

Protocol establishing prolongation of the treaty between Australia and the Kingdom of the Netherlands regarding Malaysia Airlines flight MH17

Introduction

- 4.1 This chapter considers the *Protocol Establishing the Prolongation of the Treaty between the Kingdom of the Netherlands and Australia on the Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines flight MH17* (Protocol) which was tabled in the Parliament on 12 May 2015.
- 4.2 The Joint Standing Committee on Treaties (JSCOT) examined the original *Treaty between Australia and the Kingdom of the Netherlands on the presence of Australian personnel in the Netherlands for the purpose of responding to the downing of Malaysia Airlines Flight MH17* (Treaty) in October 2014 and tabled its report into the inquiry in February 2015.¹ The Treaty is due to expire on 1 August 2015 and the Protocol proposes to extend the Treaty until 1 August 2016.²
- 4.3 The Treaty was not tabled in Parliament for the usual 20 days before binding treaty action was taken. Instead, under the National Interest

1 Joint Standing Committee on Treaties (JSCOT), *Report 146: Treaty tabled on 30 September 2014*, February 2015.

2 National Interest Analysis [2015] ATNIA 6, with attachment on consultation *Protocol Establishing the Prolongation of the Treaty between the Kingdom of the Netherlands and Australia on the Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines Flight MH17* [2015] ATNIF 13 (hereinafter referred to as 'NIA'), para 2.

Exemption (NIE), the Treaty entered into force on the date it was signed by both Australia and the Netherlands, 1 August 2014.³

- 4.4 The Protocol only extends the term of the Treaty. It does not amend any other provisions.⁴
- 4.5 The NIA states that Australia is seeking approval from the Executive Council (ExCo) for the Protocol to enter into force upon signature as provided for in **Article 2** of the Protocol. Signature will occur once Australia and the Netherlands have completed their domestic requirements for entry into force (expected by 1 August 2015).⁵

Overview and national interest summary

- 4.6 In response to the downing of Malaysia Airlines Flight MH17, significant numbers of Australian personnel were deployed to the Netherlands under the Treaty to provide assistance in relation to tasks such as the identification of victims and the investigation of the cause of the incident.⁶
- 4.7 The Treaty defines the rights, obligations and arrangements between Australia and the Netherlands necessary to facilitate Australia's deployment to, and operations in, the Netherlands. It ensures that all deployed personnel are accorded appropriate protections.⁷
- 4.8 The NIA states that due to Dutch domestic requirements, the duration of the Treaty was limited to twelve months. As the criminal investigation into the downing of flight MH17 is ongoing, and personnel from the Australian Federal Police and the Department of Defence are likely to remain in the Netherlands beyond 1 August 2015, the Protocol to prolong the Treaty is required to ensure their ongoing protection.⁸

Obligations

- 4.9 The Protocol extends the Treaty for a further twelve months (**Article 1**). As a result, both Australia and the Netherlands will remain bound by the

3 NIA, para 3.

4 NIA, para 4.

5 NIA, para 5.

6 NIA, para 6. For further details see JSCOT, *Report 146: Treaty tabled on 30 September 2014*, pp 4-5.

7 NIA, para 7.

8 NIA, para10.

provisions in the Treaty for the extended period unless terminated earlier.
The Protocol will enter into force on the date of last signature (**Article 2**).⁹

Implementation

4.10 The term of the Treaty will automatically be extended on signature of the Protocol. No legislation is required to implement Australia's obligations under the Protocol.¹⁰

Conclusion

4.11 The Committee conducted an inquiry into the original Treaty in October 2014, calling for submissions and holding a public hearing.

4.12 The Committee recognises the need to maintain without interruption the legal framework required to allow Australian personnel to continue and complete their work in the Netherlands as soon as possible.

4.13 The Committee supports the Protocol and recommends that binding treaty action be taken.

Recommendation 3

4.14 **The Committee supports the *Protocol Establishing the Prolongation of the Treaty between the Kingdom of the Netherlands and Australia on the Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines flight MH17* and recommends that binding treaty action be taken.**

⁹ NIA, para 11. For details of the Treaty see JSCOT, *Report 146: Treaty tabled on 30 September 2014*, pp 5-7.

¹⁰ NIA, para 19.

Mr Wyatt Roy MP

Chair

5 June 2015