified of the impending agreement:

In particular, Malaysia, Singapore and New Zealand were assured that the treaty reinforces both Australia's and the United Kingdom's commitment to the Five Power Defence Arrangements. No concerns from any of those countries were raised.¹⁸

Obligations

2.11 **Article 1** outlines the scope and purpose of the proposed Treaty, which is to promote:

- a. the mutual prioritisation of defence cooperation;
- b. information exchange on defence and security issues;
- c. closer engagement on technology, equipment and support matters;
- d. value for money in defence and security areas; and
- e. consultation on threats to international peace and security.¹⁹

2.12 **Article 2** outlines the areas of proposed cooperation. These include:

- a. sustaining the capacity to operate as partners in future coalition or bilateral operations;
- b. participating in multilateral security mechanisms, including the Five Power Defence Arrangements;
- c. exchanging information relating to defence capabilities and operations;
- d. exchanging strategic documents and views on key strategic issues;
- e. continuing to cooperate on space and cyber security issues;
- f. continuing to cooperate on the provision of quality assurance;
- g. continuing to cooperate on codification data and services;
- h. promoting military and civilian personnel exchanges;

16 NIA, para 8.

17 NIA, para 8.

18 Mr Hamilton, Department of Defence, *Committee Hansard*, Canberra, June 16 2014, p. 1.

19 NIA, para 9.

- i. commitment to the reciprocal personnel exchange program known as LONG LOOK;
- j. exchanging personnel, material and information to support defence and procurement reform;
- k. continuing defence industrial and materiel cooperation;
- l. cooperation and collaboration in defence science and technology;
- m. promoting the sale or loan of material, equipment and services between the Parties;
- n. continuing and developing cooperation in logistics; and
- o. cooperation in other emerging defence or security fields of mutual interest.²⁰

2.13 **Article 3** provides for the Parties to enter into written arrangements to implement cooperation under the Treaty. It also provides that the Parties may terminate existing applicable arrangements by mutual, written consent, where such arrangements are obsolete or no longer support the aims and objectives of the Treaty. The Department confirmed that the Treaty does not directly affect existing implementation arrangements (i.e. non-legally binding agreements/arrangements) which govern activities between the Parties.²¹ Therefore, in practice, once a 'non-binding arrangement' is terminated the particular activity covered ceases until a new agreement is reached.

2.14 **Article 4** outlines procedures for managing cooperation under the proposed Treaty. It notes that progress will be considered and guidance provided through AUKMIN Consultations. Departmental contacts and their responsibilities for overseeing the activities occurring under the proposed Treaty are also provided under Article 4. These responsibilities include the identification of long-term aims under the proposed Treaty and the settlement of disputes relating to the implementation of cooperation.

2.15 **Article 5** provides arrangements for access to facilities, equipment or support. It notes that the Parties shall inform each other of available facilities, equipment and support functions and provide the other Party with access to these where possible.

2.16 **Article 6** seeks to facilitate the transfer of defence equipment and services between the Parties, and to prevent any move to hinder legitimate access to their markets and government contracts in the field of defence. The

20 NIA, para 10.

21 Mr Carey, Department of Defence, *Committee Hansard*, Canberra, 16 June 2014, p. 2.

Department assured the Committee that this Article does not affect the Australian Government's ability to act in Australia's best interest when tendering for defence goods or services.²²

- 2.17 **Article 7** provides that the proportion of costs to be borne by each Party as a result of cooperation under the proposed Treaty will be detailed in separate (non-treaty) arrangements.
- 2.18 **Article 8** sets out procedures for the protection of information exchanged or communicated between the Parties. It requires that classified information is protected in accordance with the terms of the *General Security Arrangements between the United Kingdom and Australia concerning the Reciprocal Protection of Classified Information of Defence Interest*, or any applicable successor arrangement or agreement. Article 8 also notes that nothing in the Treaty authorises or governs the release, use, exchange or disclosure of information in which intellectual property rights exist.
- 2.19 **Article 9** contains provisions on claims and liability relating to cooperative activities occurring under the proposed Treaty. Australia and the UK agree to waive all claims against each other for acts arising in the performance of official duties in connection with the proposed Treaty. Article 9 provides how Australia and the UK will handle and settle third party claims arising from the acts or omissions of either Party in connection with the proposed Treaty. Claims arising under contract will be resolved in accordance with the terms of the contract.
- 2.20 **Article 10** ensures that the proposed Treaty shall not affect the rights and obligations or commitments of the Parties under other defence and security agreements or arrangements.
- 2.21 **Article 11** contains the procedures for managing disputes. Any dispute arising in relation to the interpretation or application of the proposed Treaty shall be resolved by consultation and negotiation between the Parties. If this approach fails, the Parties may agree to refer the dispute to a dispute settlement mechanism, as agreed between the Parties.

Implementation

- 2.22 The NIA states that no changes to national laws or regulations are required to implement the Treaty.²³ The Treaty will not change the existing roles of the Australian Government or the state and territory governments.

22 Mr Hamilton, Department of Defence, *Committee Hansard*, Canberra, June 16 2014, p. 2.

23 NIA, para 20.

Costs

2.23 According to the NIA, the Treaty does not contain any specific financial commitments.²⁴ **Article 7** states:

The proportion of costs to be borne by each Party as a result of the cooperative activities pursued under this Agreement shall be detailed in arrangements which have been entered into pursuant to Article 3, paragraph 1 of this Agreement.²⁵

Conclusion

2.24 This Treaty is an endorsement of the Parties' successful and committed cooperation in the areas of defence and security. The proposed Treaty does not change current implementation arrangements, rather it creates a legal framework which binds existing arrangements and facilitates mutually beneficial decision making between the Parties about their future defence and security needs.

2.25 The Treaty will strengthen the Parties' bilateral relationship as Australia transitions away from operational cooperation in Afghanistan towards the preservation of interoperability.

2.26 The Committee supports Australia's ratification of the Treaty and recommends that binding treaty action be taken.

Recommendation 1

The Committee supports the *Treaty between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland for Defence and Security Cooperation* and recommends that binding treaty action be taken.

24 NIA, para 21.

25 *Treaty between the Government of Australia and the Government of the Kingdom of Great Britain and Northern Ireland for Defence and Security Cooperation*, done at Perth, 18 January 2013 [2013] ATNIF 3, Article 7.

Agreement between the Government of Australia and the Government of the United States of America to Improve International Tax Compliance and Implement FATCA

Introduction

- 3.1 *The Agreement between the Government of Australia and the Government of the United States of America to Improve International Tax Compliance and Implement FATCA* (the Agreement) is an unusual treaty action in that it has been negotiated to enable the operation of a United States law in Australia. The law in question is the Foreign Account Tax Compliance Act (FATCA).¹
- 3.2 For a number of reasons discussed below, and at the request of the Treasurer, the Hon Joe Hockey MP, the Committee tabled a single page Interim Report containing a recommendation on the Agreement, *Report 140*, on 23 June 2014.²
- 3.3 As the Committee has already made a recommendation on this Agreement, this Chapter does not contain a recommendation concerning binding treaty action. Instead, the Chapter contains the Committee's comprehensive views on the Agreement.

1 National Interest Analysis [2014] ATNIA 9, *Agreement between the Government of Australia and the Government of the United States of America to Improve International Tax Compliance and Implement FATCA*, done at Canberra, 28 April 2014 [2014] ATNIF 5 (hereafter referred to as 'NIA'), para 3.

2 Joint Standing Committee on Treaties (JSCOT), *Report 140*, 23 June 2014.

- 3.4 While the movement of money between countries is generally legitimate, in some instances, particularly the movement of money to low tax jurisdictions, it can facilitate arrangements designed to evade paying taxes elsewhere.³
- 3.5 Efforts to address this practice began as an initiative by the Organisation for Economic Cooperation and Development (OECD) to improve the transparency of financial flows between countries. The initiative developed into a model tax information exchange bilateral treaty, which enabled signatories to exchange information relevant to determining the taxable income of their citizens.⁴
- 3.6 A bilateral tax information exchange agreement already exists between Australia and the United States, the *Convention between the Government of Australia and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income*.
- 3.7 The current model for the exchange of information for taxation purposes is the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters*, to which both the United States and Australia are party.
- 3.8 Representatives of the Treasury have previously described the Multilateral Convention in the following terms:
- One of the benefits of that particular convention is that it provides for more expansive exchange of information; it provides for information on request, as well as automatic exchange of information. It also provides for assistance in the collection of outstanding tax debts and in relation to the service of documents. So it has a broader scope than our bilateral agreements.⁵
- 3.9 Australia is currently considering the OECD initiated Common Reporting Standard for the automatic exchange of tax information which the G20 endorsed in February 2014.⁶ The Treasury explained that the FATCA agreement preceded the G20 Common Reporting Standard but that it would largely comply with the new Standard.⁷ However, Treasury told
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3 This matter is discussed in more detail in previous Joint Standing Committee on Treaties' Reports. See for example *Report 138*, 26 March 2014, Chapter 3.

4 JSCOT, *Report 138*, 26 March 2014, p. 30.

5 Mr Greg Wood, Manager, Tax Treaties Unit, Tax System Division, The Treasury, *Committee Hansard*, Canberra, 17 March 2014, p. 9.

6 For more information see The Treasury, *Common Reporting Standard for the Automatic Exchange of Tax Information, Discussion Paper*, <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2014/Common-Reporting-Standard>, accessed 7 July 2014.

7 Mr Gerry Antioch, General Manager, Tax System Division, Treasury, *Committee Hansard*, Canberra, 16 June 2014, p. 7.

the Committee that there are two areas where FATCA differs from the impending Common Reporting Standard: the imposition of a 30 per cent withholding tax for non-compliance and a lack of reciprocity requirements.⁸

Background

3.10 FATCA is an anti-tax evasion measure, the intent of which is to identify United States taxpayers who use 'foreign'⁹ financial institutions to conceal income and assets from the United States Internal Revenue Service (the IRS, the United States equivalent of the Australian Taxation Office).¹⁰

3.11 The Treasury summarised the intent of FATCA in the following terms:

FATCA aims to identify US persons using offshore financial institutions to conceal untaxed income and assets from the US Internal Revenue Service. It requires foreign financial institutions including Australian financial institutions to agree to identify their customers who are US persons and report their account details to the US Internal Revenue Service. These obligations will commence on 1 July this year.

Financial institutions that do not comply with FATCA will be subject to a 30 per cent US withholding tax on their US source income...¹¹

3.12 According to the Treasury, FATCA:

...stemmed from problems that the US was having with Swiss banks. This was their approach to dealing with that problem. They decided to make it a global solution to that problem.¹²

3.13 The proposed Agreement is best understood as an attempt by the Australian and United States Governments to deal with a number of complicated issues arising from FATCA. The issues fall into the following categories:

- the attempt by the United States to overcome problems with the extraterritorial application of its laws;¹³

8 Mr Antioch, Treasury, *Committee Hansard*, Canberra, 16 June 2014, p. 7.

9 That is, financial institutions not based in the United States.

10 NIA, para 5.

11 Mr Antioch, Treasury, *Committee Hansard*, Canberra, 16 June 2014, p. 6.

12 Mr Wood, Treasury, *Committee Hansard*, Canberra, 16 June 2014, p. 10.

13 NIA, para 5.

- the adverse interaction of the requirements of FATCA with Australian laws, such as the *Privacy Act 1988*;¹⁴
- the compliance costs to Australian financial institutions resulting from meeting FATCA's requirements;¹⁵ and
- the timing of the application of FATCA to Australian financial institutions.¹⁶

Extraterritorial application of laws

- 3.14 A country's laws do not usually have extraterritorial application. In other words, laws made by a country, such as the United States, are considered to only have application in that country.¹⁷
- 3.15 The United States cannot use legislation to compel entities in other countries to provide information that would enable the IRS to make decisions about how much tax a United States taxpayer should pay.¹⁸
- 3.16 FATCA is an attempt by the United States to encourage entities that are not based in the United States to comply with United States tax law reporting requirements while avoiding the problems associated with the extraterritorial application of laws.
- 3.17 To overcome the extraterritorial barriers to the application of United States law, FATCA imposes a penalty of a 30 per cent withholding tax on the United States derived income of financial institutions based in other countries, unless those financial institutions report to the IRS specific details on accounts held by United States taxpayers or by foreign entities controlled by United States taxpayers.¹⁹
- 3.18 The withholding tax penalty is not related to the income the financial institutions may derive from the accounts in question.²⁰
- 3.19 United States derived income of financial institutions based in other countries may include income derived from: retail services offered in the United States; investment in the United States; listing on United States

14 NIA, para 7.

15 NIA, para 55.

16 NIA, para 51.

17 *Jurist*, "What Exactly is "Extraterritorial Application" of a Statute?", 28 May 2013, <<http://jurist.org/forum/2013/05/kenneth-gallant-extraterritorial-application.php>> accessed on 6 June 2014.

18 *Jurist*, "What Exactly is "Extraterritorial Application" of a Statute?", 28 May 2013, <<http://jurist.org/forum/2013/05/kenneth-gallant-extraterritorial-application.php>> accessed on 6 June 2014.

19 NIA, para 6.

20 NIA, para 7.

stock exchanges; United States-based currency transactions; and the purchase or sale of United States Government Bonds.

- 3.20 According to the NIA, this means that Australian financial institutions will have a strong incentive to comply with the obligations of FATCA 'as non-compliance could expose them to significant economic costs, reputational damage, and a loss of international competitiveness.'²¹
- 3.21 The NIA makes it clear that FATCA is not extraterritorial. Compliance with FATCA is not mandatory, but the cost of non-compliance will be considerable for any financial institutions deriving income from the United States.²²

Interaction between FATCA and Australian laws

- 3.22 The *Privacy Act 1988* prohibits the use or disclosure of personal information for a purpose other than that for which it has been collected unless, amongst other things, disclosure is required or authorised by law.²³
- 3.23 This means that the Privacy Act may not extend to permitting the disclosure of information required by FATCA to the IRS.²⁴
- 3.24 In addition, while Commonwealth laws concerning discrimination on the basis of race may not preclude making a distinction based on nationality, such a distinction may be inconsistent with some State and Territory antidiscrimination laws.²⁵
- 3.25 To overcome this, according to the NIA:
- The proposed Agreement establishes a legal framework that will allow [Australian financial institutions] to comply with their FATCA obligations without necessarily breaching Australian anti-discrimination and privacy laws. Without the proposed Agreement, [Australian financial institutions] that perform FATCA obligations would breach these laws.²⁶

Compliance costs

- 3.26 As previously discussed, Australian financial institutions wishing to avoid the 30 per cent withholding tax would have to report to the IRS certain

21 NIA, para 7.

22 NIA, para 14.

23 NIA, para 19.

24 NIA, para 20.

25 NIA, para 23.

26 NIA, para 17.

- information about financial accounts held by US taxpayers or by foreign entities controlled by US taxpayers.²⁷
- 3.27 In addition, compliance with FATCA would require Australian financial institutions to enter into, administer and certify individual agreements with the IRS;²⁸ and either close or withhold tax from non-compliant financial accounts and prevent any payments to other non-compliant financial institutions.²⁹
- 3.28 The Treasury estimates that compliance with FATCA in the absence of the Agreement would cost Australian financial institutions A\$477 million not including any withholding tax incurred by the institutions.³⁰
- 3.29 According to the NIA, the proposed Agreement will reduce compliance costs for financial institutions by removing the requirements to report and enter into individual agreements with the IRS.
- 3.30 Instead, the Australian Taxation Office (ATO) will report to the IRS on behalf of Australian financial institutions using existing reporting mechanisms contained in the *Convention between the Government of Australia and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income*.³¹
- 3.31 Further, Australian financial institutions will be exempt from the requirements to close or withhold tax from non-compliant financial accounts or prevent payments to non-compliant financial institutions.³²
- 3.32 In addition, the proposed Agreement will exempt certain Australian financial institutions, such as superannuation funds, from having to comply with FATCA.³³
- 3.33 Nonetheless, the remaining costs to Australian financial institutions arising from administering the requirements of this Agreement are expected to be significant. The NIA estimates that the minimum up-front cost for Australian financial institutions to implement the Agreement will be approximately A\$255 million, with an ongoing annual cost of A\$22.72 million.³⁴
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27 NIA, para 10.

28 NIA, para 63.

29 NIA, para 16.

30 Mr Wood, Treasury, *Committee Hansard*, Canberra, 16 June 2014, p. 9.

31 NIA, para 63.

32 NIA, para 16.

33 NIA, para 39.

34 NIA, para 55.

- 3.34 Discussions between Australian Government officials and Australian financial institutions did not canvass the issue of how such compliance costs are to be met,³⁵ but the Committee has no doubt that at least some of the compliance costs will be passed on to the customers of Australian financial institutions.
- 3.35 The cost to the ATO, estimated to be in the vicinity of A\$1 million over three or four years, is expected to be met out of its existing budget allocation.³⁶

Timing

- 3.36 FATCA commenced on 1 July 2014.³⁷ Consequently, the Australian Government brought the proposed Agreement into force by 1 July 2014.³⁸
- 3.37 Had the Agreement not been in place by that time, Australian financial institutions would either have had to introduce expensive interim arrangements in order to avoid paying the 30 per cent withholding tax on United States derived profits; or simply defer to the necessity of paying the tax until the Agreement came into effect.
- 3.38 To assist the Government in bringing the Agreement into force by 1 July 2014, the Treasurer, the Hon Joe Hockey MP, wrote to the Committee to request that consideration of the proposed Agreement be expedited so the inquiry could be completed before that date.
- 3.39 The Committee, recognising the benefit to Australian financial institutions of a timely response in this instance, tabled an Interim Report, *Report 140*, on 23 June 2014. The Report noted that, while the Committee had a number of reservations about the Agreement, the Committee appreciated that it made the best of a less than satisfactory situation, and recommended that binding treaty action be taken.³⁹

Overview and national interest summary

- 3.40 According to the Treasury, the Agreement is one of a number of intergovernmental agreements entered into by the United States with other jurisdictions based on a common model.⁴⁰ At the time of the public

35 Mr Wood and Mr Antioch, Treasury, *Committee Hansard*, Canberra, 16 June 2014, p. 10.

36 NIA, para 54.

37 NIA, para 10.

38 NIA, para 3.

39 Joint Standing Committee on Treaties (JSCOT), *Report 140*, 23 June 2014.

40 NIA, para 15.

hearing on 16 June 2014, 31 countries, including Australia, had signed Agreements of this sort, and a further 25 countries were in negotiations with the United States to make such Agreements.⁴¹

3.41 The Agreement and its related legislation are intended to reduce the overall burden of FATCA in Australia. The Agreement:

- addresses impediments to compliance in Australian privacy and antidiscrimination law by providing a lawful basis for the provision of information;
- enables information handling within the Australian legal framework, exempting Australian institutions from having to reach individual agreements with the IRS;
- implements less onerous tests for Australian financial institutions to identify accounts and transactions that need to be reported under FATCA;
- allows information to be collected, handled and provided to the IRS by the ATO in accordance with existing tax treaty rules;
- ensures that Australian financial institutions will not be required to close or withhold tax from non-complying financial accounts and financial institutions;
- exempts certain Australian financial institutions from having to comply with FATCA; and
- allows Australia to obtain from the United States the same information it is required to collect for FATCA.⁴²

Obligations

3.42 The Agreement consists of the three elements:

- the provisions of the Agreement;
- an Annex detailing the tests Australian financial institutions are to undertake to identify accounts and transactions that need to be reported under FATCA (called the 'due diligence test'); and
- an Annex listing exempt Australian financial institutions.⁴³

41 Mr Wood, Treasury, *Committee Hansard*, Canberra, 16 June 2014, p. 7.

42 Mr Antioch, Treasury, *Committee Hansard*, Canberra, 16 June 2014, p. 6.

43 NIA, para 31.

- 3.43 The Agreement will require Australia to obtain and exchange information with the United States on accounts that are deemed reportable by the proposed Agreement's due diligence test, contained in Annex I.⁴⁴

The Agreement

- 3.44 **Article 2** of the Agreement obliges Australian financial institutions to provide prescribed information to the ATO. The Article also imposes a reciprocal obligation on the United States to provide similar information on Australian taxpayers held by United States financial institutions.⁴⁵
- 3.45 The Treasury confirmed that, while compliance with FATCA is a matter of 'choice' for financial institutions that are not based in the United States, the Agreement makes compliance with its less rigorous arrangements compulsory. In other words, Australian financial institutions that may have chosen not to comply with FATCA do not now have this choice.⁴⁶
- 3.46 The cost of failing to comply with FATCA means that for the bulk of Australian financial institutions, the choice is moot. Nevertheless, it is not inconceivable that for a small number of Australian financial institutions, such as those with little exposure to the United States, it may have been cheaper to pay the withholding tax, if any, than to meet the compliance costs they are now required to bear.
- 3.47 The Committee has not had sufficient time during this inquiry to explore this aspect of the Agreement, and so cannot make a meaningful assessment of whether some Australian financial institutions may have found it more cost effective to choose not to comply. However, the Committee notes that it is possible that for some Australian financial institutions, this Agreement does not represent the best outcome.
- 3.48 **Article 3** concerns the timing and manner of information exchange. This Article permits the amount and character of payments into and out of reportable accounts to be determined under Australian law rather than in accordance with FATCA.⁴⁷
- 3.49 **Article 4** requires that Australian financial institutions be considered generally FATCA compliant by the United States, and therefore exempt from the 30 per cent withholding tax, provided Australia meets its obligations under the proposed Agreement.⁴⁸

44 NIA, para 35.

45 NIA, para 35.

46 Ms Lyn Redman, Senior Advisor, Tax Treaties Unit, Treasury *Committee Hansard*, Canberra, 16 June 2014, p. 10.

47 NIA, para 36.

48 NIA, para 37.

- 3.50 Further, the Article will suspend the application of the FATCA on recalcitrant accounts for Australian financial institutions provided they apply the Agreement's due diligence measures to ascertain whether an account is a 'US reportable account', and if so, provide the relevant information to the ATO.⁴⁹
- 3.51 This Article also expressly exempts Australian superannuation funds from FATCA, as well as other Australian financial institutions listed in Annex II.⁵⁰
- 3.52 **Article 5** provides a framework for dealing with non-compliance by an Australian financial institution. Both the ATO and the IRS will collaborate to enforce compliance with the Agreement. Non-compliant Australian financial institutions will be dealt with using domestic (Australian) legal sanctions.⁵¹
- 3.53 This Article also provides Australian financial institutions with the opportunity to use third party service providers to fulfil their obligations under the Agreement.⁵²
- 3.54 The proposed Agreement comes with an attached Memorandum of Understanding that will provide guidance on interpreting which financial institutions and financial accounts are reportable and, crucially, will confirm that Australian financial institutions are compliant with FATCA.⁵³

Annex I

- 3.55 According to the NIA:
- Annex I requires [Australian financial institutions] to conduct due diligence to identify reportable accounts and payments made to certain non-participating financial institutions. These procedures are generally simpler than the equivalent provisions in the US FATCA regulations and would be adapted to the Australian context in relevant implementing legislation.⁵⁴
- 3.56 Specifically, the due diligence obligations relate to:
- pre-existing and new individual accounts; and
 - pre-existing and new entity accounts.⁵⁵

49 NIA, para 38.

50 NIA, para 39.

51 NIA, para 41.

52 NIA, para 43.

53 NIA, para 33.

54 NIA, para 46.

55 NIA, para 47.

- 3.57 The NIA states that the financial services industry has indicated it is generally satisfied with these obligations and that the obligations can be met.⁵⁶

Conclusion

- 3.58 As foreshadowed in *Report 140*, the Committee has a number of reservations about this Agreement.
- 3.59 The intent of FATCA is to identify United States taxpayers who use foreign financial institutions to conceal income and assets from the United States IRS. In the Committee's view, the nature of the Australian taxation system, and that of many of the United States' allies and friends, means that these countries are highly unlikely to be used by United States taxpayers to conceal income.
- 3.60 This is a point on which the Treasury agrees with the Committee, stating:
We do not think Australia is a particular risk for the US or its residents to hide their money in. We would consider Australia to be fairly low risk...⁵⁷
- 3.61 Further, the Committee notes that a number of mechanisms already exist for the IRS to obtain the substantial bulk of the information it is seeking through FATCA from Australia, including, as previously noted, the *Convention between the Government of Australia and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* and the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters*.
- 3.62 The Committee also notes that the existing mechanisms will be strengthened by the Common Reporting Standard for the automatic exchange of tax information which have been initiated by the OECD and endorsed by the G20. The interaction between these various agreements will need to be closely monitored.
- 3.63 The compliance cost of the Agreement, while half that which might apply to Australian financial institutions in the absence of the Agreement, is still very significant. Establishing the compliance regime will cost A\$255 million, and ongoing costs will continue to be significant.
- 3.64 The Committee believes that FATCA represents a disproportionate response, and notes the view expressed by Treasury that:

56 NIA, para 48.

57 Mr Wood, Treasury, *Committee Hansard*, Canberra, 16 June 2014, p. 6.

...Everybody acknowledges it is a weapon.⁵⁸

- 3.65 Notwithstanding the apparent difficulties of FATCA, the Committee understands that the Agreement represents the best possible accommodation to a difficult situation. Under the circumstances, the Agreement is in Australia's best interests.

58 Mr Antioch, Treasury, *Committee Hansard*, Canberra, 16 June 2014, p. 9.

Nine Minor Treaty Actions

Minor treaty actions

- 4.1 Minor treaty actions are generally technical amendments to existing treaties which do not impact significantly on the national interest.
- 4.2 Minor treaty actions are presented to the Committee with a one-page explanatory statement and are listed on the Committee's website. The Committee has the discretion to formally inquire into these treaty actions or indicate its acceptance of them without a formal inquiry and report.
- 4.3 There are nine minor treaty actions reviewed in this chapter. The Committee determined not to hold a formal inquiry into eight of the treaty actions, and agreed that binding treaty action may be taken.
- 4.4 The Committee held a formal public inquiry into the amendment, adopted by the 8th Conference of the Pacific Community, to the *Agreement establishing the South Pacific Commission* before agreeing that binding treaty action may be taken.

Amendments, adopted 10 May 2013, to Annex III of the Rotterdam convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade

- 4.5 This proposed amendment to the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade* (the Convention) will add the following chemicals to Annex III:
 - azinphos-methyl (an organophosphate insecticide) to the pesticide category;
 - pentabromodiphenyl ether (a bromide flame retardant) to the industrial category;

- commercial-octabromodiphenyl ether (a bromide flame retardant) to the industrial category;
 - perfluorooctane sulfonic acid (a flourosurfactant that was used in Scotchguard) to the industrial category;
 - perfluorooctane sulfonates (a flourosurfactant that was used in other stain resistors) to the industrial category;
 - perfluorooctane sulphonamides (a compound was used to repel grease and water in food packaging) to the industrial category; and
 - perfluorooctane sulfonyls (once an active ingredient in scotchguard) to the industrial category.
- 4.6 The Convention requires Parties advise as to whether they will permit the importation of chemicals in Annex III, and if so, under what conditions. It also requires Parties engaged in the exportation of chemicals in Annex III to observe other Parties' advice on the importation of chemicals in Annex III, including any applicable prohibitions or conditions.
- 4.7 The Explanatory Statement indicates that azinphos-methyl, perfluorooctane sulfonic acid, perfluorooctane sulfonates, perfluorooctane sulphonamides, and perfluorooctane sulfonyls are used in Australia in low volumes that are declining. None of these products are exported from Australia.
- 4.8 The Amendment to the Convention will require some changes to Australian law to bring these chemicals into the appropriate regulatory regime. In practice, the Explanatory Statement claims, this will require an exporter of these chemicals to pay an annual authorisation fee of between \$750 and \$1,700 and require importers to pay an annual fee of \$1,700.
- 4.9 The Explanatory Statement claims:
- These fees are unlikely to have a substantial financial impact in view of the low volume of import of these products, and no record of export.
- 4.10 The changes came into effect on 10 August 2013.

Amendment, adopted by the 8th Conference of the Pacific Community, to the agreement establishing the South Pacific Commission

- 4.11 The Explanatory Statement by the Department of Foreign Affairs and Trade explains that the proposed treaty matter is the tacit acceptance of an amendment, adopted by the 8th Conference of the Pacific Community on 19 November 2013, to the *Agreement establishing the South Pacific Commission* (the Canberra Agreement). No change to Australian legislation is required to give effect to the amendment.
- 4.12 The amendment will expand the territorial scope of the Pacific Community (SPC) to include Timor-Leste. (The South Pacific Commission was renamed the 'Pacific Community' in 1997). This will allow Timor-

Leste to join the Pacific Community by acceding to the Canberra Agreement at a later date. The amendment does not affect the rights and obligations of existing Parties to the Canberra Agreement. It is therefore expected to have a negligible legal, financial or practical impact on Australia.

- 4.13 The SPC, based in Noumea and Suva, is a Pacific regional organisation that provides technical assistance to the Pacific Island countries and territories in the areas of public health, geoscience, agriculture, forestry, water resources, disaster management, fisheries, education, statistics and demography, transport, energy, human rights, gender, youth and culture to help Pacific Island people achieve sustainable development. Founded in 1947 as an organisation of metropolitan powers, the SPC now comprises 22 Pacific Island countries and territories as well as Australia, France, New Zealand and the US. Pacific Island countries and territories were admitted as full members of the SPC in 1983 and have enjoyed the same rights as founding members ever since. Australia is the largest contributor to SPC, providing 34 per cent (approximately A\$39.6 million) of the SPC's budget in 2013.
- 4.14 In 2013, Timor-Leste advised its intention to apply for membership of the SPC. Timor-Leste attended the SPC governing body meeting (the Conference) as an observer in November 2013, and has also participated in SPC technical meetings on an ad-hoc basis. Article XXI(66) of the Canberra Agreement, allows a country to become a member of the SPC if invited to do so by all participating governments, by depositing an instrument of accession. Article II(2) provides that the territorial scope of the SPC shall include Pacific countries and territories located wholly or in part south of the equator and east of and including 'the Australian Territory of Papua and the Trust Territory of New Guinea; and Guam and the Trust Territory of the Pacific Islands.'¹ Timor-Leste lies west of this demarcation line and is thus outside the present geographic scope of the SPC.
- 4.15 Article II(3) of the Canberra Agreement allows the territorial scope of the SPC to be altered by agreement of all participating governments. In anticipation of a formal request for SPC membership from Timor-Leste, the 8th Conference of the Pacific Community (Suva, 18–19 November 2013) adopted a resolution extending the scope of the SPC to include Timor-Leste. Under the terms of the resolution, the amendment will enter into force one year from the date of its adoption by the Conference (that is, on

1 The former Australian Territory of Papua and the Trust Territory of New Guinea now form the Independent State of Papua New Guinea. The former US Trust Territory of the Pacific Islands is now the Federated States of Micronesia, Republic of the Marshall Islands and Commonwealth of the Northern Mariana Islands.

- 19 November 2014), providing no participating government lodges an objection with the depositary (Australia) before that date.
- 4.16 The amendment does not, of itself, admit Timor-Leste as a member of the SPC. Timor-Leste will be eligible to apply for membership of the SPC once the amendment enters into force. If invited to do so by all participating governments, Timor-Leste will then be able to accede to the Canberra Agreement in accordance with Article XXI(66).
- 4.17 Australian acceptance of this amendment is in line with the consensus decision of the SPC, consistent with Australia's support for Timor-Leste's participation in a range of regional forums. Timor-Leste faces a number of development challenges in common with SPC member countries and territories, and would benefit from access to the SPC's wide range of technical services.

Amendments, adopted by the 11th Conference of the Parties, to Annex IX of the Basel Convention on the control of Transboundary Movements of Hazardous Wastes and their Disposal

- 4.18 The *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* (the Basel Convention) entered into force in 1992 and is intended to protect people and the environment from the disposal of hazardous waste by transporting it from locations with high environmental protection standards to locations with lower environmental protection standards.
- 4.19 To meet its intended purpose, the movement of hazardous waste across national boundaries is governed by a regulation process set out in the Convention. The Basel Convention contains a series of annexes that categorise various types of waste for the purpose of applying the regulations set out in the Convention.
- 4.20 The proposed Amendment is an addition to Annex IX of the Convention, which contains a list of non-hazardous wastes exempted from the Convention's regulations unless that waste contains elements or characteristics that might cause it to be covered by other Annexes under the Convention. For example, Annex IX lists paper waste as a product that is not subject to the regulatory process set out in the Convention provided it is not mixed with other, hazardous, waste.
- 4.21 The proposed amendment adds two new categories of waste to Annex IX, that of composite packaging for liquids and that of self-adhesive label laminate waste. In this instance, composite packaging for liquids means paper packaging that contains either plastic or aluminium in sufficiently small quantities not to fall within the definitions of waste contained in the other annexes of the Convention.

4.22 According to the Explanatory Statement:

The amendments will not alter Australia's obligations under the Basel Convention. Rather, the amendments clarify that plastic packaging and label laminate wastes are not subject to the Basel Convention requirements for hazardous waste. This will provide additional clarity and predictability for industry and may result in a cost saving for the Commonwealth in terms of assessing whether or not those substances are subject to the Basel Convention.

4.23 The Proposed Treaty Action will require the amendment to the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*, which contains a copy of the Basel Convention, but, according to the Explanatory Statement will not require any additional regulation or expense by Government or businesses involved in the transport of waste management.

Three Related Minor Treaty Actions

4.24 Amendments were made to Annexes I and II of *The International Convention for the Prevention of Pollution from Ships (MARPOL)* and Chapter XI-1 of *International Convention for the Safety of Life at Sea, 1974 (SOLAS)* to make the Recognised Organizations (RO) Code mandatory. For details see:

- Amendments, adopted at London on 17 May 2013, to the Annex of the Protocol of 1978 relating to the *International Convention for the Prevention of Pollution from Ships, 1973* (London, 17 May 2013).

4.25 The amendments will also alter the requirements for emergency training and practice drills and carriage requirements for navigational equipment.

4.26 For consistency, the minor amendments have been reflected in the treaties listed below.

- Amendments, adopted at London on 21 June 2013, to the *International Convention for the Safety of Life at Sea, 1974, as amended* (London, 21 June 2013);
- Amendments, adopted at London on 21 June 2013, to Annex B to the *Protocol of 1988 relating to the International Convention on Load Lines, 1966, as amended* (London, 21 June 2013).

4.27 The amendments will be deemed to have been accepted on 1 July 2014.

Amendments, adopted at London on 17 May 2013, to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (London 17 May 2013)

- 4.28 The amendments were deemed to have been accepted on 1 April 2014 and amend Annex I of MARPOL so that Form A or Form B of the International Oil Pollution Prevention (IOPP) Certificate will indicate whether the ship has an incinerator for oil residues.

Amendments, adopted at London on 17 May 2013, to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (London 17 May 2013)

- 4.29 The amendments were deemed to have been accepted on 1 April 2014 and amend the Conditions Assessment Scheme, required under Annex I of MARPOL to update requirements to assess the condition of oil tankers.

Amendments, adopted at London on 21 June 2013, to the *International Convention for Safe Containers, 1972* (London, 21 June 2013).

The amendments were deemed to have been accepted on 1 January 2014 and amend the *International Convention for Safe Containers 1972* (CSC) to incorporate previous amendments to the CSC made in 1993, in order for the amendments to be brought into force using the tacit acceptance procedure contained in Article X of the CSC.

Mr Wyatt Roy MP

Chair



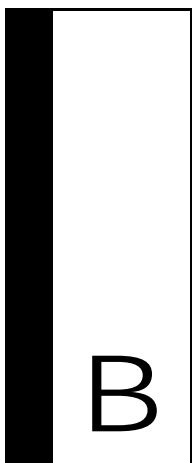
Appendix A – Submissions

Treaty tabled on 19 March 2014

- 1 The Returned & Services League of Australia Limited

Treaties tabled on 13 May 2014

- 9 Australian Bankers' Association Inc
- 11 Financial Services Council
- 51 Tax Justice Network Australia



Appendix B – Witnesses

Monday, 12 May 2014—Canberra

Department of Foreign Affairs and Trade

Mr Matt Anderson, Assistant Secretary, Pacific Regional & New Zealand Branch, Pacific Division

Mr David Binns, Assistant Secretary, Indonesia and Timor-Leste Branch

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

Monday, 16 June 2014—Canberra

Australian Taxation Office

Mr David Allen, Assistant Commissioner, International Engagement and Transparency, Public Groups and International

Mr Grant Goodwin, Executive Director, International Engagement and Transparency, Public Groups and International

Department of Defence

Mr Michael Carey, Senior Legal Officer, Directorate of International Government Agreements and Arrangements, Defence Legal

Mr Tom Hamilton, Assistant Secretary Global Interests, International Policy Division

Department of Foreign Affairs and Trade

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

The Treasury

Mr Gerard Antioch, General Manager, Tax System Division

Ms Lynette Redman, Senior Advisor, Tax Treaties Unit

Mr Gregory Wood, Manager, Tax Treaties Unit, Tax System Division