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The Parliament of the Commonwealth of Australia  
Joint Standing Committee on Treaties

# Report 148

## **Treaties tabled on 10 February 2015**

Agreement between Australia and the Republic of India on Social Security  
(Canberra, 18 November 2014)

Amendments to the Annex of the Protocol of 1997 relating to the International  
Convention for the Prevention of Pollution from Ships, 1973, as modified by the  
Protocol of 1978 relating thereto

May 2015  
Canberra

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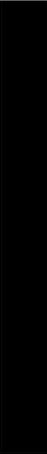
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## Resolution of Appointment

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
  - (iii) 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

AMSA	Australian Maritime Safety Authority
ATO	Australian Taxation Office
DSS	Department of Social Services
ECA	Emission Control Areas
EEDI	Energy Efficiency Design Index
FPSOs	Floating Production, Storage and Offloading Facilities
FSUs	Floating Storage Units
GT	Gross Tonnage
IAPP	International Air Pollution Prevention
IMO	International Maritime Organization
IOPP	International Oil Pollution Prevention
ISM Code	International Safety Management Code
ISO	International Organization for Standardization
JSCOT	Joint Standing Committee on Treaties
L	Length
LNG	Liquefied Natural Gas

MARPOL	International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 + Protocol of 1997
MEPC	Marine Environment Protection Committee
MOU	Memorandum of Understanding
NIA	National Interest Analysis
NGO	Non-governmental organization
NOx	Nitrogen Oxide
RIS	Regulation Impact Statement
STCW	Standards of Training, Certification and Watchkeeping for Seafarers Code
STCW Convention	Standards of Training, Certification and Watchkeeping for Seafarers
SOLAS	Safety of Life at Sea



## List of recommendations

### **2 Agreement between Australia and the Republic of India on Social Security**

#### **Recommendation 1**

The Committee supports the *Agreement between Australia and the Republic of India on Social Security* and recommends that binding treaty action be taken.

### **3 International Convention for the Prevention of Pollution from Ships, 1973**

#### **Recommendation 2**

The Committee supports the amendments to the Annex of the Protocol of 1997 relating to the *International Convention for the Prevention of Pollution from Ships, 1973*, as modified by the Protocol of 1978 relating thereto 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 10 February 2015:
  - *Agreement between Australia and the Republic of India on Social Security* (Canberra, 18 November 2014); and
  - Amendments to the Annex of the Protocol of 1997 relating to the *International Convention for the Prevention of Pollution from Ships, 1973*, as modified by the Protocol of 1978 relating thereto.
- 1.2 The Committee's resolution of appointment empowers it to inquire into any treaty to which Australia has become a signatory, on the treaty being tabled in Parliament.
- 1.3 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.
- 1.4 Prior to tabling, major treaty actions are subject to a National Interest Analysis (NIA), prepared by the 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.
- 1.5 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. An RIS was not required for any of the treaties under consideration in this report.

- 1.6 The Committee takes account of these documents in its examination of the treaty text, in addition to other evidence taken during the inquiry program.
- 1.7 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/10\\_February\\_2015](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/10_February_2015).

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

- 1.8 The treaty actions reviewed in this report were advertised on the Committee's website from the date of tabling. The Committee invited written submissions by 27 February 2015.
- 1.9 The Committee invited all State Premiers, Territory Chief Ministers and 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.
- 1.10 The Committee held a public hearing into these treaties in Canberra on Monday 16 March 2015.
- 1.11 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 date, being:
  - 10 February 2015.
- 1.12 A list of submissions received and their authors is at Appendix A.
- 1.13 A list of witnesses who appeared at the public hearings is at Appendix B.

# Agreement between Australia and the Republic of India on Social Security

## Introduction

- 2.1 This chapter considers the *Agreement between Australia and the Republic of India on Social Security* which was tabled in the Commonwealth Parliament on 10 February 2015.

## Background

- 2.2 Australia has a network of bilateral social security agreements which close gaps in social security coverage for people who migrate between countries. The agreements are designed to improve access to income support for people whose adult lives are, or have been, divided between Australia and the other country. The main beneficiaries of these agreements are age pensioners, although they apply to any type of benefit, pension or allowance within the scope of the legislation.<sup>1</sup>
- 2.3 Australia currently has 29 such agreements in place and pays out approximately \$348 million per year to around 60 000 people living in partner countries. Additionally, Australia pays out approximately \$96 million to people living in Australia who claim entitlements under the

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1 National Interest Analysis [2015] ATNIA 2 with attachment on consultation *Agreement between Australia and the Republic of India on Social Security*, done at Canberra on 18 November 2014 [2014] ATNIF 31 (hereafter referred to as 'NIA'), paragraphs 4 and 9.

agreements. Partner countries pay approximately \$985 million per year to around 231 000 people living in Australia.<sup>2</sup>

- 2.4 Twenty-eight per cent of Australia's total population was born overseas. Of the top 10 countries of birth, the number of Australian residents born in India has increased most significantly in the last decade, trebling from 132 800 in 2004 to 397 200 in 2014:

This represents 1.7 per cent of the Australian population. India has been the top source country of new migrants under the migration program in 2011–12 and 2012–13, with the majority of permanent arrivals coming in the skilled stream category. The median age of Indian born Australians is quite young at 33.2 years of age.<sup>3</sup>

## Overview and national interest summary

- 2.5 According to the NIA, the Agreement should provide enhanced access to Australian and Indian retirement benefits for people in both countries and greater portability of these benefits between the two countries. Portability of benefits allows for the payment of a benefit from one country to a person in another country. Enhanced access to benefits is an underlying principle of bilateral social security agreements where the responsibility for providing benefits is shared.<sup>4</sup>
- 2.6 Under the Agreement, residence in one Party's territory will not affect a person's entitlement to benefits under the legislation of the other Party. People who move between Australia and India will be able to do so confident that their rights to benefits are recognised in both countries. For Australia, the Agreement generally covers the age pension and superannuation guarantee. For India, the Agreement covers old age and survivors' pension for employed persons and Permanent Total Disability pension for employed persons.<sup>5</sup>
- 2.7 The NIA suggests that the Agreement will facilitate business between Australia and India by ensuring employers and employees do not have 'double liability' in respect of the same work of an employee. For example, when an employee from one Party is temporarily seconded to work in the

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2 Mr Peter Anthony Hutchinson, Director, International Agreements, Eligibility and Participation, Policy Branch, Department of Social Services (DSS), *Committee Hansard*, Canberra, 16 March 2015, p. 2.

3 Ms Alanna Foster, Branch Manager, Eligibility and Participation Policy Branch, Department of Social Services (DSS), *Committee Hansard*, Canberra, 16 March 2015, p. 1.

4 NIA, para 5.

5 NIA, para 6.

territory of the other, the employee and/or their employer will not need to make compulsory pension or superannuation contributions in both countries. In the Australian context, the Agreement will exempt employers and/or employees already making superannuation guarantee contributions in Australia, from the requirement to make compulsory social security contributions in India. Similarly, Indian employers will be exempt from the requirement to make superannuation guarantee contributions for employees sent to work temporarily in Australia, provided they continue to make contributions in India.<sup>6</sup>

- 2.8 The NIA maintains that the Agreement will serve to reinforce Australia's political, business and strategic interests. Further, the NIA states that it is expected to bring economic and social benefits to Australia and facilitate business links between the two countries by reducing costs. It is also expected to maximise the foreign income of Australian residents, which would have positive flow-on effects within the Australian economy. The NIA concludes that it should further strengthen bilateral relations between Australia and India and provide choices in retirement for individuals who migrate to Australia or India during or after their working lives.<sup>7</sup>

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

- 2.9 The NIA states that the Agreement will allow residents of Australia and India to move between the two countries knowing that their rights to benefits are protected. Also under the Agreement, individuals may be eligible for benefits from both Australia and India if they meet certain criteria and have resided and/or worked in both countries during their working lives.<sup>8</sup>
- 2.10 According to the NIA, the Agreement will provide substantial benefits to Australian businesses operating in India. The NIA estimates that removing the double liability for superannuation contributions will reduce costs to businesses by around \$10 million a year. The NIA also states that removal of superannuation guarantee 'double liability' will result in a reduction in Australian taxation revenue of an estimated \$4.8 million over the first three years of operation of the Agreement.<sup>9</sup>
- 2.11 The Department of Social Services (DSS) estimates that, in the first three years of the Agreement, approximately 150 people living in India will

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6 NIA, para 7.

7 NIA, para 8.

8 NIA, para 11.

9 NIA, para 12.

claim Australian pensions with a value of around \$1.8 million. Indian pensions will be payable in Australia under the Agreement, but it is difficult to estimate the number of pensions payable.<sup>10</sup>

- 2.12 The Committee queried the reliability of the estimates in the NIA. DSS conceded that it is difficult to accurately determine either the number of people who will claim entitlements under the Agreement or the total cost. However, the Department said that estimates are calculated on the assumption that all those eligible will claim an entitlement:

... we do try to look at what has happened in previous experiences. What we have found is that sometimes there are over estimates sometimes underestimates. It is very hard to learn from the experience of one country how it is going to apply to another country. The estimates themselves are based on data – hard data; the best available data we have – based on immigration arrivals and departures, and then we apply a range of assumptions to that data. The assumptions are based on the best available data and are run by the Department of Finance as well and agreed with Finance as part of the estimates process.<sup>11</sup>

- 2.13 DSS use a range of means to communicate the benefits of such agreements including targeted department publications and media advertisements. Additionally, eligible individuals will be encouraged to apply for reciprocal pensions when they apply for an Australian pension:

... it is a requirement in the social security law already that somebody who is claiming an Australian pension must make a claim for a foreign pension they might have any entitlement to. So the Department of Human Services actually will identify people who were born in India or who may have lived in India according to their own records. At the time of the agreement's implementation, they will write out to those people and invite them to claim an Indian pension for example.<sup>12</sup>

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10 NIA, para 13.

11 Mr Hutchinson, DSS, *Committee Hansard*, Canberra, 16 March 2015, p. 4.

12 Mr Hutchinson, DSS, *Committee Hansard*, Canberra, 16 March 2015, p. 2.

## Obligations

- 2.14 **Part I (Articles 1-5)** sets out general provisions. **Article 1** contains definitions and **Articles 2 and 3** respectively set out the legislative and personal scope of the Agreement. **Article 4** obliges the Parties to ensure equal treatment of people covered by the Agreement, with respect to eligibility for and payment of benefits. **Article 5** provides that benefits are payable to persons who are residents of, and in, the territory of either Party.<sup>13</sup>
- 2.15 **Part II (Articles 6-11)** concerns coverage and contains provisions to avoid double liability for superannuation contributions in respect of the same work of an employee. **Article 8** provides that where a person whose employment is subject to the laws of one Party is temporarily seconded to work in the territory of the other Party, the person and/or their employer will be subject only to the legislation of the first Party. **Article 10** allows the relevant government authority of each Party, specified in **Article 1(b)** of the Agreement (the Competent Authorities), or institutions they have designated, specified in **Article 1(c)** (the Competent Institutions), to agree in writing to modify the application of **Part II** in respect to a particular person or category of persons.<sup>14</sup>
- 2.16 **Part III (Articles 12-14)** applies to benefits payable by Australia. Under **Article 1**, a benefit is defined as ‘a benefit, pension or allowance’ provided for in the legislation of a Party, excluding (in the case of Australia) ‘any benefit, payment or entitlement under the law concerning the superannuation guarantee’. **Article 2** makes it clear that the Agreement only applies to Australian social security law related to the age pension and the law concerning the superannuation guarantee.<sup>15</sup>
- 2.17 **Part III:**
- **(Article 12)** obliges Australia to regard residents of India, and Australian residents who are temporarily in India, as Australian residents and as being present in Australia, for the purpose of claiming the benefit, provided the person has been a resident of Australia for at least 12 months at some time in his or her working life;
  - **(Article 13)** provides that with certain limitations periods of insurance in India (being periods of contributions used to acquire the right to a benefit under Indian legislation, or periods deemed equivalent will be regarded as periods of

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13 NIA, para 14.

14 NIA, para 15.

15 NIA, para 16.

residence in Australia for the purpose of meeting any minimum qualifying period of residence for the benefit; and

- **(Article 14)** specifies how the rate of the Australian benefit (i.e. age pension) will be calculated under the Agreement and how this applies to a person who is living inside or outside Australia.<sup>16</sup>

2.18 **Part IV (Articles 15–16)** applies to benefits payable by India. Certain periods of Australian working-life residence will be taken into account by India for the purpose of meeting minimum insurance periods under Indian legislation, provided the periods do not overlap with the person's periods of insurance accumulated in India **(Article 15)**. The rate of pension from India will generally be based on a person's period of insurance accumulated in India **(Article 16)**.<sup>17</sup>

2.19 **Part V (Article 17–23)** sets out various obligations relating to the administration of the Agreement, including:

- for the Parties to consider the date a claim is lodged in one country as the date of lodgement in the other country **(Article 17(2))** and, in certain circumstances, to consider a claim for a benefit from one country as a claim for the corresponding benefit from the other country **(Article 17(3))**;
- for the Parties to guarantee payment of benefits in the event that currency transfer controls are imposed by either country **(Article 18(1))** and without deductions for government administrative fees or charges **(Article 18(2))**;
- for the Competent Authorities and Competent Institutions of each Party to assist each other to exchange information and to protect the confidentiality of personal data, and to communicate and accept documents in any of the official languages of either Party **(Article 19)**;
- for the Competent Authorities to conclude an Administrative Arrangement to implement the proposed Agreement **(Article 20)**;
- for the Competent Authorities to exchange annual statistics on the payments granted under the Agreement **(Article 21)**; and
- for the Competent Authorities to resolve, to the extent possible, any differences which arise in interpreting or applying the proposed Agreement according to its spirit and fundamental principles **(Article 22(1))** and for the Parties to meet to review the proposed Agreement upon request by either Party **(Article 23)**.<sup>18</sup>

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16 NIA, para 17.

17 NIA, para 18.

18 NIA, para 19.

- 2.20 **Part VI (Articles 24–26)** contains transitional and final provisions. **Article 24** precludes payment for any period prior to the date on which the proposed Agreement enters into force (**Article 24(1)**), but ensures that Indian periods of insurance and periods of Australian residence completed before the Agreement enters into force will be taken into account when determining entitlements to benefits under the Agreement (**Article 24(2)**).<sup>19</sup>
- 2.21 **Article 24** also provides that the Agreement will not apply in respect to periods of insurance which were liquidated by the granting of a lump sum payment or the reimbursement of contributions (**Article 24(3)**) and that the double superannuation liability provisions of **Articles 7(2)** and **8(2)** apply from the date of entry into force of the Agreement, even if an employee from one Party was seconded to work in the territory of the other before the Agreement entered into force (**Article 24(4)**).<sup>20</sup>
- 2.22 **Articles 25** and **26** respectively set out the arrangements for the entry into force of the Agreement and its termination.<sup>21</sup>
- 2.23 The Agreement does not contain a specific provision in relation to amendment of the Agreement or for the negotiation of future legally binding instruments. In the absence of specific procedures, the Parties may amend the Agreement by mutual agreement at any time in accordance with **Article 39** of the *Vienna Convention on the Law of Treaties*.<sup>22</sup>
- 2.24 **Article 23** obliges the Parties to meet to review the proposed Agreement within six months of the request of either Party.<sup>23</sup>
- 2.25 Any future amendment to the Agreement, whether arising out of review of the Agreement by the Parties under **Article 23** or arising out of ad hoc mutual agreement to change the Agreement under **Article 39** of the *Vienna Convention on the Law of Treaties* would be subject to Australia's domestic treaty-making process.<sup>24</sup>
- 2.26 The Agreement contains no specific provisions for withdrawal from or denunciation of the Agreement by either Party, but contains instead a termination provision (**Article 26**). **Article 26(1)** provides that it will remain in force until terminated by either Party giving 12 months' written notice to the other through the diplomatic channel. Any termination of the

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19 NIA, para 20.

20 NIA, para 21.

21 NIA, para 22.

22 NIA, para 28.

23 NIA, para 29.

24 NIA, para 30.

Agreement by Australia would be subject to Australia's domestic treaty-making process.<sup>25</sup>

- 2.27 In the event of termination, **Article 26(2)** preserves the rights of those who are receiving benefits under the Agreement, those who have lodged claims and would have been entitled to receive benefits under the Agreement, and certain employees and/or employers to whom the double superannuation liability provisions of **Articles 7(2)** and **8(2)** of the Agreement apply.<sup>26</sup>

## Implementation

- 2.28 The NIA states that the *Social Security (International Agreements) Act 1999* (Cth)(the Act) gives effect in domestic law to relevant provisions of Australia's bilateral social security agreements which are set out in Schedules 1–30 of the Act. A new Schedule containing the full text of the Agreement with India will be added to the Act as a legislative instrument pursuant to regulations made under **Sections 8** and **25** of the Act following tabling of the Agreement and consideration of the Agreement by the Joint Standing Committee on Treaties (JSCOT).<sup>27</sup>
- 2.29 Pursuant to **Section 27(1)(e)** of the *Superannuation Guarantee (Administration) Act 1992* (Cth) and **Regulation 7AC** of the *Superannuation Guarantee (Administration) Regulations 1993* (Cth), the provisions of Australia's bilateral social security agreements relating to double superannuation coverage are automatically given effect in Australian domestic law once the relevant agreement is added as a separate Schedule to the *Social Security (International Agreements) Act 1999*. The combined effect of **Section 27(1)(e)** and **Regulation 7AC** is that payment of salary or wages to an employee who has been sent temporarily to work in Australia will not give rise to a superannuation guarantee obligation for the overseas employer, provided that a relevant scheduled social security agreement is in place.<sup>28</sup>

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25 NIA, paragraphs 31–33.

26 NIA, para 34.

27 NIA, para 23.

28 NIA, para 24.

## Costs

- 2.30 According to the NIA, the Agreement was funded in the 2014–15 Federal Budget at a net cost of \$11.7 million over the forward estimates period.<sup>29</sup>
- 2.31 Department costs incurred by DSS, the Department of Human Services (Centrelink) and the Australian Taxation Office (ATO) total \$5.04 million over the forward estimates period, and are primarily one-off set-up costs related to implementation of the Agreement.<sup>30</sup>
- 2.32 In addition to departmental expenses, there is a revenue cost of \$4.8 million over the forward estimates period associated with the superannuation double coverage provisions. Administered costs for DSS are estimated to be \$1.8 million over the forward estimates period.<sup>31</sup>

## Conclusion

- 2.33 The Committee acknowledges that bilateral social security agreements are becoming increasingly important in today's mobile world as growing numbers of people live and work across national boundaries. It is essential that benefits are portable and that both employers and employees are not disadvantaged.
- 2.34 The Committee supports Australia's ratification of the Agreement and recommends that binding treaty action be taken.

### Recommendation 1

- 2.35 **The Committee supports the *Agreement between Australia and the Republic of India on Social Security* and recommends that binding treaty action be taken.**

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29 NIA, para 25.

30 NIA, para 26.

31 NIA, para 27.



## International Convention for the Prevention of Pollution from Ships, 1973

### Introduction

- 3.1 This chapter considers amendments to the Annex of the *Protocol of 1997* relating to the *International Convention for the Prevention of Pollution from Ships 1973* as modified by the *Protocol of 1978*.
- 3.2 The *International Convention for the Prevention of Pollution from Ships 1973* as modified by the *Protocol of 1978* [1988] ATS 29 (which incorporates the terms of the Convention although the Convention itself has not entered into force) and the *Protocol of 1997* [2007] ATS 37 (together referred to as MARPOL) are the key international instruments addressing the problem of marine pollution from ships.<sup>1</sup>
- 3.3 MARPOL contains six technical Annexes dealing with Regulations for the prevention of pollution by respectively: oil (**Annex I**); noxious liquid substances in bulk (**Annex II**); harmful substances in packaged form (**Annex III**); sewage (**Annex IV**); garbage (**Annex V**); and air (**Annex VI**).<sup>2</sup>

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1 National Interest Analysis [2015] ATNIA 3 with attachment on consultation Amendments to the Annex of the Protocol of 1997 relating to the *International Convention for the Prevention of Pollution from Ships, 1973*, as modified by the Protocol of 1978 relating thereto, done at London on 4 April 2004 [2014] ATNIF 34 (hereafter referred to as 'NIA'), para1.

2 NIA, para 2.

- 3.4 The International Maritime Organization (IMO) is responsible for administering MARPOL through the Marine Environment Protection Committee (MEPC).<sup>3</sup>
- 3.5 MEPC adopted the following resolutions (together, the Amendments) in London on 4 April 2014:
- Resolution MEC.246 (66), containing the text of amendments to MARPOL Annexes I, II, III, IV and V (First Resolution);
  - Resolution MEPC.247 (66), containing the text of amendments to MARPOL Annex VI (Second Resolution);
  - Resolution MEPC.248 (66), containing the text of amendments to MARPOL Annex I (Third Resolution); and
  - Resolution MEPC.251 (66), containing the text of amendment to MARPOL Annex VI and the Nitrogen Oxides (NO<sub>x</sub>) Technical Code 2008 (Fourth Resolution).<sup>4</sup>

## Overview and national interest summary

### First and Second Resolutions

- 3.6 The First and Second Resolutions revise international regulations for the prevention of pollution from ships making it mandatory for Parties to MARPOL to be subject to, and facilitate, periodic audits by the IMO to ensure compliance with MARPOL obligations.<sup>5</sup>
- 3.7 The NIA states that the amendments will increase compliance with MARPOL and reduce risks of marine pollution from vessels in Australian waters and beyond.<sup>6</sup>

### Third Resolution

- 3.8 The Third Resolution requires all oil tankers to be fitted with stability instruments capable of verifying vessel stability under intact and damage conditions, from January 2016. Oil tankers constructed before 1 January 2016 must comply with this requirement at the first scheduled renewal survey of the ship after 1 January 2016, but not later than 1 January 2021. The amendments also waive the requirement for some oil tankers to be fitted with a stability instrument under certain circumstances.<sup>7</sup>

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3 NIA, para 3.

4 NIA, para 4.

5 NIA, para 8.

6 NIA, para 9.

7 NIA, para 10.

- 3.9 According to the NIA, mandatory stability instruments for oil tankers will increase vessel and personnel safety, and reduce risks to the environment in Australian and other waters.<sup>8</sup>

## Fourth Resolution

- 3.10 The Fourth Resolution clarifies interpretations and application of regulations, including emissions calculations related to the application of the Energy Efficiency Design Index (EEDI), and provides for the necessary requirements, such as fuel gas composition, fuel and engine parameters and calculation factors, in order to calculate the NO<sub>x</sub> emission of dual fuel engines and to certify such engines.<sup>9</sup>
- 3.11 The NIA states that the amendments will allow the shipping sector to play its part in meeting agreed global goals and the Australian Government's international commitments to address climate change and reduce greenhouse gas emissions.<sup>10</sup>

## Reasons for Australia to take the proposed treaty action

### First and Second Resolutions

- 3.12 The NIA explains that the mandatory audit scheme is a key tool for assessing Member States' performance in meeting their obligations and responsibilities as a flag, port and coastal State under the relevant IMO treaties.<sup>11</sup> The NIA indicates that when the IMO Instruments Implementation Code (III Code)<sup>12</sup> was originally introduced, it was agreed by the IMO that the audit scheme would eventually be mandatory.<sup>13</sup>
- 3.13 Further, the NIA points out that the intention of making the III Code mandatory is not only to ensure Member States are adhering to the requirements, but also to identify capacity building needs and offer technical assistance to Member States as required.<sup>14</sup>

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8 NIA, para 11.

9 NIA, para 12.

10 NIA, para 14.

11 NIA, para 15.

12 The III Code assists Parties to implement the IMO instruments by providing a global standard to enable States to meet their obligations as flag, port and/or coastal States. (International Maritime Organization, 'IMO Assembly adopts mandatory audit scheme', <<http://www.imo.org/MediaCentre/PressBriefings/Pages/A-28-ends-.aspx#.VS2lu6N-9IU>> accessed 14 April 2015.)

13 NIA, para 16.

14 NIA, para 17.

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## Third Resolution

- 3.14 The NIA states that the stability instrument will provide oil tankers with the ability to respond in real time to changing circumstances, such as a damaged cargo hold, and reduce the risk of a maritime incident such as capsizing.<sup>15</sup>
- 3.15 The Committee sought assurance that adequate training would be provided to crews to ensure that the new equipment would be used effectively. The Australian Maritime Safety Authority (AMSA) said that training requirements are covered in separate IMO conventions.<sup>16</sup> These conventions include:
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW Convention) and STCW Code; and
  - International Safety Management Code (ISM Code) for ships regulated by the International Convention for the Safety of Life at Sea (SOLAS).<sup>17</sup>
- 3.16 AMSA explained that STCW Convention requirements are included in the Maritime Training Package, the standard for vocational education and training in Australia. AMSA ensures that the industry is aware of all IMO requirements and compliance with training requirements will be assessed as part of the IMO periodic audit process.<sup>18</sup>

## Fourth Resolution

- 3.17 According to the NIA, the amendments will build on the existing mandatory emission standards, further contributing to the reduction of air pollutants that have been linked to negative environmental and health effects.<sup>19</sup>
- 3.18 The NIA claims that the energy efficiency regulations will help Australia to meet its greenhouse gas emissions target.<sup>20</sup> The NIA also warns that, if the amendments are not implemented, there is a risk that Australian international ships built after 1 January 2013 will be less energy efficient than foreign-flagged ships that adhere to the new IMO regulations. Consequently, these Australian ships will be unable to trade internationally if the amendments are implemented by other nations or they sought to operate in a designated emission control area (ECA).<sup>21</sup>

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15 NIA, para 18.

16 Mr Matthew Johnston, Acting General Manager, Marine Environment Division, Australian Maritime Safety Authority (AMSA), *Committee Hansard*, 16 March 2015, p. 15.

17 Australian Maritime Safety Authority (AMSA), *Submission 3*.

18 AMSA, *Submission 3*.

19 NIA, para 24.

20 NIA, para 25.

21 NIA, para 26.

## Obligations

### First and Second Resolutions

3.19 The First and Second Resolutions amend **Annexes I, II, III, IV, V and VI** to include a new Chapter with regulations that provide that Parties shall use the provisions of III Code in the execution of their obligations and responsibilities contained in each Annex. It will be mandatory for every Party to be subject to periodic audits by the IMO to verify compliance with and implementation of each Annex. Each Party will be responsible for facilitating the conduct of the audit and implementation of a programme of actions to address the findings, based on guidelines developed by IMO.<sup>22</sup>

### Third Resolution

3.20 The Third Resolution amends **Regulation 28 of Annex I** to include a new paragraph 6, which requires that from 1 January 2016, all oil tankers must be fitted with a stability instrument capable of verifying compliance with intact and damage stability requirements. Oil tankers constructed before 1 January 2016 must comply with this regulation at the first scheduled renewal survey of the ship after 1 January 2016, but not later than 1 January 2021.<sup>23</sup>

3.21 In Australia, the stability instrument must be approved by AMSA having regard to the performance standards recommended by IMO.<sup>24</sup>

3.22 **Appendix II of Annex I** provides the Form of International Oil Pollution Prevention (IOPP) Certificate and Supplements. Form B of **Appendix II** contains the Record of Construction and Equipment for Oil Tankers. The Third Resolution amends Form B to reflect the amendment to **Regulation 28**.<sup>25</sup>

3.23 **Regulation 3 of Annex I** gives a Party the option to waive the requirement for some oil tankers to be fitted with a stability instrument under certain circumstances.<sup>26</sup>

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22 NIA, para 28.

23 NIA, para 29.

24 NIA, para 30.

25 NIA, para 31.

26 NIA, para 32.

## Fourth Resolution

- 3.24 The Fourth Resolution amends **Regulation 2** of **Annex VI** to clarify interpretations of hybrid propulsion and to provide definitions for a number of vessels.<sup>27</sup> **Regulation 5** of **Annex VI** is amended to define a 'new ship'.<sup>28</sup>
- 3.25 The amendments to **Regulation 13** of **Annex VI** mean the NO<sub>x</sub> emission limits under Tier III standards in any newly adopted ECA only apply to ships with marine diesel engines constructed on or after the date of adoption of a new ECA, or a later date as specified in the amendment designating a new ECA, whichever is later.<sup>29</sup>
- 3.26 **Regulation 13** specifies that NO<sub>x</sub> Tier III standards do not apply to a marine diesel engine installed on a ship constructed prior to 1 January 2021 of less than 500GT<sup>30</sup> that is greater than 24m in length when it has been specifically designed, and is used solely, for recreational purposes.<sup>31</sup>
- 3.27 The NO<sub>x</sub> Technical Code 2008 controls emissions of nitrogen oxides from marine diesel engines. The amendments to the Code provide a definition of a marine diesel engine and clarify the application of **Regulation 13**, including measurement procedures, for engines operating in gas and fuel modes. The amendments set out procedures for NO<sub>x</sub> emission measurements on a test bed, and for demonstrating compliance with NO<sub>x</sub> emission limits on board, including identifying relevant ISO standards and updating technical data in calculation and parameter tables.<sup>32</sup>
- 3.28 **Appendix I** of **Annex VI** provide the Form of International Air Pollution Prevention (IAPP) Certificate. The length (L) metres requirement within the Supplement to the IAPP Certificate has been expanded to include the amendment to **Regulation 13**.<sup>33</sup>
- 3.29 **Regulation 19** of **Annex VI** provides the application of regulations on energy efficiency for ships. **Regulation 19** is amended to exclude ships not propelled by mechanical means, and platforms including Floating Production, Storage and Offloading Facilities (FPSOs) and Floating Storage Units (FSUs) and drilling rigs, regardless of their propulsion. **Regulation 19** will also specify that Attained Energy Efficiency Design targets do not apply to ships which have non-conventional propulsion, except in the case of cruise passenger ships and LNG carriers delivered on

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27 NIA, para 33.

28 NIA, para 34.

29 NIA, para 35.

30 Gross tonnage (GT) is a measurement of the overall internal volume of a ship.

31 NIA, para 36.

32 NIA, para 37.

33 NIA, para 38.

or after 1 September 2019. **Regulation 19** clarifies that **Regulations 20** and **21** shall not apply to cargo ships having ice-breaker capability.<sup>34</sup>

3.30 **Regulation 20** of **Annex VI** provides regulations for calculating the Attained Energy Efficiency Design Index (Attained EEDI) of ships. **Regulation 20** is amended to expand vessel categories for the Attained EEDI calculation to include the addition of LNG carriers and Cruise passenger ships.<sup>35</sup>

3.31 **Regulation 21** of **Annex VI** provides the Required EEDI provisions for ships. The EEDI is a non-prescriptive design-based measure which aims to improve the energy efficiency of ships and reduce greenhouse gas emissions from international shipping.<sup>36</sup> **Regulation 21** is amended to expand the vessel categories for Required EEDI.<sup>37</sup>

## Implementation

3.32 According to the NIA no legislative amendments are required to implement the Resolutions.<sup>38</sup>

3.33 The NIA points out that Australia, as a Party to MARPOL, will be responsible for facilitating the conduct of the mandatory audit required under the amendments and to address the findings of such an audit.<sup>39</sup>

## Costs

### First and Second Resolutions

3.34 The NIA states that the implementation of the First and Second Resolutions is expected to have negligible administrative impact and compliance costs are likely to remain unchanged.<sup>40</sup>

### Third Resolution

3.35 AMSA estimates that the type of stability instruments required will cost between \$5000 and \$10000 which AMSA does not consider a substantial

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34 NIA, para 39.

35 NIA, para 40.

36 NIA, para 41.

37 NIA, para 42.

38 NIA, paragraphs 43–46.

39 NIA, para 44.

40 NIA, para 47.

cost in the context of a ship. The NIA suggests that, as stability instruments will be required on all oil tankers, it will not create a competitive disadvantage for Australian vessels. The NIA points out that there are only four Australian registered oil tankers operating.<sup>41</sup>

## Fourth Resolution

- 3.36 According to the NIA the proposed EEDI amendments will impose minimal or no cost on Australia as the EEDI regulations will only apply to new ships engaged in international trade.<sup>42</sup>
- 3.37 The NIA also expects that the amendments to the application of the NO<sub>x</sub> Tier III emission limits will incur minimal to no cost, as they only apply to ships with marine diesel engines constructed on or after 1 January 2016 operating in a designated ECA.<sup>43</sup>

## Conclusion

- 3.38 The Committee supports Australia's ratification of the amendments to the Annex of the Protocol of 1997 relating to the *International Convention for the Prevention of Pollution from Ships, 1973*, as modified by the Protocol of 1978 and recommends that binding treaty action be taken.

### Recommendation 2

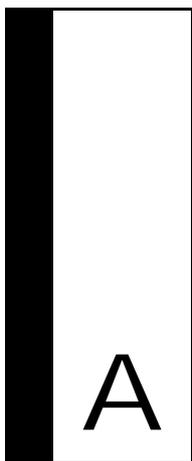
- 3.39 **The Committee supports the amendments to the Annex of the Protocol of 1997 relating to the *International Convention for the Prevention of Pollution from Ships, 1973*, as modified by the Protocol of 1978 relating thereto and recommends that binding treaty action be taken.**

Mr Wyatt Roy MP  
Chair

41 NIA, para 50.

42 NIA, para 52.

43 NIA, para 53.

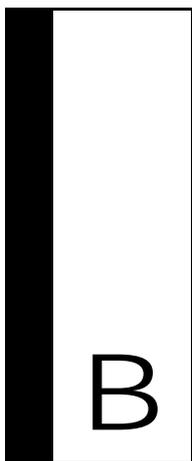


## Appendix A - Submissions

Treaties tabled on 10 February 2014

3 Australian Maritime Safety Authority





## Appendix B - Witnesses

**Monday, 16 March 2015—Canberra**

**Australian Maritime Safety Authority**

Mr Matthew Johnston, Acting General Manager, Marine Environment Division

**Department of Infrastructure and Regional Development**

Mr Michael Sutton, General Manager, Maritime and Shipping Branch, Surface Transport Policy Division

Ms Katrina Cristofani, Acting Director, Maritime Safety and Environment Section, Maritime and Shipping Branch, Surface Transport Policy Division

Mr Peter Good, Acting Senior Policy Advisor, Maritime Safety and Environment Section, Maritime and Shipping Branch, Surface Transport Policy Division

**Department of Social Services**

Ms Alanna Foster, Branch Manager, Eligibility and Participation Policy Branch

Mr Peter Hutchinson, Director, International Agreements, Eligibility and Participation Policy Branch

**Treasury**

Ms Heather Sturgiss, Analyst, Personal and Retirement Income Division