

Report 107

Treaties tabled on 20 August (2) and 15 September 2009

Convention between Australia and New Zealand for the Avoidance of Double Taxation with Respect to Taxes on Income and Fringe Benefits and the Prevention of Fiscal Evasion

Agreement between the Government of Australia and the Government of Jersey for the Exchange of Information with Respect to Taxes

Agreement between the Government of Australia and the Government of Jersey for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments

Second Protocol Amending the Agreement between Australia and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

Proposed Amendment of the Articles of Agreement of the International Monetary Fund to Enhance Voice and Participation in the International Monetary Fund

Proposed Amendment of the Articles of Agreement of the International Monetary Fund to Expand the Investment Authority of the International Monetary Fund

Proposed amendment of the Articles of Agreement of the International Bank for Reconstruction and Development to Enhance Voice and Participation in the International Bank for Reconstruction and Development

Agreement to amend the Agreement between the Government of Australia and the Government of the United States of America concerning Certain Mutual Defense Commitments

Agreement between the Government of Australia and the Government of the Republic of Singapore Concerning the Use of Shoalwater Bay Training Area and the Use of Associated Facilities in Australia

Amendment to Annex III of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade

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Membership of the Committee

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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

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

ADF	Australian Defence Force
ATO	Australian Taxation Office
AUSTRAC	Australian Transaction Reports and Analysis Centre
EOI	Exchange of Information
IMF	International Monetary Fund
JSCOT	Joint Standing Committee on Treaties
NIA	National Interest Analysis
OECD	Organisation for Economic Co-operation and Development
TIEA	Tax Information Exchange Agreement
TRA	Taxing Rights Agreement



List of recommendations

2 Taxation Agreement with New Zealand

Recommendation 1

The Committee supports the *Convention between Australia and New Zealand for the Avoidance of Double Taxation with Respect to Taxes on Income and Fringe Benefits and the prevention of Fiscal Evasion* and recommends that binding treaty action be taken.

3 Taxation Agreements with Jersey

Recommendation 2

The Committee supports the *Agreement between the Government of Australia and the Government of Jersey for the Exchange of Information with Respect to Taxes* and recommends that binding treaty action be taken.

Recommendation 3

The Committee supports the *Agreement between the Government of Australia and the Government of Jersey for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments* and recommends that binding treaty action be taken.

4 Taxation Agreement with Belgium

Recommendation 4

The Committee supports the *Second Protocol amending the Agreement between the Kingdom of Belgium and Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* and recommends that binding treaty action be taken.

5 Three treaties for the reform of the IMF and the World Bank

Recommendation 5

The Committee recommends that the Australian Government use the good will it has gained by agreeing to the IMF Voice and Participation Amendment prior to the G20 meeting to progress improvements in the balance of voting power and the confidence and legitimacy of the IMF's decision making process.

Recommendation 6

The Committee recommends that, consistent with the IMF's goals of international economic stability and fostering growth and economic development, the Australian Government advocate that the IMF not invest in:

- high risk investments;
- the manufacture of arms or military equipment; and
- environmentally damaging industries.

Recommendation 7

The Committee recommends that the Australian Government support the proposal of the Development Committee of the World Bank to increase the quota of votes allocated to developing countries to at least 47 per cent.

6 Amended Chapeau Defence Agreement

Recommendation 8

The Committee recommends that the Australian Government explore mechanisms to ensure that Australian personnel convicted of crimes for which the penalty is death while serving in the United States are not subject to the death penalty.

Recommendation 9

The Committee supports the *Agreement to amend the Agreement between the Government of Australia and the Government of the United States of America concerning Certain Mutual Defense Commitments* and recommends that binding treaty action be taken.

7 Agreement between the Government of Australia and the Government of the Republic of Singapore Concerning the Use of Shoalwater Bay Training Area and the Use of Associated Facilities in Australia

Recommendation 10

The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the use of Shoalwater Bay Training Area and the use of associated facilities in Australia* and recommends that binding treaty action be taken.

Introduction

Purpose of the Report

- 1.1 This report contains advice to Parliament on the review by the Joint Standing Committee on Treaties of nine treaty actions tabled in Parliament on 20 August 2009. These treaty actions are the:
- *Convention between Australia and New Zealand for the Avoidance of Double Taxation with Respect to Taxes on Income and Fringe Benefits and the Prevention of Fiscal Evasion;*
 - *Agreement between the Government of Australia and the Government of Jersey for the Exchange of Information with Respect to Taxes;*
 - *Agreement between the Government of Australia and the Government of Jersey for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments;*
 - *Second Protocol Amending the Agreement between Australia and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income;*
 - *Proposed Amendment of the Articles of Agreement of the International Monetary Fund to Enhance Voice and Participation in the International Monetary Fund;*
 - *Proposed Amendment of the Articles of Agreement of the International Monetary Fund to Expand the Investment Authority of the International Monetary Fund;*
 - *Proposed amendment of the Articles of Agreement of the International Bank for Reconstruction and Development to Enhance Voice and*

Participation in the International Bank for Reconstruction and Development;

- *Agreement to amend the Agreement between the Government of Australia and the Government of the United States of America concerning Certain Mutual Defense Commitments (Chapeau Defense Agreement); and*
- *Agreement between the Government of Australia and the Government of the Republic of Singapore Concerning the Use of Shoalwater Bay Training Area and the Use of Associated Facilities in Australia.*¹

- 1.2 One of the powers of the Committee set out in its resolution of appointment is to inquire into and report on matters arising from treaties and related National Interest Analyses (NIAs) presented. This report deals with inquiries conducted under this power, and consequently the report refers frequently to the treaties and their associated NIAs. Copies of each treaty and its associated NIA may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct/20august2009/tor.htm

- 1.3 Copies of each treaty action and the NIAs may also be obtained from the Australian Treaties Library maintained on the internet by the Department of Foreign Affairs and Trade. The Australian Treaties Library is accessible through the Committee's website or directly at:
- www.austlii.edu.au/au/other/dfat/

Conduct of the Committee's Review

- 1.4 The reviews contained in this report were advertised in the national press and on the Committee's website.² Invitations to lodge submissions were also sent to all State Premiers, Chief Ministers, Presiding Officers of parliaments and to individuals who have expressed an interest in being kept informed of proposed treaty actions. Submissions received and their authors are listed at Appendix A.

1 Parliament of the Commonwealth of Australia, House of Representatives, *Votes and Proceedings* No. 113, p. 1268; Parliament of the Commonwealth of Australia, Senate, *Journals of the Senate*, No. 86, p. 2403.

2 The Committee's reviews of the proposed treaty actions were advertised in *The Australian* on 2 September 2009. Members of the public were advised on how to obtain relevant information both in the advertisement and via the Committee's website, and invited to submit their views to the Committee.

- 1.5 The Committee also received evidence at public hearings on 7 September and 14 September 2009 in Canberra. A list of witnesses who appeared at the public hearings is at Appendix B. Transcripts of evidence from the public hearings may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct/20august2009/hearings.htm

Taxation Agreement with New Zealand

Introduction

- 2.1 The *Convention between Australia and New Zealand for the Avoidance of Double Taxation with Respect to Taxes on Income and Fringe Benefits and the Prevention of Fiscal Evasion* is intended to replace an existing Agreement between the Government of Australia and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income [1997] ATS 23, as amended by the Protocol amending the Agreement between the Government of Australia and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income [2007] ATS 5.¹
- 2.2 The key objectives of the Treaty are to:
- promote closer economic cooperation between Australia and New Zealand by reducing barriers caused by the double taxation of residents of the two countries; and
 - improve certainty for Australian businesses looking to expand into New Zealand and for other Australian taxpayers by updating and modernising the tax arrangements between the two countries.²

1 National Interest Analysis (NIA), para 3.

2 NIA, paras 4 and 5.

Obligations

- 2.3 Articles 6 to 21 allocate taxing rights in respect of certain types of income fringe benefits and are of a kind already present within the existing Agreement.³
- 2.4 Article 23 obliges both countries to relieve double taxation on cross-border income by permitting tax paid under the other country's laws and in accordance with the Agreement to be allowed as a credit against tax payable under their own laws.⁴
- 2.5 Article 24 obliges each country to treat nationals of the other country no less favourably than it treats its own nationals regarding taxation and any connected requirements.⁵
- 2.6 Article 25 establishes dispute resolution procedures and obliges each country to endeavour to resolve disputes. The Article strengthens existing dispute resolution procedures by requiring both countries to allow taxpayers to pursue arbitration where an issue remains unresolved after two years.⁶
- 2.7 Article 26 obliges both countries to exchange relevant information, including obligations to observe secrecy provisions and to notify the other country of any significant changes to laws relating to relevant taxes. The Article allows limited grounds for either country to decline to provide requested information.⁷
- 2.8 Article 27 obliges each country to assist the other in the collection of revenue claims upon request and within the bounds of its own administrative practices, laws or public policy.⁸
- 2.9 Article 29 obliges the two countries to consult each other on the operation and application of the Agreement within five years of entry into force of the Treaty and at intervals of no more than every five years.⁹

3 NIA, para 18.

4 NIA, para 19.

5 NIA, para 20.

6 NIA, para 21.

7 NIA, para 22.

8 NIA, para 23.

9 NIA, para 24.

Relationship between Australia and New Zealand

- 2.10 Treasury emphasised that Australia and New Zealand share a ‘unique relationship’ characterised by a ‘highly interconnected economic relationship’.¹⁰ Based on trade in goods and services, New Zealand is now Australia’s fifth largest market, taking 5.2 per cent of our exports, and is the eighth largest source of imports for Australia. Australia is New Zealand’s principal trading partner, providing 20.8 per cent of its merchandise imports and taking 22 per cent of its merchandise exports.¹¹
- 2.11 Two-way trade reached A\$22.45 billion in 2007-08 with the balance in Australia’s favour. Two-way investment between Australia and New Zealand currently stands at over A\$110 billion. New Zealand is Australia’s sixth largest investor, with a total stock of investment worth A\$32.4 billion at the end of 2006. New Zealand is the third largest market for Australian investment abroad, with Australia the largest investor in New Zealand. The total stock of Australian investment in New Zealand was worth A\$65.3 billion at the end of 2006.¹²
- 2.12 Additionally Australian and New Zealand citizens move freely between the two countries for work and leisure. Under the Trans-Tasman Travel Arrangements which have been in place since 1973, citizens from both countries can visit, live, work and remain indefinitely in the other country without applying for formal authority.¹³ The flow of citizens between the two countries tends to fluctuate with changing economic conditions in either Australia or New Zealand. In 2007-08 over 756,000 Australians visited New Zealand¹⁴ and 1,392,136 New Zealanders came to Australia.¹⁵ Of the New Zealanders, 49,221 came on either a permanent or long-term basis.¹⁶

10 Ms Lynette Redman, *Transcript of Evidence*, 7 September 2009, p. 10.

11 *NZ Tax Agreement*, Regulation Impact Statement (NZ RIS), para 1.14.

12 NZ RIS, paras 1.15 and 1.18.

13 Department of Immigration and Citizenship, *Population flows: immigration aspects 2007-08 edition*, Commonwealth of Australia, 2009, p. 81.

14 C. Harkess et al, *Migration Trends & Outlook 2007/08*, Department of Labour, Wellington, 2009, p. 43.

15 Department of Immigration and Citizenship, *Population flows: immigration aspects 2007-08 edition*, Commonwealth of Australia, 2009, p. 82.

16 Department of Immigration and Citizenship, *Population flows: immigration aspects 2007-08 edition*, Commonwealth of Australia, 2009, p. 82.

Reasons to take treaty action

- 2.13 Treasury told the Committee that this Agreement will encourage a stronger economic relationship between Australia and New Zealand by reducing the barriers to bilateral trade and investment, primarily by reducing withholding taxes on dividend, interest and royalty payments between the two countries.¹⁷ In particular, 'the Future Fund and Australia's other nation building funds are exempted from withholding tax on interest and certain dividends received from New Zealand.'¹⁸
- 2.14 For individuals, the Agreement allocates sole taxing rights over pensions and similar periodic remuneration to the recipient's country of residence. Similarly a lump sum paid under a retirement benefit scheme, or in consequence of retirement, invalidity, disability or death, or by way of compensation for injuries, will be taxable solely in the country from which it is paid. These new rules will remove impediments to working and accumulating superannuation benefits in both countries.¹⁹ Treasury explained that this would correct a current problem for many retirees:
- Essentially what is intended with that provision is that it recognises that people that move between Australia and New Zealand during their working life can accumulate superannuation benefits in both countries but they have to retire to one. Often you will have the situation where somebody has accumulated an Australian superannuation benefit and, had they retired to Australia, the payment would have been exempt. Because they are aged over 60, it is coming from a tax-complying superannuation fund. But if they moved to New Zealand, it would not be exempt under their domestic law. So it ensures that that Australian exemption will also be granted in New Zealand and vice versa.²⁰
- 2.15 Treasury informed the Committee that the Agreement also ensures that an employee's remuneration during short term visits on secondment to one country is taxable only in the employee's country of residence.²¹ This will accommodate the increasing number of individuals who are sent to work for short periods of time in either country.

17 NIA, para 7.

18 Ms Lynette Redman, *Transcript of Evidence*, 7 September 2009, p. 10.

19 NIA, para 11.

20 Ms Lynette Redman, *Transcript of Evidence*, 7 September 2009, pp. 13-14.

21 NIA, para 12. Ms Lynette Redman, *Transcript of Evidence*, 7 September 2009, p. 11.

- 2.16 Treasury also informed the Committee that the Agreement will increase certainty for taxpayers by reducing the complexity of the tax treatment of many cross border transactions, particularly Australian managed investment trusts. An avenue has also been established for dispute resolution, providing further security for taxpayers.²²

Costs and implementation

- 2.17 There would be a small, unquantifiable cost in administering the changes made by the Treaty, including minor implementation costs to the Australian Taxation Office (ATO) in educating the taxpaying public and ATO staff concerning the new arrangements. Other administrative costs will continue to be managed within existing agency resources.²³
- 2.18 Reductions in New Zealand withholding taxes can be expected to result in an increase in the amount of Australian tax revenue through reduced Foreign Income Tax Offsets and increases in Australian taxable income. The revenue costs are likely to be broadly offset by revenue gains.²⁴
- 2.19 Treasury advised that amendments to the *International Tax Agreements Act 1953* will be made prior to the Treaty entering into force. No action is required by the States or Territories and there will be no change to the existing roles of the Commonwealth, or the States and Territories, in tax matters as a consequence of implementing the Treaty.²⁵

Consultation

- 2.20 The then Assistant Treasurer invited submissions from stakeholders and the wider community in January 2008. Treasury also sought comments from the business community through the Tax Treaties Advisory Panel.²⁶
- 2.21 The State and Territory governments have been consulted through the Commonwealth/State Standing Committee on Treaties. Information on

22 NIA, para 18. Ms Lynette Redman, *Transcript of Evidence*, 7 September 2009, p. 11.

23 NIA, para 30.

24 NIA, para 28.

25 NIA, para 26.

26 NIA, para 37.

the negotiation of this Treaty was included in the schedules of treaties to State and Territory representatives from early March 2009.²⁷

- 2.22 The Committee sought clarification of any concerns raised by business organisations during the consultation process. Treasury stated that overall business representatives had expressed support for the Agreement but were critical of the services provision. However, New Zealand insisted on the inclusion of a services provision and Treasury argued that it has negotiated a suitable compromise.²⁸

Conclusion and recommendations

- 2.23 The Committee recognises the unique relationship which exists between Australia and New Zealand and the importance of reducing complexity for both individuals and business with regard to taxation arrangements between the two countries. The Committee therefore supports binding treaty action being taken.

Recommendation 1

The Committee supports the *Convention between Australia and New Zealand for the Avoidance of Double Taxation with Respect to Taxes on Income and Fringe Benefits* and the prevention of Fiscal Evasion and recommends that binding treaty action be taken.

27 NIA, para 39.

28 Ms Lynette Redman, *Transcript of Evidence*, 7 September 2009, p. 17.

Taxation Agreements with Jersey

Introduction

3.1 This chapter considers two treaties:

- an *Agreement between the Government of Australia and the Government of Jersey for the Exchange of Information with Respect to Taxes*; and
- an *Agreement between the Government of Australia and the Government of Jersey for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments*.

3.2 The first Agreement, the Tax Information Exchange Agreement (TIEA), establishes the legal basis for the exchange of tax information between Australia and Jersey.¹

3.3 The second Agreement, the Taxing Rights Agreement (TRA), is part of a package of benefits that have been offered to Jersey to encourage it to conclude the above mentioned TIEA. This Agreement provides for the allocation of taxing rights of certain cross-border income derived by the residents of both countries, and establishes a mechanism to help resolve disputes arising from transfer pricing adjustments.²

3.4 Jersey is a British Crown Dependency, located in the English Channel. It has a low-tax structure and is an internationally recognised offshore

1 Tax Information Exchange Agreement National Interest Analysis (TIEA NIA), para 3.

2 Taxing Rights Agreement National Interest Analysis (NIA), paras 3 and 6.

financial centre. Detailed information on the level and type of economic activity between Australia and Jersey is not available. However data held by the Australian Transaction Reports and Analysis Centre (AUSTRAC) indicates that a significant amount of funds flow between Australia and Jersey.³

Reasons to take treaty action

- 3.5 The TIEA is the sixth Agreement of this kind for Australia and is part of Australia's efforts to conclude tax information exchange agreements with countries committed to working with the OECD to improve transparency and establish effective procedures for the exchange of tax information. Other Agreements are in place with Bermuda, Antigua and Barbuda, the Netherlands Antilles, the British Virgin Islands and the Isle of Man.⁴ The Agreements for the British Virgin Islands and the Isle of Man were considered by the Committee earlier this year.⁵
- 3.6 Treasury told the Committee that the TIEA will strengthen the ability of Australia to administer and enforce its tax laws by enabling the Commissioner of Taxation to 'seek relevant taxpayer information from the authorities in Jersey for both civil and criminal tax purposes'.⁶ The Agreement will override domestic bank secrecy laws and compel each country to supply relevant information even if it does not require the information itself.
- 3.7 Treasury submitted that the second Agreement, the Taxing Rights Agreement, will encourage Jersey to conclude the TIEA by offering a package of additional benefits. The Agreement will help to prevent double taxation for individuals who are residents of either country and derive cross-border income from Australia or Jersey.⁷
- 3.8 Treasury considers the additional benefits being offered to various jurisdictions through the taxing rights agreements an important incentive

3 NIA, paras 4 and 5.

4 TIEA NIA, para 7.

5 See Joint Standing Committee on Treaties (JSCOT) *Report 99: Treaties tabled on 3 December 2008 and 3 February 2009* available at <http://www.aph.gov.au/house/committee/jsct/reports.htm>; and JSCOT *Report 102: Treaties tabled on 12 and 16 March 2009* available at <http://www.aph.gov.au/house/committee/jsct/reports.htm>.

6 Mr Gregory Wood, *Transcript of Evidence*, 14 September 2009, p. 1.

7 Mr Gregory Wood, *Transcript of Evidence*, 14 September 2009, pp. 1-2.

to sign TIEAs. Not all jurisdictions take the offer up but those that do receive:

- recognition that they are no longer operating as a tax haven;
- technical assistance and training; and
- the benefits of the taxing rights agreement which avoids double taxation for its citizens.⁸

Progress on taxation evasion measures

3.9 As the Committee has examined a number of TIEAs and taxation exchange agreements recently, it sought an update on progress in negotiating similar agreements with relevant jurisdictions. Treasury confirmed that progress had accelerated considerably with four agreements signed in the past year, compared to only three such agreements being signed in the past three to four years.⁹

3.10 The Committee asked whether the implementation of these agreements was having a noticeable affect on tax evasion. Treasury is confident that 'the noose is definitely tightening' on tax evasion world wide with approximately 50 countries signing these types of agreements since the G20 meeting in March-April 2009.¹⁰

3.11 The ATO identified the technical assistance being offered by Australia to various jurisdictions through the taxation exchange agreements as an important contributor to negotiations. In particular, smaller jurisdictions were said to benefit from practical assistance in the form of resources and training. Australia has valuable expertise in a wide range of areas and has facilitated the exchange of information on issues such as VAT, GST and compliance models.¹¹ The ATO explained that in many cases the assistance required can be very basic:

For many of the smaller countries, actually having the resources in place to accept those requests, store them safely, and send the information back, can get down to levels such as providing

8 Mr Gregory Wood, *Transcript of Evidence*, 14 September 2009, p. 4.

9 Mr Gregory Wood, *Transcript of Evidence*, 14 September 2009, p. 2.

10 Mr Gregory Wood, *Transcript of Evidence*, 14 September 2009, p. 2; Mr Malcolm Allen, *Transcript of Evidence*, 14 September 2009, p. 3.

11 Mr Malcolm Allen, *Transcript of Evidence*, 14 September 2009, p. 5.

sufficient filing cabinets of a secure standard and computer facilities to go with that.¹²

Agreement between the Government of Australia and the Government of Jersey for the Exchange of Information with Respect to Taxes

Obligations

- 3.12 Article 4(1) obliges both Parties to exchange information where the information is relevant to the administration and enforcement of the Party's domestic tax laws.¹³
- 3.13 Article 4(2) obliges the requested Party to collect requested information even if it is not required for its own domestic tax purposes. Parties must ensure that their competent authority has the power to obtain requested information from banks, other financial institutions, any person acting in an agency or fiduciary capacity, and information regarding the legal and beneficial ownership of companies and partnerships as well as persons involved with trusts and foundations (Article 4(4)).¹⁴
- 3.14 Information must be provided without delay (Article 4(7)) and access provided to individuals and records (Article 5). However, information may be refused if requests do not conform to the Agreement or if the requesting Party would be unable to obtain the requested information under its own laws (Article 6).¹⁵
- 3.15 Information provided must be kept confidential (Article 7) and costs are divided between the Parties: direct costs are borne by the requesting Party and indirect costs by the requested Party (Article 8).¹⁶
- 3.16 Under Article 9 neither Party may impose punitive measures on residents or nationals of the other Party because that Party has failed to provide relevant information. Both Parties are obliged to use whatever dispute

12 Mr Malcolm Allen, *Transcript of Evidence*, 14 September 2009, p. 5.

13 TIEA NIA, para 15.

14 TIEA NIA, paras 16 and 17.

15 TIEA NIA, paras 18, 19 and 20.

16 TIEA NIA, paras 21 and 22.

resolution methods may be necessary to resolve any disagreements over the application or interpretation of this Agreement (Article 10).¹⁷

Costs and implementation

- 3.17 Treasury advised the Committee that implementation of the Agreement will have a small administrative and financial impact on the ATO as it is likely that most requests for information will originate from Australia. A Memorandum of Understanding will be concluded between the two countries to clarify costs that will be borne by the ATO.¹⁸
- 3.18 No further legislation or regulation is required to implement the Agreement. The implementation will not affect the existing roles of the Commonwealth or the States and Territories in tax matters.¹⁹

Agreement between the Government of Australia and the Government of Jersey for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments

Obligations

- 3.19 Under Article 5, Australia cannot tax Australian-source pensions and retirement annuities paid to residents of Jersey. Article 5 permits Australia to tax Jersey-source pensions and retirement annuities paid to Australian residents.²⁰
- 3.20 Under Article 6, Australia cannot tax the salaries of government employees of Jersey working in Australia in government service for non-commercial purposes. Australia and Jersey will therefore have sole taxing rights over the salaries that they pay to individuals undertaking government functions.²¹
- 3.21 Under Article 7, Australia cannot tax maintenance, education or training payments received by students or business apprentices from Jersey who

17 TIEA NIA, paras 23 and 24.

18 TIEA NIA, paras 27 and 29.

19 TIEA NIA, paras 25 and 26.

20 NIA, para 11.

21 NIA, para 12.

are temporarily studying in Australia, where those payments are made from outside Australia. Other income will remain liable to Australian tax.²²

3.22 Article 8 establishes a mechanism to assist in the resolution of disputes arising from transfer pricing adjustments made by either country and provides an avenue for affected taxpayers to present their case to the relevant authority.²³

3.23 Article 9 obliges the Parties to exchange information that is foreseeably relevant for the purposes of carrying out the Agreement.²⁴

Costs and implementation

3.24 Treasury advised the Committee that the Agreement will have a financial impact on the Australian Taxation Office (ATO), however this is expected to be minimal given the small number of taxpayers likely to be affected by the Agreement.²⁵

3.25 Minor amendments will be required to the *International Tax Agreements Act 1953* to give effect to the Agreement. Treasury informed the Committee that this legislation is expected to be introduced into Parliament in late 2009. The implementation of the Agreement will not affect the existing roles of the Commonwealth or the States and Territories in tax matters.²⁶

Consultation

3.26 Relevant Commonwealth Ministers, the ATO and State/Territory Governments have been consulted in development of the Agreements. No public consultation took place as the negotiations for the Agreement were not public.²⁷

Conclusions and recommendations

3.27 The Committee recognises the importance of international efforts to combat offshore tax evasion and to establish consistent standards of tax governance between Australia and countries such as Jersey. The

22 NIA, para 13.

23 NIA, para 14.

24 NIA, para 15.

25 NIA, para 18.

26 NIA, paras 16 and 17.

27 NIA, paras 27 to 30.

Committee also recognises the domestic tax benefits arising from taxation Agreements that discourage the use of certain countries as tax havens. The Committee therefore recommends that binding treaty action be taken for both Agreements.

Recommendation 2

The Committee supports the *Agreement between the Government of Australia and the Government of Jersey for the Exchange of Information with Respect to Taxes* and recommends that binding treaty action be taken.

Recommendation 3

The Committee supports the *Agreement between the Government of Australia and the Government of Jersey for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments* and recommends that binding treaty action be taken.

Taxation Agreement with Belgium

Introduction

- 4.1 The *Second Protocol Amending the Agreement between Australia and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* will update the Exchange of Information (EOI) provisions (Article 26) in the *Agreement between Australia and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*.
- 4.2 The provisions are intended to improve the ability of the Australian Taxation Office (ATO) to exchange information with Belgium authorities by:
- expanding the taxes in respect of which information may be exchanged to all federal taxes rather than just the income taxes covered under the existing Agreement; and
 - ensuring that neither Belgium nor Australia's tax authorities can refuse to provide the information solely because they do not have a domestic interest in such information, or because a bank or similar institution holds the information.¹

¹ National Interest Analysis (NIA), para 5.

Obligations

- 4.3 Article 1(1) obliges both Parties to exchange information where such information is foreseeably relevant for carrying out the provisions of the Agreement or to the administration and enforcement of each Party's domestic tax laws.²
- 4.4 Such information shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, information received may be used for other purposes when the laws of both countries permit this and the tax authority supplying the information authorises this (Article 1(2)).³
- 4.5 Article 1(3) provides for either Party to decline a request for information in certain circumstances, for example, if the information would disclose a trade or business secret or breach human rights obligations.⁴

Reasons to take treaty action

- 4.6 Treasury submitted that the Second Protocol will update the current Agreement with Belgium and bring it into line with the internationally agreed tax standards developed by the OECD. Treasury considered that Belgium's commitment to implement full EOI on tax matters is a positive step in its relationship with Australia.⁵
- 4.7 Treasury also considered that this Protocol further demonstrates the Australian Government's commitment to supporting global action on improving information exchange and transparency.⁶
- 4.8 Treasury told the Committee that the updated Protocol will help to counteract existing bank secrecy provisions which contribute to tax evasion by compelling each tax administration to supply relevant information even if it is not required for their domestic taxation purposes.⁷

2 NIA, para 9.

3 NIA, paras 10 and 13.

4 NIA, para 11.

5 Mr Michael Atfield, *Transcript of Evidence*, 14 September 2009, p. 7

6 NIA, para 8.

7 Mr Michael Atfield, *Transcript of Evidence*, 14 September 2009, p. 7.

Exchange of information

- 4.9 The Committee requested clarification on the mechanics of the exchange of taxation information between Australia and Belgium. Treasury advised that the exchange is usually on an *ad hoc* basis but that tax authorities in either country may decide to pass on relevant information if they are aware that it is of interest to tax authorities in the other country.⁸
- 4.10 Treasury further advised that to ensure security and privacy provisions are met, the exchange of taxpayer data is done in accordance with the Protective Security Manual published by the Attorney-General's Department and the Australian Government Information and Communication Technology Security Manual (ACSI33) published by the Defence Signals Directorate.⁹

Costs and implementation

- 4.11 Treasury advised that the estimated revenue impact of the updated EOI Article in the Second Protocol is unquantifiable. However, since the Second Protocol seeks to expand the scope of taxpayer information available to the Australian Taxation Office, the proposal is expected to increase taxpayer compliance and therefore tax revenue.¹⁰
- 4.12 As the existing Exchange of Information Unit within the ATO will be able to handle any EOI requests there will only be minimal increases in administrative costs to the ATO as a result of the enhanced information exchange between Australia and Belgium. There is expected to be little or no change in ongoing compliance costs for Australian taxpayers.¹¹
- 4.13 The implementation of the Second Protocol will require amendment to the *International Tax Agreements Act 1953* to give the Second Protocol the force of law in Australia. The amendment will be effected prior to the Second Protocol entering into force in Australia. The implementation of the Protocol will not affect the existing roles of the Commonwealth or the States and Territories in tax matters.¹²

8 Mr Michael Atfield, *Transcript of Evidence*, 14 September 2009, p. 8.

9 Treasury, *Submission No. 2*.

10 NIA, para 17.

11 NIA, paras 18 and 19.

12 NIA, paras 14 and 16.

Consultations

- 4.14 Relevant Commonwealth Ministers, the ATO and State/Territory Governments were consulted in development of the Agreement. No public consultation took place as the negotiations for the Agreement were not public.¹³

Conclusions and recommendations

- 4.15 The Committee recognises the importance of updating and enhancing taxation agreements with countries such as Belgium in the interests of increasing tax transparency. The Committee therefore supports binding treaty action being taken.

Recommendation 4

The Committee supports the *Second Protocol amending the Agreement between the Kingdom of Belgium and Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* and recommends that binding treaty action be taken.

13 NIA, paras 23 to 26.

Three treaties for the reform of the IMF and the World Bank

Background

- 5.1 This chapter considers three treaty actions for the reform of the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (the World Bank):
- *Proposed Amendment of the Articles of Agreement of the International Monetary Fund to Enhance Voice and Participation in the International Monetary Fund* (IMF Voice and Participation Amendment);
 - *Proposed Amendment of the Articles of Agreement of the International Monetary Fund to Expand the Investment Authority of the International Monetary Fund* (IMF Investment Authority Amendment); and
 - *Proposed Amendment of the Articles of Agreement of the International Bank for Reconstruction and Development to Enhance Voice and Participation in the International Bank for Reconstruction and Development* (World Bank Voice and Participation Amendment).
- 5.2 The three treaty actions were presented together with a single National Interest Analysis (NIA). According to the Treasury, the three treaties were presented together because they have the common aim of improving the effectiveness and legitimacy of the IMF and the World Bank.¹

1 National Interest Analysis (NIA), Para 8.

Government request to expedite consideration and Report 104

- 5.3 The three treaties were tabled in Parliament on 20 August 2009², with the Committee's time for consideration expiring on 18 November 2009.
- 5.4 On 27 August 2009, the Treasurer, the Hon Wayne Swan MP, wrote to the Committee to request that a recommendation on treaty action in relation to these three treaties be made by 10 September 2009.
- 5.5 In support of this request, the Treasurer advised that 10 September 2009 was the last date on which member nations could advise the IMF that they had accepted the reforms contained in the IMF Voice and Participation Amendment and the IMF Investment Authority Amendment if the member nation wished to be included in the list of countries accepting the amendment presented to the G20 meeting on 24 and 25 September 2009.³
- 5.6 The Treasurer argued that, as Australia had been co-chair of the G20 Working Group on IMF Reform, it would be politic for Australia to be amongst those seen to be supporting the reform of the IMF. The Treasurer also stated that having the reforms agreed prior to a forthcoming G20 summit would substantially assist Australia's negotiating position on future reforms.⁴
- 5.7 After conducting a hearing with Treasury officials and satisfying itself that ratification of the treaties was in Australia's interests, the Committee agreed to the Treasurer's request. On 9 September 2009, the Committee tabled Report 104, which indicated the Committee's support for binding treaty action in relation to the three treaties.⁵
- 5.8 In making this recommendation, the Committee noted that it would provide a more detailed report on the treaties at a later date.⁶

2 Parliament of the Commonwealth of Australia, House of Representatives, *Votes and Proceedings* No 113, p. 1268.

3 The Hon Wayne Swan MP, *Correspondence*, 27 August 2009.

4 The Hon Wayne Swan MP, *Correspondence*, 27 August 2009.

5 Joint Standing Committee on Treaties, *Report 104*, p. 2.

6 Joint Standing Committee on Treaties, *Report 104*, p. 2.

The IMF and the World Bank

- 5.9 The IMF and the World Bank are institutions formed as a result of a meeting in July 1944, attended by 45 countries, which established a framework for international financial cooperation after the Second World War. The framework was intended to prevent a repeat of the circumstances that had produced the Great Depression. The IMF and World Bank are collectively known as the Bretton Woods Institutions, after the location of the meeting.⁷
- 5.10 The IMF is an international membership based organisation with the goals of supporting stability in the global economy through:
- ...promoting international monetary cooperation, exchange stability, and orderly exchange arrangements; fostering economic growth and employment; and providing temporary financial assistance to members, helping to ease balance of payments adjustment.⁸
- 5.11 The World Bank supports international economic development and poverty reduction in developing and emerging economies through the provision of loans, grants, guarantees, equity, risk management products and non-lending analytical services. It is also an international membership based organisation.⁹

IMF Voice Participation Amendment

- 5.12 Participation in the IMF is based on a voting system that provides 250 votes for each member nation, and additional votes based on relative economic weight of each member country in the global economy. These additional votes are referred to as 'quotas'. Quotas are allocated using a formula that incorporates the GDP, openness, economic variability and the international reserves of each member nation.¹⁰
- 5.13 Because of the way the quotas are allocated, the number of votes in each quota has increased significantly since the establishment of the IMF, while

7 International Monetary Fund, *About the IMF*, 2009,
<<http://www.imf.org/external/about/history.htm>>, viewed on 11 October 2009.

8 NIA, Para 8.

9 NIA, Para 9.

10 International Monetary Fund, *Fact Sheet – IMF quotas*, 2009,
<<http://www.imf.org/external/np/exr/facts/quotas.htm>>, viewed on 11 October 2009.

the basic voting allocation for each member nation has remained the same. Consequently, there has been a shift in the balance of power within the IMF towards the countries with greater economic weight. There are currently 2,217,033 votes, of which only 46,500 constitute the basic voting allocation.¹¹

- 5.14 According to the NIA, the IMF Voice and Participation Amendment aims to redress this steadily increasing imbalance by tripling the number of basic votes allocated to each country to 750, and then fixing the proportion of basic votes to quota votes in perpetuity. The change will result in a decline in the voting power of the countries with larger economies.¹² In total, the reform package will result in a shift in voting share of 2.7 per cent from large economies to smaller economies.¹³
- 5.15 Australia's voting share will decline marginally from 1.47 per cent of votes to 1.31 per cent of votes.¹⁴
- 5.16 The IMF Voice and Participation Amendment will also change the staffing allocation system within the IMF. The full time board of the IMF is made up of 24 Executive Directors. Each Executive Director is permitted to appoint an alternate who can assist with their workload. A number of these represent individual countries, but 19 are elected to represent a number of countries in constituencies. Constituency based Executive Directors can have significant workloads.¹⁵
- 5.17 The Treaty will allow some of the constituency based Executive Directors to appoint two alternates in order to better balance their workload.¹⁶
- 5.18 The voice participation amendments were recommended by the IMF Executive Board in March 2008.¹⁷ At the time, the reforms were described by a former United States Assistant Treasury Secretary and others in the senior ranks of the international financial community as:

11 NIA, Para 12.

12 NIA, Para 13.

13 NIA, Para 14.

14 NIA, Para 15.

15 NIA, Para 16.

16 NIA, Para 16.

17 International Monetary Fund, *IMF Executive Board Recommends Reforms to Overhaul Quota and Voice*, Press Release No. 08/64, March 28, 2008, <<http://www.imf.org/external/np/sec/pr/2008/pr0864.htm>>, viewed on 11 October 2009.

...falling far short in addressing the challenges facing the IMF and its evolution towards a truly global institution with more balanced and incisive representation and voting power.¹⁸

- 5.19 Representatives of countries that will benefit from this reform have also indicated their dissatisfaction with the extent of the changes. In an article commenting on the proposals at the time, the *Washington Post* quoted India's executive director at the IMF as stating that the proposal '...falls short of our expectations...and is certainly not a huge shift.'¹⁹
- 5.20 In light of this criticism, the IMF has continued to examine reform options, and in March 2009 released the Final Report of the Committee on IMF Governance.²⁰
- 5.21 The Report identifies a number of flaws in the IMF governance regime. In particular, the Report found:
- the changes in voting power to date have been marginal, and ongoing reform of voting power is slow, with a further review of voting power not scheduled until 2013;²¹
 - the second dimension of governance, the decision making process itself, has not been subject to reform, and is a significant contributor to the lack of trust, confidence and legitimacy in the organisation;²²
 - the Governance bodies in the organisation have impeded timely responses to problems, and have resulted in less formal, and consequently less transparent, decision making mechanisms being adopted;²³ and

18 C Swan, *Washington Post*, 'Critics Assail IMF Plan on Developing Nations' Voting Share,' March 29 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/28/AR2008032803459_pf.html>, viewed on 11 October 2009.

19 C Swan, *Washington Post*, 'Critics Assail IMF Plan on Developing Nations' Voting Share,' March 29 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/28/AR2008032803459_pf.html>, viewed on 11 October 2009.

20 Committee on IMF Governance Reform, *Final Report*, International Monetary Fund, Washington, 2009.

21 Committee on IMF Governance Reform, *Final Report*, International Monetary Fund, Washington, 2009, p. 7.

22 Committee on IMF Governance Reform, *Final Report*, International Monetary Fund, Washington, 2009, p. 9.

23 Committee on IMF Governance Reform, *Final Report*, International Monetary Fund, Washington, 2009, p. 7.

- the governance regime lacked oversight and direction from high level political representation such as the leaders of the member countries.²⁴

5.22 The Committee recommended that:

- the next review of voting power be conducted in Spring 2010;²⁵
- the creation of a ministerial level council to foster political engagement in the funds' decisions and make the key strategic decisions for the organisation;²⁶ and
- the creation of a Board to perform the executive function, implementing the decisions of the ministerial level council.²⁷

5.23 The Committee on IMF Governance Reform's recommendations appear to have had some impact. The Department of the Treasury advised the Treaties Committee that the G20 group of nations agreed to bring forward the next review of voting power to January 2011, and that '...there is an expectation that that quota increase will be substantial.'²⁸

5.24 The Report of the Committee on IMF Governance Reform argues that the IMF's problems with legitimacy, trust and confidence extend a good deal further than the balance of quotas. This view is backed up by the response to the acceptance of the IMF Voice and Participation Amendment at the G20 meeting attended by the Treasurer on 24 and 25 September 2009. Quoted in Bloomberg.com, the President of the Centre for Global Development, Ms Nancy Birdsall stated:

These are steps in the right direction, but we should not fool ourselves that this is going to bring any fundamental, structural shift in power and influence by itself.²⁹

5.25 The Committee expresses concern about the ongoing IMF voting imbalance. The Committee believes that if Australia is to continue playing

24 Committee on IMF Governance Reform, *Final Report*, International Monetary Fund, Washington, 2009, p. 9.

25 Committee on IMF Governance Reform, *Final Report*, International Monetary Fund, Washington, 2009, p. 7.

26 Committee on IMF Governance Reform, *Final Report*, International Monetary Fund, Washington, 2009, p. 11.

27 Committee on IMF Governance Reform, *Final Report*, International Monetary Fund, Washington, 2009, p. 11.

28 Department of the Treasury, *Transcript of Evidence*, 7 September 2009, p. 4.

29 S Rastello, *Bloomberg.com*, 'G20 Agrees to Boost Emerging Nations' Clout at IMF, World Bank', September 26 2009, <<http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a1eMHrBceJNU>>, viewed on 11 October 2009.

a significant role in improving the legitimacy of the IMF, the Government will need to consider developing approaches to improve the legitimacy of the decision making processes within the IMF.

- 5.26 It is clear there are a number of well-considered proposals to guide further reforms. If the international community is serious about addressing trust and confidence in the IMF, then the IMF Voice and Participation Amendment is really only a small first step in the process. The Committee believes that the Australian Government should use the good will it has gained by having the IMF Voice and Participation Amendment agreed prior to the G20 meeting to support reforms that improve confidence in the IMF's decision making process.

Recommendation 5

The Committee recommends that the Australian Government use the good will it has gained by agreeing to the IMF Voice and Participation Amendment prior to the G20 meeting to progress improvements in the balance of voting power and the confidence and legitimacy of the IMF's decision making process.

IMF Investment Authority Amendment

- 5.27 The IMF's income derived from its lending activities to finance its general administrative expenses is given effect by the IMF Articles, which provide that the IMF can only invest in the marketable obligations of members or international organisations.³⁰ In other words, the IMF relies on interest payments from loans made to member countries.
- 5.28 In recent years, this income has declined sharply, causing a deterioration in the budgetary position of the IMF. In the 2007-08 financial year, the IMF ran a deficit of US\$165m.³¹
- 5.29 Lending in the last financial year has increased, so income is also expected to increase. However, the NIA states that some reform of the income model is required to diversify the income base of the IMF and reduce reliance on loan repayments.³²

30 NIA, Para 22.

31 NIA, Para 20.

32 NIA, Para 21.

- 5.30 The new funding model combines income from lending activities with the following new sources of income:
- an endowment funded by profits from the sale of some of the IMF's gold reserves (the IMF is one of the largest holders of gold reserves in the world);
 - a mandate to invest funds; and
 - cost recovery from concessional lending.³³
- 5.31 Any profits made using this funding model will be returned to member states in the form of dividend payments.³⁴
- 5.32 The IMF's discretion to invest funds will be limited. The IMF Investment Authority Amendment would require:
- ...that all investments be made in accordance with rules and regulations... adopted by the Fund by a 70 per cent majority of total voting power.³⁵
- 5.33 In discussing the investment aspect of the new funding model, the IMF Board of Governors indicated that:
- The Board of Governors' approval of a broader investment mandate will enable the Fund to increase the average expected return and adapt its investment strategy over time. The investment policies will reflect the public nature of the funds to be invested and include safeguards to ensure that the broadened investment authority does not lead to actual or perceived conflicts of interest.³⁶
- 5.34 The Committee is of the view that additional safeguards are necessary to ensure that the IMF's investment strategy does not conflict with its goals of international economic stability and fostering growth and economic development. In particular:
- IMF funds should not be invested in such a way as to endanger those funds through high risk investments;

33 International Monetary Fund, *About the IMF*, 2009, <<http://www.imf.org/external/about/income.htm>>, viewed on 11 October 2009.

34 International Monetary Fund, *About the IMF*, 2009, <<http://www.imf.org/external/about/income.htm>>, viewed on 11 October 2009.

35 NIA, Para 22.

36 International Monetary Fund, *IMF Board of Governors Approves Key Element of IMF's New Income Model*, Press Release No. 08/101, 6 May 2008, <<http://www.imf.org/external/np/sec/pr/2008/pr08101.htm>>, viewed on 11 October 2009.

- IMF funds should not be used to invest in the manufacture of arms or military equipment; and
 - IMF funds should not be used to invest in environmentally damaging industries.
- 5.35 The Committee believes that, when participating in IMF discussions about its investment strategy, the Australian Government should advocate a position consistent with these goals.

Recommendation 6

The Committee recommends that, consistent with the IMF's goals of international economic stability and fostering growth and economic development, the Australian Government advocate that the IMF not invest in:

- high risk investments;
- the manufacture of arms or military equipment; and
- environmentally damaging industries.

World Bank Voice and Participation Amendment

- 5.36 The World Bank has a similar participation system to the IMF, with voting power distributed on a basic allocation for each country and a quota allocation based on the size of a member country's economy. Like the IMF, the voting structure has resulted in a concentration of voting power in the hands of larger economies over time.³⁷
- 5.37 The World Bank Voice and Participation Amendment will double the number of basic votes allocated to each country and then fix the proportion of basic votes to total votes in perpetuity. The change will result in an increase in the voting power of small economies from 42.6 per cent to 44 per cent. Australia's share of the votes will decline from 1.53 per cent to 1.49 per cent of the vote.³⁸
- 5.38 The World Bank considers this change, agreed to in 2008, as only the starting point for a larger shift in voting power. Indeed, on

³⁷ NIA, Para 17.

³⁸ NIA, Para 19.

6 October 2009, the Development Committee of the World Bank released a proposal to increase the quota of votes allocated to developing countries to at least 47 per cent.³⁹ This proposal will be considered by the Board of Governors in the Northern Spring of 2010. In addition, when the President of the World Bank recently addressed the Board of Governors, he foreshadowed an attempt to bring the share of votes for developing countries up to 50 per cent over time.⁴⁰

- 5.39 As with the IMF, it is clear that the World Bank Voice and Participation Amendment addresses only one aspect of the legitimacy problem being experienced by the World Bank. According to the Centre for Global Development, other identified aspects of the legitimacy problem include:
- a lack of a transparent, formalised method for selecting the World Bank president;⁴¹
 - the relative lack of representation from African member nations on the Board;⁴²
 - confusion within the Bank about the role it should play in each particular setting;⁴³ and
 - a lack of sensitivity to the political constraints existing within member nations using the Bank's services.⁴⁴
- 5.40 It is also clear that the Bank is now seen only as a lender of last resort in middle income countries such as China and India. Middle income countries in need of loan services are increasingly accessing private capital markets as an alternative to the World Bank, undermining the World Bank's reputation as an international institution.⁴⁵

39 The World Bank, *The World Bank Group Beyond the Crisis – Remarks by the President of the World Bank to the Board of Governors*, 6 October 2009, <<http://go.worldbank.org/5JYWTSK5U0>>, viewed on 11 October 2009.

40 The World Bank, *The World Bank Group Beyond the Crisis – Remarks by the President of the World Bank to the Board of Governors*, 6 October 2009, <<http://go.worldbank.org/5JYWTSK5U0>>, viewed on 11 October 2009.

41 N Birdsall and D Kapur, *The Hardest Job in the World: Five Crucial Tasks for the New President of the World Bank*, Centre for Global Development, Washington, 2005, p. 26.

42 M Ahmed, 'Votes and Voice: Reforming Governance at the World Bank' in *Rescuing the World Bank*, Centre for Global Development, Washington, 2006, p. 92.

43 N Birdsall and D Kapur, *The Hardest Job in the World: Five Crucial Tasks for the New President of the World Bank*, Centre for Global Development, Washington, 2005, p. 2.

44 M Ahmed, 'Votes and Voice: Reforming Governance at the World Bank' in *Rescuing the World Bank*, Centre for Global Development, Washington, 2006, p. 103.

45 N Birdsall and D Kapur, *The Hardest Job in the World: Five Crucial Tasks for the New President of the World Bank*, Centre for Global Development, Washington, 2005, p. 8.

- 5.41 The wider reform context is likely to become the focus of attention at the World Bank as the High Level Commission examining World Bank Governance, set up by the President of the World Bank in 2008, reports later this year.⁴⁶
- 5.42 While recognising that Voice and Participation reforms are only a small part of an overall process of reform, the Committee believes the Australia Government can make a contribution to the reform process by supporting the recent proposal of the Development Committee of the World Bank to increase the quota of votes allocated to developing countries at the World Bank's meeting in 2010.

Recommendation 7

The Committee recommends that the Australian Government support the proposal of the Development Committee of the World Bank to increase the quota of votes allocated to developing countries to at least 47 per cent.

46 The World Bank, *World Bank Reforming to Meet New Challenges, Zoellick Says, Press Release No:2010/092/EXC*, October 6, 2009, <<http://go.worldbank.org/5JYWTSK5U0>>, viewed on 11 October 2009.

Amended Chapeau Defense Agreement

Background

- 6.1 The full title of the amended Chapeau Defense Agreement is the *Agreement to amend the Agreement between the Government of Australia and the Government of the United States of America concerning Certain Mutual Defense Commitments (Chapeau Defense Agreement)*.¹ As its name implies, the amended Chapeau Defense Agreement amends the Chapeau Defense Agreement, which came into effect on 1 December 1995.²

The original Chapeau Agreement

- 6.2 The original Chapeau Agreement came into effect before the JSCOT was formed, and consequently has not been subject to parliamentary scrutiny. The original Agreement clarified the legal status of liability claims between the Australian Department of Defence and the United States Department of Defence as a result of:

...death, injury or damage to property that occurred as a consequence of the provision and receipt of reciprocal military assistance defined within the Chapeau Defense Agreement as cooperative research, development, test evaluation or production programs and the provision of logistic support.³

1 The Agreement uses the American English spelling of the word 'defence'. This chapter uses the Australian spelling when not directly naming the Agreement.
2 National Interest Analysis (NIA), Para 2.
3 Mr Mark Cunliffe, *Transcript of Evidence*, 7 September 2009, p. 19.

- 6.3 The original Chapeau Agreement provides for particular processes to deal with administrative issues that might arise during mutual defence commitments. Specifically, the original agreement deals with the following issues:
- Liability for death, injury, or damage to property. Where any of these occur during the performance of official duties, the offended country waives liability. If any of these happen to a third party, any costs born by the countries will be shared in accordance with the proportions stated in the relevant agreement. If any of these happen as a result of recklessness, wilful misconduct or gross negligence, any costs will be born by the culpable person's country. In claims for breach of contract by a third party, any costs will be born as required in that contract.⁴
 - Rights to own and use information provided or developed under a written arrangement. In general, information provided or developed under a written arrangement can only be used for the purposes of the arrangement. Title to the information generated by the arrangement will be allocated in accordance with the written arrangement and any contracts with third parties entered into as part of the arrangement.⁵
 - The lease or loan of materiel or equipment. Where materiel or equipment are leased or loaned as part of a written agreement, the receiving country shall only use the material for the purposes set out in the agreement; maintain the materiel and equipment in as good a condition as they were received; and pay for any loss or damage.⁶
 - Logistic support. Each country shall provide: food; water; billeting; transportation; fuels and lubricants; clothing; communication services; medical services; ammunition; storage services; repair and maintenance; and access to bases as required in the written agreement.⁷
- 6.4 Disputes arising from matters covered by the original Chapeau Agreement are to be resolved by consultation, and are specifically prohibited from being referred to a national or international tribunal.⁸
- 6.5 The original Agreement provided an administrative framework for the implementation of two long standing defence cooperation treaties between Australia and the United States of America. These treaties were:

4 *Chapeau Defence Agreement*, 1995, p. 2.

5 *Chapeau Defence Agreement*, 1995, p. 3.

6 *Chapeau Defence Agreement*, 1995, p. 3.

7 *Chapeau Defence Agreement*, 1995, p. 3.

8 *Chapeau Defence Agreement*, 1995, p. 4.

- the *Agreement concerning the Status of United States Forces in Australia*, signed in 1963; and
 - the *Agreement to Facilitate Interchange of Patent Rights and Technical Information for Defence Purposes*, signed in 1958.⁹
- 6.6 The original Chapeau Agreement also applied to all future written arrangements to cooperate on mutual defence commitments, where those written arrangements explicitly invoked the original Agreement.¹⁰

The amended Chapeau Agreement

- 6.7 The amended Agreement's origins are in advice from the United States Department of Defense that, contrary to a previous understanding, United States law requires the United States Department of Defense to have agreements binding in international law covering all personnel programs.¹¹ In other words, a treaty would be required for each personnel program involving an Australian citizen placed with a United States defence organisation or a United States citizen placed with an Australian defence organisation.
- 6.8 Australian and United States defence forces work closely together, and as a consequence, there are numerous arrangements between the United States Department of Defense and the Australian Department of Defence which relate to personnel programs.¹² There are currently 28 bilateral arrangements, relating to 400 Australian personnel placed with the United States defence organisation and 102 United States defence personnel placed with the Australian defence organisation.¹³
- 6.9 None of these 28 documents are legally binding under international law, rather, they are in the form of non-legally binding arrangements. As a consequence, they do not meet the requirements for cooperation under United States law.¹⁴
- 6.10 The Australian Department of Defence determined that the most efficient way to accommodate the United States' requirement was to amend the

9 *Chapeau Defence Agreement*, 1995, pp. 1-2.

10 *Chapeau Defence Agreement*, 1995, p. 2.

11 Mr Mark Cunliffe, *Transcript of Evidence*, 7 September 2009, p. 19.

12 Mr Mark Cunliffe, *Transcript of Evidence*, 7 September 2009, p. 19.

13 Mr Mark Cunliffe, *Transcript of Evidence*, 7 September 2009, p. 20.

14 Mr Mark Cunliffe, *Transcript of Evidence*, 7 September 2009, p. 20.

existing Chapeau Defense Agreement to incorporate terms and conditions covering the exchange, secondment and liaison of personnel between the two nations' defence organisations. In November 2003 the US Department of Defense advised the Australian Department of Defence that such a proposal was acceptable to them.

6.11 The amended Chapeau Agreement will:

...extend the application of the Chapeau Defense Agreement's terms and conditions from cooperative research, development, test evaluation or production programs, logistics and materiel based military assistance to include personnel matters such as claims and liabilities issues arising out of personnel loans, secondments, exchanges and liaison officer activities, security assurances for personnel undertaking the abovementioned personnel activities, personnel access to controlled and classified information, criminal jurisdiction and limits upon the exercise of service disciplinary action for personnel undertaking the previously mentioned personnel activities, and caveats placed upon the duties that personnel may undertake while undertaking their previously mentioned personnel activities.¹⁵

6.12 Specifically, the amended Chapeau Agreement adds the following personnel and exchange related provisions additional to the provisions described above:

- Access to classified and controlled unclassified information.¹⁶ Personnel from one country being hosted by the other must comply with the security and disclosure laws, regulations and policies relating to classified information and controlled unclassified information. Access to controlled unclassified information will occur on a need to know basis and can only be used for the purpose of the written arrangement.¹⁷
- Criminal and disciplinary jurisdiction. While personnel from one country being hosted by the other must comply with the laws of the hosting country, those personnel and their dependents will be granted privileges and immunities as provided for by the written arrangement covering their placement. If administrative or disciplinary action must be taken against a person, that action can only be taken by the country

15 Mr Mark Cunliffe, *Transcript of Evidence*, 7 September 2009, p. 19.

16 Controlled unclassified information is information to which access or distribution limitations have been applied. See *Amended Chapeau Agreement*, NIA, Paragraph 16.

17 NIA, Para 17.

the person came from. The host country is prohibited from taking any disciplinary action against host personnel.¹⁸

- Termination of assignments. The amended Chapeau Agreement provides that a hosting arrangement can be terminated where the assigned personnel are unable to perform their duties.¹⁹
- The carrying of weapons. The amended agreement prohibits the carrying or transporting of personal weapons while in the territory of the host country.²⁰

6.13 The amended Agreement will consequently underpin all cooperative Australian – United States defence activities.²¹

6.14 The amended Chapeau Agreement retains the termination procedure of the original Agreement; that is, that the Agreement will remain in force until a decision to terminate the Agreement is taken by one of the countries. However, the amended Agreement adds a new clause. The obligations of the Parties to the Chapeau Agreement will continue notwithstanding termination of the Agreement.²²

Capital punishment

6.15 The Committee has in the past expressed some concern about treaties for defence cooperation exposing Australian defence personnel to the laws and regulations of the host country when those laws and regulations do not meet the Australian community's expectations for the treatment of sentenced prisoners. In Report 95 the Committee discussed this issue in relation to the *Treaty between Australia and the State of the United Arab Emirates on Defence Cooperation*. In that Report, the Committee noted:

...it is possible that Australian personnel will be subject to the death penalty or judicial flogging under United Arab Emirates law. This could be seen as incompatible with human rights law.²³

6.16 The Committee concluded that:

18 NIA, Para 20.

19 NIA, Para 21.

20 NIA, Para 22.

21 Mr Mark Cunliffe, *Transcript of Evidence*, 7 September 2009, p. 19.

22 NIA, Para 36.

23 Joint Standing Committee on Treaties, *Report 95*, 16 October 2008, p. 41.

...every effort should be made by the Australian Government to ensure that Australian personnel are protected from the death penalty.²⁴

- 6.17 The Committee recommended that the Australian Government seeks to ensure that Australian personnel are protected from corporal and capital punishment under United Arab Emirates law.²⁵
- 6.18 During the public hearing into the amended Agreement, Committee members expressed their concern that Australian personnel may be subject to the death penalty if convicted of certain offences in the United States.²⁶
- 6.19 In its response, the Department of Defence advised that:
- The agreement does not provide for immunity from United States criminal law for ADF members who are serving in the United States and participating in defence commitments under the agreement. An ADF member could be subject to the death penalty if sentenced to that penalty by a United States court following conviction for an offence committed in the United States.²⁷
- 6.20 The Committee remains of the view that the Australian Government should be doing its best to ensure that defence personnel convicted of a crime while serving in another country should not be subject to penalties harsher than those applied to similar crimes in Australia.

Recommendation 8

The Committee recommends that the Australian Government explore mechanisms to ensure that Australian personnel convicted of crimes for which the penalty is death while serving in the United States are not subject to the death penalty.

Conclusion

- 6.21 The Committee concurs with the Department's view that:
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24 Joint Standing Committee on Treaties, *Report 95*, 16 October 2008, p. 42.

25 Joint Standing Committee on Treaties, *Report 95*, 16 October 2008, p. 42.

26 Mr Mark Cunliffe, *Transcript of Evidence*, 7 September 2009, p. 23.

27 Department of Defence, *Submission 3*.

This treaty action will benefit the Australian Defence Force by ensuring that the exchange of defence information and ideas with the United States will continue now and into the future, will contribute to the continued development of ADF military capability and training and will support Australia's defence partnership with the United States. As noted earlier in this statement, this partnership is central to Australia's broader strategic and security objectives.²⁸

Recommendation 9

The Committee supports the *Agreement to amend the Agreement between the Government of Australia and the Government of the United States of America concerning Certain Mutual Defense Commitments* and recommends that binding treaty action be taken.

28 Mr Mark Cunliffe, *Transcript of Evidence*, 7 September 2009, p. 20.

Agreement between the Government of Australia and the Government of the Republic of Singapore Concerning the Use of Shoalwater Bay Training Area and the Use of Associated Facilities in Australia

Background

- 7.1 The *Agreement between the Government of Australia and the Government of the Republic of Singapore Concerning the Use of Shoalwater Bay Training Area and the Use of Associated Facilities in Australia* (the Agreement) is an agreement concerning the use of Shoalwater Bay by the Singapore Armed Forces for training purposes.
- 7.2 The Agreement provides the Singapore Armed Forces with access to the Shoalwater Bay training area to conduct unilateral training activities, in particular Singapore's major annual exercise, Exercise Wallaby. The Singapore Armed Forces lack adequate training areas in Singapore, so the Shoalwater Bay training area allows Singapore to develop its capability as a modern military force. The Department of Defence argues that this benefits Australia by making Singapore a more effective defence partner and contributor to regional security.¹
- 7.3 Shoalwater Bay is an Australian Defence Force (ADF) facility on the mid north coast of Queensland, and is one of a number of ADF facilities used by the Singapore Armed Forces for training purposes. The Singapore

1 Brigadier Andrew Nikolic, *Transcript of Evidence*, 7 September 2009, p. 25.

armed Forces also regularly use ADF facilities at Oakley and Pearce in Western Australia.²

- 7.4 The Agreement is part of the Australian Government's broader policy to allow access to ADF facilities for the Singapore Armed Forces. This broader policy is intended to enhance Australia's bilateral defence relationship with Singapore.³

The extent of Exercise Wallaby

- 7.5 The Agreement requires Australia to provide access to the Shoalwater Bay facility for not more than 45 days between August and December each year to allow the Singapore Defence Force to conduct Exercise Wallaby.⁴
- 7.6 Singapore is permitted to deploy up to 6600 troops, 150 armoured vehicles, 150 soft skinned vehicles, 250 special purpose engineering vehicles, 70 motorcycles and 30 other vehicles as part of the exercises.⁵
- 7.7 The exercise is subject to a detailed concept of training plan each year that cannot be changed without written agreement from Australia.⁶ While being conducted, the exercise is presided over by an ADF liaison officer, who cannot intervene in the conduct of training, but can prohibit or stop training if it is necessary to do so for safety reasons.⁷
- 7.8 The Agreement also details the extent of Australia's legal jurisdiction in relation to the exercise. All associated facilities used by the Singapore Armed Forces will be subject to Australian legal and security requirements.⁸ In addition all Australian quarantine laws are to be complied with,⁹ and the Singapore Armed Forces are to advise the ADF whenever the training activities create the potential to introduce diseases into Australia.¹⁰

2 Brigadier Andrew Nikolic, *Transcript of Evidence*, 7 September 2009, p. 29.

3 National Interest Analysis (NIA), Para 5.

4 NIA, Para 12.

5 NIA, Para 12.

6 NIA, Para 13.

7 NIA, Para 15.

8 NIA, Para 18.

9 NIA, Para 21.

10 NIA, Para 21.

- 7.9 Finally, Singapore is required to pay all costs associated with the training on a full cost recovery basis.¹¹

Previous recommendations

- 7.10 The Agreement being considered here is the latest in a series of agreements with the Singapore Defence Force concerning the use of Shoalwater Bay, the first of which was negotiated in 1995. The previous version of the Agreement was reviewed by the Committee in 2005. At that time, the Department of Defence advised the Committee that it had implemented three previous recommendations by the Committee made as part of the 1999 review of the Agreement:

The first recommendation related to consultation with the local business community during preparation of any future agreements to ensure that its interests were incorporated where possible. Two other recommendations related to the environmental impact of major exercises and meetings and circulation of documents to the Environmental Advisory Committee.¹²

- 7.11 The Department remains committed to implementing these recommendations. In relation to incorporating the interests of the local business community, the current version of the Agreement contains the following obligations on the Singapore Armed Forces:

- its contractors must demonstrate a practical commitment to supporting Australian commercial enterprises. The Department of Defence will determine what companies constitute Australian commercial enterprises for the purposes of the Agreement;¹³
- it must, where practical, offer contract and subcontract opportunities to Central Queensland local industry providers as a priority;¹⁴ and
- it is obliged to outsource set minimum levels of maintenance of its vehicles and equipment to Australian commercial enterprises.¹⁵

- 7.12 The last time the economic impact of Exercise Wallaby was measured, in 2004, it was found that the Exercise injected approximately \$6 million into

11 NIA, Para 26.

12 Joint standing Committee on Treaties, *Report 66*, p. 43.

13 NIA, Para 24.

14 NIA, Para 24.

15 NIA, Para 24.

the local economy. The Department of Defence believes the financial benefits have increased in the intervening years.¹⁶

- 7.13 The Committee Chair held discussions with Mr Brian Smith, Chief Executive Officer, and Mr John Bryant, Director of Rocky's Own, a transport company based in Rockhampton that has been engaged by the Singapore Defence Force to provide logistic support to Exercise Wallaby.
- 7.14 Rocky's Own has benefited greatly from the Singapore presence. Having obtained an explosive transport licence about a decade ago in order to service the Singaporean exercises, Rocky's Own is now the biggest transferrer of high explosives in Australia. Rocky Regional Development Ltd has calculated the benefits of the Singaporean exercises to the local economy as \$30 to \$35 million.
- 7.15 Mr Smith and Mr Bryant were highly complimentary of the Singapore presence in the local community, saying that they worked hard to get along with the local people and that they were very polite and that there were no incidents of violence between the troops and the local people.
- 7.16 In relation to the environmental impact of the exercises, the Agreement requires the Singapore Armed Forces to undertake post exercise remediation, restoration and rehabilitation at their own cost. In addition, all training exercises are subject to environmental impact assessment, monitoring.¹⁷ The Department of Defence argued:
- Defence takes its custodianship of the Shoalwater Bay training area very seriously and the new agreement contains additional reference to Australia's environmental laws and the requirement for Singapore to adhere to those laws. The new agreement also extends Singapore's remediation responsibilities to include external public access roads to Shoalwater Bay training area if deemed necessary by the environmental monitoring group and the post-exercise damage inspection.¹⁸
- 7.17 The Committee notes that there is some degree of concern in the Shoalwater Bay community about the environmental impacts of the ADF use of the Bay.¹⁹ It seems unlikely that the use of live ammunition and heavy military vehicles does not damage the environment in some way. However, in relation to this Agreement, the Committee is pleased to see
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16 Brigadier Andrew Nikolic, *Transcript of Evidence*, 7 September 2009, p. 26.

17 NIA, Para 17.

18 Brigadier Andrew Nikolic, *Transcript of Evidence*, 7 September 2009, p. 26.

19 See for example the website of the Shoalwater Bay Action Group, <<http://www.shoalwaterbay.org/military.php>>, viewed on 11 October 2009.

that the Singapore Defence Force takes its responsibility to clean up after its exercises seriously.

- 7.18 The Committee Chair held discussions with Ms Leise Childs, of the Shoalwater Bay Environmental Advisory Committee, who has had over ten years' experience dealing with the environmental issues caused by the military exercises in Shoalwater Bay.
- 7.19 On the one hand, Ms Childs was very complimentary of the Department of Defence's environmental awareness and commitment to protecting Shoalwater Bay. On the other hand, she was very concerned about the impact of fire on the Shoalwater Bay Training Area.
- 7.20 Ms Childs told the Committee Chair that the fire issue was particularly relevant to Singapore's Exercise Wallaby, which always seems to be held at peak fire season. She said that each Singaporean exercise gave rise to one or more fires, and that the fires last year were the worst for some time, burning for weeks over tens of thousands of hectares and came close to the community of Byfield. Homes would have been threatened if the weather had not changed and the fire stopped by Defence, Forestry and National Parks staff.
- 7.21 Ms Childs expressed the view that these exercises should not be conducted at peak fire risk times. She also expressed concern about the nature of pre-emptive burning prior to the exercise, saying core wilderness areas, such as the Clinton Peninsula, were being burnt. Her impression is that in 2009 over 60 per cent of the area was burnt. If this level of control burning occurs on an annual basis, it leads to changes in the vegetation habitat of a character which makes the area more fire prone, creating an unfortunate cycle.
- 7.22 Ms Childs stated that the pre-emptive burn of Clinton Peninsula in 2009 was a very hot fire that had burned too much ground cover leaving the ground surface exposed to erosion. Such a fire was also very damaging to wildlife and had burned into mangroves and wetlands. Ms Childs believes that this fire was only lit because of demands by the Singaporean training group to use this area for large calibre helicopter firing when this activity could have been carried out on Townshend Island without the necessity to burn out such an environmentally sensitive area.
- 7.23 Ms Childs believes Singapore's Exercise Wallaby is one of the most intensive held each year, with continuous troop activity and live firing over a six week period. Because of this and the timing during peak fire season, Ms Childs was not in favour of an additional 20 days of training

being added to the existing exercise. She may not oppose an extended exercise if it were programmed at a different time of year.

7.24 Ms Childs said that the Environmental Advisory Committee had worked well, and she was supportive of Defence's continued management of the area. She said Shoalwater Bay was unique in the world, with whole catchments in a relatively undisturbed state, and of incredible environmental value.

7.25 Ms Childs expressed concern about the future capacity and commitment of Defence to maintain environmental standards. Budget cuts over recent years have seen the civil and environmental units contract in terms of funds and staff. Ms Childs is of the opinion that this has reduced the capacity of these units and their influence within the organisation of Defence. Local knowledge and committed permanent staff has been a great asset in environmental management of Shoalwater Bay. Ms Childs perceives the Defence department's shift towards contracting out a range of functions including environmental and range control services as a threat to the high standard of management that has been achieved in Shoalwater Bay Training Area in the past.

Conclusion

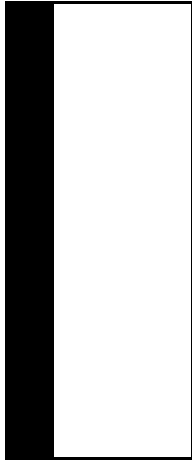
7.26 The Committee believes the proposed Agreement will continue to strengthen the Australia-Singapore bilateral defence relationship. More broadly, the Agreement will also promote Australia's policy of increasing regional security. The Committee also welcomes the implementation of the recommendations made by its predecessor. It would appear the Department of Defence needs to be very mindful of the risk of fire when scheduling exercises, and the impact of pre-emptive burning on native vegetation.

Recommendation 10

The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the use of Shoalwater Bay Training Area and the use of associated facilities in Australia* and recommends that binding treaty action be taken.

Mr Kelvin Thomson MP

Committee Chair



Dissenting report — Coalition Members and Senators

Coalition Members and Senators have concerns about recommendations 5, 6 and 7 of Report 107 and subsequently for the three treaties for the reform of the IMF and the World Bank.

Recommendation 5

The Coalition is concerned that by agreeing to the IMF Voice and Participation Amendment the Government may act against the best interest of Australia by reducing our voting influence and that of other larger nations.

Australia's voting share is set to decline from 1.47 per cent of the votes to 1.31 per cent of the votes. Far from marginal, this decline in voting share of 0.16 per cent of votes signs away 11 percent of our current vote share.

While we support a greater engagement of developing nations within the IMF we are not convinced that this proposal will improve the quality of governance of the IMF.

Recommendation 6

The Coalition is concerned that recommendation 6 does not provide sufficient definition as to what constitutes 'high risk', 'arms or military equipment' or 'environmentally damaging'. Without clear definitions of these terms it is possible that legitimate investments could be thwarted by an overly wide or indiscriminate reading of these terms.

If the Australian Government were to advocate for the proscriptions outlined in recommendation 6 we risk creating an overly prescriptive regime for the IMF to operate within and may unnecessarily impede the IMF's ability to respond in the best interests of all countries concerned.

World Bank Voice and Participation Amendment and Recommendation 7

The Coalition is concerned that by agreeing to the World Bank Voice and Participation Amendment the Government may act against the best interest of Australia by reducing our voting influence and that of other larger economies.

Australia's voting share is set to decline from 1.53 per cent of the vote to 1.49 per cent of the votes. This decline in vote share of 0.04 per cent of the vote signs away over 2.6 per cent of our current vote share.

Australian influence in the World Bank would be further diluted if Recommendation 7 is supported and eventuates as a later World Bank Amendment.

While we support a greater engagement of developing economies within the World Bank we are not convinced that this proposal will improve the quality of governance of the World Bank.

Senator Julian McGauran
Deputy Chair

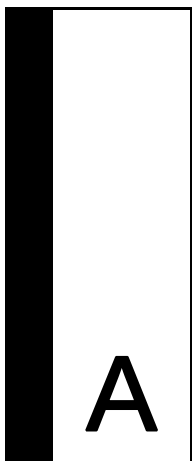
Senator Simon Birmingham

Senator Michaelia Cash

Mr John Forrest MP

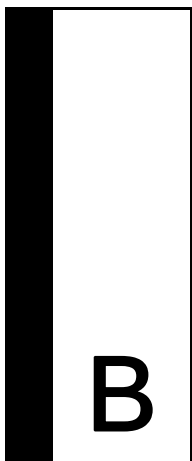
Mr Luke Simpkins MP

Mr Jamie Briggs MP



Appendix A — Submissions

- 1.1 Australian Patriot Movement
- 1.3 Australian Patriot Movement
- 1.5 Australian Patriot Movement
- 2 Department of the Treasury
- 3 Department of Defence



Appendix B — Witnesses

Monday, 7 September 2009 - Canberra

Department of Foreign Affairs and Trade

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

Department of the Treasury

Mr Michael Atfield, Senior Adviser

Mr Colin Brown, Manager, Costing and Quantitative Analysis Unit

Ms Lynette Redman, Manager, Tax Treaties Unit

Mr Jonathan Thorpe, Policy Analyst

Department of Defence

Mr Ben Burdon, Assistant Secretary

Mr Michael Carey, Senior Legal Officer

Mr Lachlan Colquhoun, Assistant Secretary

Mr Michael Crossman, Director

Mr Mark Cunliffe, Head, Defence Legal

Brigadier Andrew Nikolic, First Assistant Secretary

Monday, 14 September 2009 - Canberra

Australian Taxation Office

Mr Malcolm Allen, Assistant Commissioner - International Relations

Department of Foreign Affairs and Trade

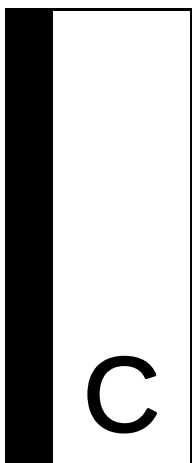
Mr David Mason, Executive Director, Treaties Secretariat, International
Legal Branch

Department of the Treasury

Mr Michael Atfield, Senior Adviser

The Treasury

Mr Gregory Wood, Policy Advisor, International Tax and Treaties
Division



Appendix C — Minor treaty actions

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

The following minor treaty action was considered by the Committee on the date indicated. The Committee determined not to hold a formal inquiry into the treaty and agreed that binding treaty action may be taken.

Minor treaty action tabled on 15 September 2009

Considered by the Committee on 27 October 2009:

- Amendment to Annex III of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the Convention).

The *Amendment to Annex III* of the Rotterdam Convention adds tributyltin (TBT) compounds in the pesticide category to the list of chemicals in Annex III to the Convention. Annex III lists those chemicals subject to the Convention's prior informed consent procedure, which provides for information exchange regarding the import and export of listed chemicals.

At its fourth meeting held on 27–31 October 2008, the Conference of the Parties (COP 4) to the Convention agreed by consensus to list all TBT compounds in Annex III.

The Department of the Environment, Water, Heritage and the Arts advises that TBT compounds are hazardous and meet the requirements for listing under Annex III of the Convention. The Department further argues that support for the

listing is consistent with Australia's support for the Convention and that no objections to Australia's support for listing TBT were raised during the consultation process in preparation for the COP 4. Australia has domestic legislation that controls TBT compounds.¹

Compliance with the Convention will require minor legislative amendments to include TBT in the list of chemicals referred to in the *Agricultural and Veterinary Chemicals (Administration) Regulations 1995*, Schedule 1, and the *Customs (Prohibited Exports) Regulations 1958*, Schedule 2.

1 Explanatory Statement 12 of 2009, p. 1.