
The Parliament of the Commonwealth of Australia

Report 43

Thirteen Treaties Tabled in August 2001

Joint Standing Committee on Treaties

September 2001

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Membership of the Committee

Chair Kerry Bartlett MP (from 17 September 2001)

Hon Andrew Thomson MP (Chair until 17 September 2001, member until 18 September 2001)

Deputy Chair Senator Barney Cooney

Members	Hon Dick Adams MP	Senator Andrew Bartlett
	Hon Bruce Baird MP	Senator Helen Coonan
	Anthony Byrne MP	Senator Joe Ludwig
	Barry Haase MP	Senator Brett Mason
	Gary Hardgrave MP	Senator the Hon Chris Schacht
	De-Anne Kelly MP	Senator Tsebin Tchen
	Chris Pearce MP (from 18 September 2001)	
	Kim Wilkie MP	

Committee Secretariat

Secretary Grant Harrison

Inquiry Staff Bob Morris
Margaret Atkin
Lisa Kaida



Recommendations

Agreement on Social Security with Canada

The Committee supports the proposed *Agreement with Canada on Social Security* and recommends that binding treaty action be taken. (Paragraph 2.27)

Agreement on Social Security with Spain

The Committee supports the proposed *Agreement with the Netherlands on Social Security* and recommends that binding treaty action be taken. (Paragraph 2.28)

Agreement on Social Security with the Netherlands

The Committee supports the proposed *Agreement with Spain on Social Security* and recommends that binding treaty action be taken. (Paragraph 2.29)

Protocol to the Agreement on Social Security with Austria

The Committee supports the proposed *Protocol to the Agreement with Austria on Social Security* and recommends that binding treaty action be taken. (Paragraph 2.30)

Agreement on Social Security with Portugal

The Committee supports the proposed *Agreement with Portugal on Social Security* and recommends that binding treaty action be taken. (Paragraph 2.31)

Agreement on Social Security with Germany

The Committee supports the proposed *Agreement with Germany on Social Security* and recommends that binding treaty action be taken. (Paragraph 2.32)

Agreement with the United States of America on Cooperation in Defence Logistic Support

The Committee supports the proposed amendments to the *Agreement with the United States of America on Cooperation in Defence Logistic Support* and recommends that binding treaty action be taken. (Paragraph 3.11)

Amendments to Convention on Conservation of Nature in the South Pacific

The Committee supports the *Amendments to the Convention on Conservation of Nature in the South Pacific* and recommends that binding treaty action be taken. (Paragraph 4.13)

Agreement with Thailand on the Transfer of Prisoners

The Committee supports the proposed *Agreement with Thailand on the Transfer of Offenders and Co-operation in the Enforcement of Penal Sentences* and recommends that binding treaty action be taken. (Paragraph 5.29)

Agreement with the Council of Europe on the Transfer of Prisoners

The Committee supports the proposed *Agreement with the Council of Europe Convention on the Transfer of Sentenced Persons* and recommends that binding treaty action be taken. (Paragraph 5.30)

The Minister for Justice should expedite negotiations with all State and Territory Governments to ensure that all issues associated with the implementation and ongoing management of international prisoner exchange agreements are well understood and that all regulatory, administrative and funding arrangements are established promptly. (Paragraph 5.32)

Space Agreement with Russia

The Committee supports the *Agreement with the Russian Federation on Cooperation in the Exploration and Use of Outer Space for Peaceful Purposes* and recommends that binding treaty action be taken. (Paragraph 6.16)

The Minister for Industry, Science and Resources should liaise with his counterpart in the Government of Western Australia to ensure that the development of the Asia Pacific Space Centre facility on Christmas Island does not have a detrimental impact on those living and working in the North-West of Western Australia. (Paragraph 6.14)

Amendments to the INTELSAT Convention

Noting that the reforms proposed by the *Amendments to the Agreement and Operating Agreement of the International Telecommunications Satellite Organisation (INTELSAT)* have already been implemented, the Committee recommends that binding treaty action be taken. (Paragraph 7.18)

The Minister for Communications, Information Technology and the Arts should seek to ensure:

- that Australia's interests are actively represented at meetings of the International Telecommunications Satellite Organisation;
- that the work program and priorities of the Executive arm of the International Telecommunications Satellite Organisation reflect Australia's interests; and
- that Australia's interests are protected by the Public Service Agreement to be negotiated between the International Telecommunications Satellite Organisation and Intelsat Ltd. (Paragraph 7.19)

Final Acts of the World Radiocommunications Conference-2000

The Committee supports the *Final Protocol and Partial Revision of the Radio Regulations, as incorporated in the Final Acts of the World Radiocommunication Conference 2000* and recommends that binding treaty action be taken. (Paragraph 8.14)

Introduction

Purpose of the report

- 1.1 This report contains advice to Parliament on the review by the Joint Standing Committee on Treaties of a series of proposed treaty actions that were tabled on 7 August and 21 August 2001.¹
- 1.2 The report deals with:
- agreements on social security with Canada, the Netherlands, Spain, Austria, Portugal and Germany, in Chapter 2;
 - an *Agreement with the United States of America on Cooperation in Defence Logistic Support*, in Chapter 3;
 - the *Convention on Conservation of Nature in the South Pacific*, in Chapter 4;
 - agreements with Thailand and the Council of Europe on the transfer of prisoners, in Chapter 5;
 - a *Space Agreement with Russia*, in Chapter 6;
 - *Amendments to the INTELSAT Convention*, in Chapter 7; and
 - the *Final Acts of the World Radiocommunications Conference-2000*, in Chapter 8.
- 1.3 In addition to the proposed treaty actions mentioned above, four other treaty actions were tabled in Parliament on 21 August 2001:
- an *Agreement with Argentina concerning cooperation in Peaceful use of Nuclear Energy*;

1 For treaties tabled 7 August see *Senate Journal*, 7 August 2001, No. 199, p. 4591 and *House of Representatives Votes and Proceedings*, 7 August 2001, No. 1995, p. 2109. For treaties tabled on 21 August 2001 see *Senate Journal*, 21 August 2001, No. 203, p. 4667 and *House of Representatives Votes and Proceedings*, 21 August 2001, No. 2034, p. 2507.

- nuclear safeguards agreements with Hungary and the Czech Republic; and
 - an *Agreement with the United States on Nuclear Transfers to Taiwan*.
- 1.4 We have commenced, but not yet completed, our reviews of each of these proposed treaty actions. After having taken evidence on these treaty actions at hearings on 27 August 2001 we concluded that it would be appropriate to subject these treaties to a more thorough examination than the time frame for this report allowed. We will complete our review of these treaty actions and report back to Parliament as soon as possible.

Availability of documents

- 1.5 The advice in this Report refers to, and should be read in conjunction with, the National Interest Analyses (NIAs) prepared for these proposed treaty actions. Copies of the NIAs are at Appendix B. These documents were prepared by the Government agency responsible for the administration of Australia's responsibilities under each treaty.
- 1.6 Copies of each of the treaty actions and NIAs can also be obtained from the Australian Treaties Library maintained on the Internet by the Department of Foreign Affairs and Trade (DFAT). The Australian Treaties Library is accessible through the Committee's website at www.aph.gov.au/house/committee/jsct.

Conduct of the Committee's review

- 1.7 Our review of each of the treaty actions tabled on 7 August 2001 and 21 August 2001 were advertised in the national press and on our web site.² A total of 28 submissions were received in response to the invitation to comment in the advertisement. A list of submissions is at Appendix C.
- 1.8 For the proposed treaty actions reviewed in this report, we gathered evidence at public hearings held in Canberra on 20 August, 27 August and 17 September 2001. A list of the witnesses who gave evidence at the hearings is at Appendix D.

2 Our review of these proposed treaty actions was advertised in *The Weekend Australian* on 11/12 August 2001 (p. 9) and 25/26 August 2001 (p. 10)

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- 1.9 A transcript of the evidence taken at the hearings can be obtained from the database maintained on the Internet by the Department of the Parliamentary Reporting Staff (at www.aph.gov.au/hansard/joint/committee/comjoint.htm) or from the Committee Secretariat.
- 1.10 We always seek to consider and report on each proposed treaty action within 15 sitting days of it being tabled in Parliament. In this instance, the 15 sitting day periods expired on 20 September 2001 (for the treaties tabled on 7 August) and on 27 September 2001 (for the treaties tabled on 21 August).

Six Social Security Agreements

Introduction

- 2.1 Successive Australian Governments have negotiated a network of bilateral social security agreements to allow for the portability of pension entitlements and both countries to share in the cost of meeting those entitlements.
- 2.2 This Chapter reviews six proposed social security agreements:
- a Social Security Agreement with Canada;
 - a Social Security Agreement with Spain;
 - a Social Security Agreement with the Netherlands;
 - a Protocol to a Social Security Agreement with Austria;
 - a Social Security Agreement with Germany; and
 - a Social Security Agreement with Portugal
- 2.3 Although most people benefiting from the agreements are age pensioners these agreements also improve income support coverage for people with severe disabilities, widowed persons and some carers.
- 2.4 Each of the agreements reviewed in this Chapter provide that both countries will share the financial responsibility for providing adequate social security coverage for former residents of their countries. In each case there are savings in costs for the Australian taxpayer.
- 2.5 The agreements will allow residents to continue to move between the territory of each bilateral partner knowing their right to benefits is

recognised in both countries and that each country will contribute fairly to support those who have spent part of their working lives in either country.

- 2.6 The social security agreements with Canada and Spain replace existing Agreements that have been in place over the last decade, while the Protocol to the agreement with Austria amends updates a existing agreement to provide a comparable range of entitlements.
- 2.7 In the case of all the proposed agreements, the coverage of disability support pensions has been changed to limit them to people who are considered to be severely disabled. This has been done in Australia to encourage and support less severely disabled recipients to enter the work force rather than to simply rely passively on income support.
- 2.8 The Agreements with the Netherlands and Portugal are new agreements and are the first agreements signed for Australia to include provisions relating to double coverage superannuation deductions for seconded workers. Although following the same basic model as the other agreements, this new inclusion removes the obligation employers to pay 'double superannuation' when companies send employees to work in the other country.
- 2.9 The Netherlands agreement involves several other changes from the current arrangements. It protects access to certain Dutch benefits that would otherwise be withdrawn from 1 January 2003 under the Netherlands *Export Restrictions on Benefits Act*. In addition it extends the coverage to benefits to include the disability support pension which is not available under the current agreement.
- 2.10 In the case of the German Agreement, the updated provisions will overcome an existing restriction which applies to beneficiaries who no longer hold German citizenship. They will now be able to get the full entitlements instead of the reduced pensions provided for under the existing agreement.

Evidence presented

- 2.11 Representatives from the Department of Family and Community Services (FACS) confirmed that all the new Agreements will set in place improved procedures over existing agreements; overcome time limitations on portability of pension entitlements; apply a specific income-testing regime;

and provide avenues for mutual administrative assistance to help in the determination of correct entitlements.¹

- 2.12 There are two key changes in these agreements which will affect recipients. The first is the change to the disability support pension which will in future be limited to people who are considered severely disabled. This is in response to Australia's focus on rehabilitation, where possible. In this context, programs that encourage recipients to find ways of entering the work force with the aid of support mechanisms are seen as preferable.
- 2.13 We were assured that the changes incorporated in these agreements would not affect any people who are already receiving disability support pensions.² FACS also emphasised that, without these agreements, recipients in other countries would only be eligible to receive the entitlements provided for in those countries.³
- 2.14 The new agreement with the Netherlands is the first agreement signed by Australia that includes provisions to avoid double coverage of seconded workers. The provisions affect the operation of the superannuation guarantee laws and provide that compulsory contributions do not have to be paid in both countries, where employees are sent to work temporarily in the other country. These provisions are also included in the new agreements with Portugal.
- 2.15 At our hearings we sought clarification from the Government witnesses about the extent of consultation involved in developing the agreement in relation to superannuation payments. We asked, in particular, whether the ACTU or any of the trade union superannuation funds had been consulted. We were advised that:
- ... the Association of Superannuation Funds of Australia, which is the peak lobby group representing the superannuation industry as a whole [had been consulted]. We did not consult specifically with any of the union industry based superannuation funds ...⁴
- 2.16 After the hearing, we were informed by FACS that it had subsequently sought comment on the matter from the ACTU. FACS advised that the ACTU:

1 Roger Barson (FACS), *Transcript of Evidence*, 20 August 2001, p. 2

2 Roger Barson (FACS), *Transcript of Evidence*, 20 August 2001, p. TR2

3 Roger Barson (FACS), *Transcript of Evidence*, 20 August 2001, p. TR4

4 Nigel Murray (ATO), *Transcript of Evidence*, 20 August 2001, p. TR5

... could not see any problem with what was being contemplated and [they, that is the ACTU] thought that employees would be better off by not having to contribute to the other country's scheme, particularly if they do not intend to live there permanently.⁵

- 2.17 We also received written submissions from the ACT and Western Australian Governments.
- 2.18 The ACT Government was concerned about the possible impact of these Agreements on the level of demand for the concessional rates charged to holders of Pensioner Concession Cards (PCCs). These agreements will potential increase the number of pensioners holding PCCs and therefore entitled to claim reductions on some government fees and charges, cheaper transport fares and reductions in fees associated with running motor vehicles. The ACT Government notes that the agreements do not require foreign governments to make any contribution to the cost of these concessions, which seems to run counter to the cost sharing principle underpinning the agreements. The ACT Government recommends, therefore, that the Commonwealth review the funding arrangements for concessions in any new agreements.⁶
- 2.19 The WA Government makes a similar observation, pointing out that the NIA does not attempt to quantify the potential costs to the States and Territories. It suggests that, in future, the 'Costs' section of NIAs should detail potential costs to all levels of government, even though the overall number of potential beneficiaries may be relatively small.⁷
- 2.20 The Queensland Government is supportive of the agreements, but also notes that the NIA fails to recognise its positive response to the agreements.⁸
- 2.21 The Southern Cross Group, an international non-profit advocacy group, welcomes the Government's initiatives on these agreements. However, it is concerned that the NIA, while showing consultation with many community groups in Australia, appears to indicate that no attempt has

5 L Latimore, *Submission No. 1 (Netherlands Agreement)*, p. 1

6 ACT Government, *Submissions No. 1 (Canada), No. 2 (Netherlands), No. 3 (Spain), No. 1 (Austria)*, p. 1

7 Department of Premier and Cabinet (WA), *Submissions No. 4 (Canada), No. 5 (Netherlands), No. 4 (Spain), No. 4 (Austria)*, p. 1, and also *Submissions No. 5 (Portugal) and No. 5 (Germany)*, p.1

8 Queensland Government, *Submissions No. 2 (Canada), No. 3 (Netherlands), No. 2 (Spain), No. 2 (Austria), No. 1 (Portugal) and No. 1 (Germany)*, p.1

been made to seek out Australian citizens overseas of which it notes there are in the vicinity of 850 000.⁹

- 2.22 The Southern Cross Group believe that a more effective method of informing expatriate Australians of their rights in this regard needs to be set up. The group indicates that it sought the views of some 1000 Australians worldwide and that a vast majority of these have no knowledge of the network of social security agreements being developed by the Australian Government.¹⁰

Conclusions and recommendations

- 2.23 During this Parliament we have reviewed similar social security agreements with Denmark, New Zealand and Italy - in each case recommending binding treaty action.
- 2.24 We continue to support the Government's efforts to extend Australia's network of bilateral social security agreements. Such agreements are a classic example of the national and individual benefits that can flow from international treaty actions. We are pleased to note the inclusion in several of the agreements in this new batch of provisions to avoid payment of double rates for superannuation. This is useful advancement on the standard form of agreement.
- 2.25 We note the ACT and WA Government's concerns about the potential cost of concessions under these agreements and encourage the Commonwealth when negotiating future agreements to take this issue into account.
- 2.26 We also agree with the submission from the Southern Cross Group that the Government should seek to explore ways of more effectively communicating with expatriate Australians about the many beneficial changes that are occurring in this area.

Recommendation 1

- 2.27 **The Committee supports the proposed *Agreement with Canada on Social Security* and recommends that binding treaty action be taken.**

9 Southern Cross Group, *Submissions No. 2 (Canada), No. 3 (Netherlands), No. 2 (Spain), No. 2 (Austria), No. 1 (Portugal) and No. 1 (Germany)*, p. 1

10 Southern Cross Group, *Submissions No. 2 (Canada), No. 3 (Netherlands), No. 2 (Spain), No. 2 (Austria), No. 1 (Portugal) and No. 1 (Germany)*, p.1

Recommendation 2

- 2.28 **The Committee supports the proposed *Agreement with Spain on Social Security* and recommends that binding treaty action be taken.**

Recommendation 3

- 2.29 **The Committee supports the proposed *Agreement with the Netherlands on Social Security* and recommends that binding treaty action be taken.**

Recommendation 4

- 2.30 **The Committee supports the proposed *Protocol to the Agreement with Austria on Social Security* and recommends that binding treaty action be taken.**

Recommendation 5

- 2.31 **The Committee supports the proposed *Agreement with Portugal on Social Security* and recommends that binding treaty action be taken.**

Recommendation 6

- 2.32 **The Committee supports the proposed *Agreement with Germany on Social Security* and recommends that binding treaty action be taken.**

Agreement with the United States of America on Cooperation in Defence Logistics

Proposed treaty action

- 3.1 The proposed agreement extends and updates the *Agreement with the United States of America on Cooperation in Defence Logistic Support Agreement* (CDLSA) originally negotiated in 1989. The CDLSA provides for the exchange of mutual logistics support to enhance the capabilities of both countries' armed forces.
- 3.2 The proposed Agreement will involve:
- updating the CDLSA text to modernise all references to computers, computer data and Australian public sector financial management legislation; and
 - extending the CDLSA for 10 years, from 1999 (when it lapsed) until 2009.

Evidence presented

- 3.3 The CDLSA is in line with the Government's current policy objectives, as outlined in the *Defence White Paper, 2000*. Moreover, the Department of Defence sees the agreement as an integral part of Australia's defence relationship with the US, as it is the umbrella document under the ANZUS treaty for mutual logistics support between the two countries.

- 3.4 Evidence suggested that the current agreement had been applied in the Gulf war and used in East Timor for the reciprocal provision of logistics support during those operations.
- 3.5 We sought clarification of the status of the treaty in that under Article II of the Agreement that:
- Each Party's commitment under this Agreement shall be subject to its national laws, regulations, and policies and to case-by-case review and determination.¹
- 3.6 In commenting on the generality of the language of the agreement Defence representatives commented that
- ... if national laws, regulations and policies at the time were to preclude the use of this agreement, they of course would hold sway. The whole nature of the thing is to say that we are partners, we will cooperate and wherever we can, providing we are not contravening laws or regulations, then we should do so.²
- 3.7 In this context we questioned whether the agreement was considered to be of treaty status or rather an executive agreement in US terms. Dr Lloyd suggested that as an executive agreement it does not override the existing US legislation where there is inconsistency. He went on to say that:
- ... if it were to be of that higher status as a treaty in US terms, that would lead to different consequences. But as an executive agreement, no, it is subject to those export control laws in the US.³
- 3.8 We also questioned the implications of this agreement for Australian defence industries, an issue that was not well covered in the NIA. Defence officials advised that the nature of the defence relationship between Australia and the US is such that the agreement provides mainly for the maintenance of equipment in Australia. This situation was highlighted in the recent combined forces 'Operation Tandem Thrust' during which Australian industry provided maintenance as well as goods and services generally to the United States forces worth many millions of dollars.⁴

1 Senator Cooney, *Transcript of Evidence*, 20 August 2001, p. TR13

2 Ken Heldon (Defence), *Transcript of Evidence*, 20 August 2001, p. TR13

3 Dr David Lloyd (Defence), *Transcript of Evidence*, 20 August 2001, p. TR14

4 Ken Heldon, *Transcript of Evidence*, 20 August 2001, p. TR13

Conclusions and recommendation

- 3.9 Australia's defence relationship with the United States of America is of critical importance. The proposed amendment to the CDLSA is a key element of that relationship. It falls within the overarching framework of the ANZUS treaty and complements agreements such as a status of forces agreement, an acquisition and cross-servicing agreement, communications agreements and the Pine Gap Agreement.
- 3.10 We have no hesitation in signalling our support for the proposed amendment to the CDLSA. Indeed, having regard to the recent terrorist attacks in the US and the Australian Government's strong support for the international coalition against terrorism being developed by the US, we have already written to the Ministers for Defence and Foreign Affairs indicating our support for the amendments and recommending that binding treaty action be taken

Recommendation 7

- 3.11 **The Committee supports the proposed amendments to the *Agreement with the United States of America on Cooperation in Defence Logistic Support* and recommends that binding treaty action be taken.**

Amendments to the Convention on the Conservation of Nature in the South Pacific

Proposed treaty action

- 4.1 The proposed binding treaty action is ratification of the amendments to the Convention on Conservation of Nature in the South Pacific, 1976 (known as the Apia Convention) that were adopted by the Fifth Meeting of the Parties in Guam on 9 October 2000.¹
- 4.2 The proposed amendments are of a technical nature to bring the Convention up to date. They establish procedures for making amendment to the Convention; change references to the Secretariat from the “South Pacific Commission” to the “South Pacific Regional Environment Program”; change a reference to “Western Samoa” to “Samoa”; and make other minor changes.

Evidence presented

- 4.3 Evidence presented stated that the Apia Convention is the principal international legal instrument concerning regional cooperation for nature conservation and biodiversity in the Pacific. Essentially, the current amendments are procedural and go some way to bringing the convention up to date.²

1 Unless otherwise noted, the material in this section was drawn from the *National Interest Analysis for the Amendments to the Convention on the Conservation of Nature in the South Pacific* (NIA for CCNSP).

2 Mark Hyman (Environment Australia), *Transcript of Evidence*, 20 August 2001, p. TR17.

- 4.4 Australian ratification of the amendments is in the national interest as it will encourage regional commitment to the Apia Convention and through it to conservation of nature and biodiversity in the Pacific, without imposing additional obligations on the Parties.
- 4.5 The current membership is Australia, the Cook Islands, Fiji, France and Samoa (ie only three Pacific countries). While current membership is low among the countries of the Pacific, most Pacific countries still participate in activities under the Convention.
- 4.6 Evidence suggested that many of the Pacific countries have not signed because they are often tiny and the obligations involved in taking on another treaty, even if comparatively minor, are often quite daunting.³
- 4.7 The continuing hope is that the general approach towards biodiversity conservation will be improved through its codification. For example, a number of the Pacific Islands countries do have difficulties in marine conservation. In many areas marine resources are heavily utilised for subsistence and commercial fishing. Yet with some foresight and planning it is possible to increase catch levels by establishing protected areas in certain fishing areas. That can lead to greater breeding effort and production of fish, which then migrate out of those areas into general areas of fishing. This is an example of how providing an oversight and a planning framework to improve the livelihood of and the impact on these communities supports the policy.⁴
- 4.8 Australian's ratification would send a positive signal to Pacific Island Countries regarding Australia's commitment to the region and its development. It may also encourage accession by a greater number of Pacific Island Countries.⁵
- 4.9 The amendment broadens the range of declarations permitted in the original Article IX and brings the Convention into line with current international practice. This amendment would allow new Parties to join who might otherwise have considered themselves unable to do so, thus strengthening regional commitment to the Convention.
- 4.10 The States and Territories have been advised of the proposed treaty action through the Commonwealth-State-Territory Standing Committee on Treaties and the relevant Commonwealth Departments have been consulted. Given the technical nature of these amendments to the Convention, public consultations were not seen as warranted, although

3 Mark Hyman (Environment Australia), *Transcript of Evidence*, 20 August 2001, p. TR17-18.

4 Lee Thomas (Environment Australia), *Transcript of Evidence*, 20 August 2001, p. TR19.

5 Mark Hyman (Environment Australia), *Transcript of Evidence*, 20 August 2001, p. TR17.

notification of the amendments will be provided to Australian environment non-government organisations.

Conclusions and recommendation

- 4.11 Australian ratification of the amendments is in the national interest as it may encourage greater regional commitment to the Apia Convention, which is the principal international legal instrument concerning regional cooperation for nature conservation in the Pacific.
- 4.12 It is noted that Cook Islands, Fiji and Samoa are the only Pacific Island countries committed to the Convention. Ratification of the amendments by Australia would facilitate the implementation of the Apia Convention and may encourage more Pacific Island Countries to become Parties. It would also demonstrate a commitment to the Convention and to conservation of nature and biodiversity in the Pacific, without imposing additional obligations on Australia, at the same time as sending a positive signal to the Pacific regarding Australia's commitment to the region and its development.

Recommendation 8

- 4.13 **The Committee supports the *Amendments to the Convention on Conservation of Nature in the South Pacific* and recommends that binding treaty action be taken.**

Two Agreements for the Transfer of Prisoners

Background

- 5.1 The *International Transfer of Prisoners Act 1997* was enacted by the Commonwealth Parliament to provide a framework for Australia to participate in the international transfer of prisoners.¹
- 5.2 To give effect to the Act and allow prisoner transfers to occur, Australia needs to conclude appropriate international prisoner transfer agreements with other countries. These two agreements considered in this Chapter will allow prisoners to be transferred between Australia and Thailand and Australia and the parties to the *Council of Europe Convention on the Transfer of Sentenced Persons* (those being the United Kingdom, most European countries, the United States of America and Canada).

Proposed treaty actions

- 5.3 Two prisoner exchange agreements were presented to Parliament on 21 August 2001:

1 The Act also enables any Australian citizens convicted of war crimes by the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda to be transferred to Australia to serve their sentences.

The material in this section, and the section that follows, is drawn from the National Interest Analysis for the *Agreement with Thailand on the Transfer of Offenders and Cooperation in the Enforcement of Penal Sentences* and the National Interest Analyses for the *Council of Europe Convention on the Transfer of Sentenced Prisoners*.

- a proposed *Agreement with Thailand on the Transfer of Offenders and Cooperation in the Enforcement of Penal Sentences*; and
 - a proposed action to accede to the *Council of Europe Convention on the Transfer of Sentenced Prisoners*.
- 5.4 The signing of these two agreements reflects the results of growing public pressure from a wide range of community groups, parliamentarians and individuals for Australia to participate in international prisoner transfer schemes.
- 5.5 As State and Territory jurisdiction rather than Commonwealth jurisdiction in Australia, the development of these agreements has involved many years of domestic, as well as international, inter-governmental negotiation.
- 5.6 The domestic arrangements, between the Commonwealth and State and Territory governments are close to being finalised. In relation to the cost of transferring prisoners, for example, it has been agreed that:
- the Commonwealth will meet all general administrative costs involved in the processing of transfers; and
 - the State or Territory to which a prisoner wishes to return will be responsible for meeting the costs of transporting the prisoner to Australia and maintaining him or her in prison in Australia.
- 5.7 For out-going prisoner transfers, Australia will be responsible only for the cost of taking a prisoner to the nearest point of international departure.

Agreement with Thailand

- 5.8 The bilateral Agreement with Thailand has been negotiated because Thailand is not a party to the multilateral Council of Europe Convention. When the agreement comes into force Australian nationals serving prison sentences in Thailand, and Thai nationals serving sentences in Australian gaols, will be able to be repatriated to their home country to serve out their sentences.
- 5.9 The process has several benefits because it will:
- ensure that the prisoner will continue to be punished, but the punishment will be in accordance with the humanitarian and rehabilitative ideals of his or her home country;
 - relieve the hardship and burden on the relatives of the prisoner;
 - facilitate prisoner rehabilitation;

- in Australia's case, reduce the burden on Australian consular officials in Thailand; and
 - in the case of Thai nationals in Australian gaols, Australia will no longer have to pay the ongoing costs of their incarceration.
- 5.10 A key feature of the Agreement is that each transfer may only be made with the consent of both countries and of the prisoner concerned.
- 5.11 Although Australia does not have an established system for international prisoner exchanges, Thailand has already transferred a total of 232 foreign prisoners out of Thailand to countries including the USA and the United Kingdom. Currently there are 12 Australian nationals in Thai gaols.
- 5.12 All States and Territories have passed implementing legislation to participate in the scheme. Once the necessary regulations have been enacted under the Act, and all administrative arrangements are in place, the scheme can be activated.

Council of Europe Convention

- 5.13 If it were to accede to the Council of Europe Convention, Australia would bring into place transfer agreements with the 49 other countries who are parties to that Convention, including the United Kingdom, most European countries, the United States of America, and Canada.² In operational terms, the Convention is very similar to the proposed Agreement with Thailand.
- 5.14 One point of difference between the two agreements is that while the Thai treaty stipulates at least one year of the sentence must remain to be served at the time of the request for transfer, the Council of Europe Convention specifies that prisoners must have at least 6 months of their sentence remaining.
- 5.15 The Australian Government proposes to make two declarations at the time of accession:
- the first to clarify that, for Australia's purposes, the term 'national' would include permanent residents; and
 - the second to specify that requests for transfer and supporting documents be accompanied by translations into English.

2 There are presently 49 parties to the convention and there are 10 non-member states of the Council of Europe. Those include the Bahamas, Canada, Chile, Costa Rica, Israel, Japan, Panama, Tonga, Trinidad and Tobago, and the United States. Joanne Blackburn (Attorney-General's Department), *Transcript of Evidence*, 17 September 2001, p. TR44

Evidence presented

- 5.16 We received a number of submissions strongly supporting the proposed Agreement with Thailand. Most argued that the agreement would establish a compassionate approach to incarceration and more effective opportunities for rehabilitation. Many passionately urged that action be taken to expedite implementation of the agreement.³
- 5.17 Ruth Blakely summed up the feelings of those who support the agreement in saying:
- I firmly believe that we should take it upon ourselves to rectify the damage caused by our society as soon as the Thai government will release our prisoners. *I am not condoning the crime but I am also not condoning the current method of punishment.* (emphasis added)⁴
- 5.18 Similar views are expressed by Troy Doniger whose father is currently serving a 50 year drug related sentence in a Thai gaol:
- I certainly do not condone what my father has done and recognise the heartbreaks that drugs bring in many families, however, the prolonged isolation from family does nothing to the rehabilitation of my father and will only cause a further and unnecessary degradation of our family unit. My father has suffered enough, please let him come home.⁵
- 5.19 David Skeat concludes his submission with a poignant request:
- In the annals of time let it not be said of this generation of Australians that we were so angry at the crimes committed, and so determined to extract revenge that we became instruments through which the perpetrators were denied humane justice.⁶
- 5.20 Other issues raised in submissions in support of treaty action include:

3 See for example St Vincent de Paul Society, *Submission No. 14 (Thai Prisoners)*, p. 1

4 Ruth Blakely, *Submission No. 5 (Thai Prisoners)*, p. 1. See also *Submission No. 9* from the NSW Council for Civil Liberties, who comment, "We do not condone the offences for which Doniger was convicted, nor do we criticise the actions of the Thai courts and other institutions", (NSW Council for Civil Liberties, *Submission No. 9 (Thai Prisoners)*, p. 1). . See also Debbie Singh's submission: '[my brother] was guilty of committing a crime but we feel that he has paid the price and the opportunity to get him back on track in Australia should come sooner rather than later'. (Debbie Singh, *Submission No. 13*, p. 1).

5 Troy Doniger, *Submission No. 3 (Thai Prisoners)*, p. 2

6 Ps David Skeat, *Submission No. 2*, p. 2

- the difficulties imposed on families in arranging visits to their family members under the current arrangements⁷;
- the prohibitive costs involved⁸;
- the inability of some countries to provide any type of support network⁹; and
- the costs associated with the translation of legal documentation into English.¹⁰

5.21 In relation to the Council of Europe Convention, we were informed that following the commencement of the transfer scheme in Australia, 134 of the 211 Australians presently imprisoned overseas would be eligible to apply for transfer to Australia. A considerable number of foreign nationals imprisoned in Australia would similarly be eligible to apply for transfer to their home country.¹¹

5.22 At our hearing we raised several issues concerning the Council of Europe Convention including:

- the use of declarations as opposed to textual provisions;
- whether a person could appeal their sentences once the transfer had been completed;¹²

7 See Submission 13 ‘[my brother] would benefit greatly from being near his family who have always supported him and would be able to visit him on a regular basis’. (Debbie Singh, *Submission No. 13*, p. 1). Anita Bird has similar sentiments ‘...these prisoners need to be returned to Australia, to at least have visits available from family and friends’, (Anita Bird, *Submission No. 15 Thai Prisoners*), p. 1. Diane Spinner comments: ‘to have the treaty would enable [my daughter] to re-establish a relationship with her children who desperately need contact with, their mother, for their mental well being’, (Diane Spinner, *Submission No. 11 (Thai Prisoners)*, p. 2.

8 Anne Firkin comments that: ‘A key element of the issue is that the socio-economic status of the families, and in turn their ability to support them in foreign gaols, varies significantly’ (Ann Firkin, *Submission No. 5 (Thai Prisoners)*, p. 2). Troy Doniger comments that: ‘apart from the huge emotional strain [visiting his father in Thailand] this places on me it is also financially draining as I am only on a butcher’s apprentice wages’ (Troy Doniger, *Submission No. 3*, p. 1). See also Lyn Garnett’s comments that ‘The monetary cost of travelling to Thailand on a yearly basis to support my son has been a burden on my person and on my business income, (Lyn Garnett, *Submission No. 1 (Thai Prisoners)*, p. 1).

9 See *Submission No. 2* that comments: ‘This treaty will give hope to [the Doniger family], and will provide a basis for a support network through which he can draw in order to serve the time he has left’ (David Skeat, *Submission No. 2*, p.1)

10 Lyn Garnett, *Submission No. 1*, p. 1

11 Joanne Blackburn (Attorney-General’s Department), *Transcript of Evidence*, 17 September 2001, p. TR38

12 See comment by Joanne Blackburn: that prisoners would have to do that through the country in which the sentencing occurred. The convention and the legislation is very clear: you cannot use the transfer mechanism to be transferred back to Australia and then seek to use the

- clarification of the mechanisms under which sentences will be applied by the receiving country, namely, the continuation method and the converted sentence method;¹³
- the requirement of the Convention that the transfer of prisoners is not used to reopen the question of whether the conviction was rightly made or whether the sentence was properly imposed;¹⁴
- whether there is specific evidence that the prisoner transfer process actually facilitates rehabilitation of prisoners;
- some concerns about rehabilitation is actually achieved and whether it is preferable for prisoners to complete their sentences in the country that tried them;¹⁵ and
- the requirement that the sentence cannot exceed the maximum applied in other countries. We sought clarification that if the administering country did have a substantially different sentencing regime to ours could that result in a substantial reduction in penalty.¹⁶

5.23 In written submissions to our review, the Queensland Government highlights what it perceives to be a number of inconsistencies between the two agreements and the provisions of the International Transfer of Prisoners Act. It argues that these inconsistencies give rise to some uncertainty in application. It also notes that while negotiations between the Commonwealth and State governments on the administrative procedures to be applied in support of the agreements are well advanced,

Australian judicial system to appeal the original sentence that has been imposed on you by the foreign country. (Joanne Blackburn, *Transcript of Evidence*, 17 September 2001, p. TR39).

- 13 Annette Willing informed us that: The country would have an obligation under the treaty to continue the sentence enforcement. The protection that we have is our treaty relationship. If Australia did have some concern with a particular country, the other protection would be that, for future transfers, we would not necessarily need to consent to transfer prisoners to that country unless we were satisfied that the sentence would continue to be enforced. (Annette Willing (Attorney-General's Department), *Transcript of Evidence*, 17 September 2001, p. TR40)
- 14 Joanne Blackburn, *Transcript of Evidence*, 17 September 2001, p. TR41
- 15 In relation to this issue Joanne Blackburn noted that: if there was a request for an Australian prisoner to be transferred here it is a matter of discretion for Australia whether it chooses to consent to that request. As you rightly mentioned earlier, in addition to being a legal decision that may well be a political and a moral decision. Those would be relevant factors which I am sure would be taken into account in the decision making process. (Joanne Blackburn, *Transcript of Evidence*, 17 September 2001, p. TR44)
- 16 See Joanne Blackburn comments where she states 'The other example is of regimes that impose flogging. That may be an obvious case—where an Australian prisoner has sought transfer and the sending country was prepared to agree to that, then obviously we would be negotiating a sentence in Australia that did not include flogging—because it is not a punishment which we impose in Australia. (Joanne Blackburn, *Transcript of Evidence*, 17 September 2001, p. TR45)

they are not complete and, accordingly, the final costs of implementing the agreements are unclear. As a result, the Queensland Government suggests that binding treaty action on these agreements should be delayed until these matters are resolved.¹⁷

- 5.24 Finally, Mr John Ryan, while applauding the humanitarian purposes underpinning the two agreements, expresses concern that the validity of the arrangements and the International Transfer of Prisoners Act itself are open to question and may ultimately be held to be invalid by the High Court of Australia.¹⁸

Conclusions and recommendations

- 5.25 The international transfer of prisoners is forming an increasingly important part of international cooperation in the administration of justice. Most developed countries in the world participate in such schemes and the number of countries participating is continually increasing.
- 5.26 We agree that there are good reasons for Australia also to participate in such schemes. It will reduce the burden on the friends and family of those imprisoned overseas; ensure that punishment is meted out in a manner consistent with Australian standards; and increase the prospects for successful rehabilitation.
- 5.27 It is important to acknowledge that, once transferred, offenders will continue to be punished and that, as far as possible, all original custodial sentences will be carried out. The agreements simply provide the imprisonment will be in gaols that are run in accordance with the humanitarian standards of the prisoner's home country.
- 5.28 Both the proposed Agreement with Thailand and the Council of Europe Convention have been strongly supported in the evidence we have received. We are especially sympathetic to the views of the many people who wrote in support of the proposed Agreement with Thailand and

17 Queensland Government, *Submission No. 17 (Thai Prisoners)* and *Submission No. 3 (Council of Europe)*, p. 2. See also Western Australian Government, *Submission No. 1 (Russian Space Agreement)*, p. 3. While in favour of both Agreements the WA Government notes that: Finalisation of the Arrangements has proved more complex than anticipated. States and Territories are currently awaiting the next draft. Given the proximity of an election it is unlikely that the Commonwealth will be able to finalise these matters until early next year. Once the Arrangements have been settled, they require endorsement by the relevant State Governors and the Governor-General. Proclamation of each jurisdiction's legislation will be needed before this can occur.

18 John Ryan, *Submission No. 12 (Thai Prisoners)* and *Submission No. 2 Council of Europe)*, .p. 1

provided moving and compelling testimony about the importance of allowing prisoners to be allowed more convenient access to friends and family. As a result, and in order to minimise any delays in implementation, we have already written the Ministers for Justice and Foreign Affairs indicating our support for the proposed Agreement and recommending that binding treaty action be taken.

Recommendation 9

- 5.29 **The Committee supports the proposed *Agreement with Thailand on the Transfer of Offenders and Co-operation in the Enforcement of Penal Sentences* and recommends that binding treaty action be taken.**

Recommendation 10

- 5.30 **The Committee supports the *Council of Europe Convention on the Transfer of Sentenced Persons* and recommends that action be taken to accede to the Convention.**
- 5.31 We note the issues raised by the Queensland Government and encourage the Minister for Justice and his officials to work closely with the Queensland Government (and all other State and Territory governments) to resolve any remaining administrative or funding issues. As it seems that all other States have agreed to the proposed treaty action, our view is that these issues are not sufficient to defer action on either treaty.

Recommendation 11

- 5.32 **The Minister for Justice should expedite negotiations with all State and Territory Governments to ensure that all issues associated with the implementation and ongoing management of international prisoner exchange agreements are well understood and that all regulatory, administrative and funding arrangements are established promptly.**
- 5.33 We are prepared to accept the Government's assertion that it is within the Commonwealth's power to legislate for the international exchange of prisoners in a manner consistent with its international treaty obligations.

The possibility that, at some stage in the future, a case may arise in which one party argues to the contrary is insufficient reason to withhold our support for these treaty actions.

Space Agreement with Russia

Proposed treaty action

- 6.1 The proposed *Agreement with the Russian Federation on Cooperation in the Field of the Exploration and Use of Outer Space for Peaceful Purposes* provides a framework for collaboration in a broad range of space projects with Russia, especially collaboration in the development of commercial spaceports in Australia using Russian launch technology.¹
- 6.2 Two proposed spaceports – the Asia Pacific Space Centre facility proposed for Christmas Island and the Spacelift facility proposed for Woomera – would use wholly Russian launch vehicles. The Agreement is necessary for both projects to proceed.
- 6.3 As the Russian Government holds equity in and exercises a degree of administrative control over most of the Russian space industry and research sector, an inter-governmental framework agreement is required before international collaboration can take place. In this context, the proposed Agreement is a critical step in facilitating the Asia Pacific Space Centre and Spacelift projects, and any other joint projects that may emerge in the future. Without the Agreement, and the more detailed technology safeguards and intellectual property agreements, that will be negotiated in support of the framework agreement, the Russian Government would not allow the transfer of launch technology to Australia, thus blocking the development of these projects and denying Australia an opportunity to capture a share of the lucrative satellite launch market.

1 Unless otherwise indicated, the material in this section is derived from the National Interest Analysis for the *Agreement with the Russian Federation on Cooperation in the Field of the Exploration and Use of Outer Space for Peaceful Purposes* [Russian Space NIA].

- 6.4 The Asia Pacific Space Centre is about to commence construction. The project has a capital value of \$A800 million and is expected to generate \$1.3 billion in net gains to Australia over 20 years. It will create up to 400 jobs in its construction phase and up to 550 jobs in operation. It would especially benefit the economy of Christmas Island and may reduce calls on Commonwealth funds to support the Island.
- 6.5 More generally, it is estimated that access to Russian launch technology will allow the emerging Australian space launch sector to capture between 10 and 20 per cent of the global launch market over the coming decade.

Evidence presented

- 6.6 Subject to this Agreement coming into effect, it will replace the current Agreement from 1987 on cooperation in space research and the use of space for peaceful purposes. It will underpin our mutual relationship on space matters, building upon the inherent advantages of our two nations. While Russia is a recognised leader in space technology, Australia is well placed geographically for launches into space in addition to possessing a stable political and economic environment that is attractive to potential investors and prospective launch participants.²
- 6.7 The proposed Agreement covers joint activities relating to the exploration and use of outer space. It also covers cooperative research development and the exchange of space technology expertise, equipment and material resources. The potential exists to include other areas of cooperation and joint activity, to further advance a mutually beneficial relationship. In summary, the proposed Agreement will facilitate the development of a commercial Australian space launch industry using Russian launch vehicles.³
- 6.8 While all the State and Territory Governments have been invited to comment, only the Western Australian Government had some concerns. They believe that this Agreement should not be implemented if it in any manner creates the potential for detrimental impact on the key industries in the North West of the State. In particular, Western Australia believes that strategic oil and gas assets in the North West must be safeguarded, at

2 Peter Morris, Department of Industry, Science and Resources (DISR), *Transcript of Evidence*, 17 September 2001, TR47.

3 Peter Morris(DISR), *Transcript of Evidence*, 17 September 2001, TR47.

all cost, from the possible impact of rocket launch operations on Christmas Island.⁴

Conclusions and recommendation

- 6.9 The proposed Agreement is critical to supporting the continuing development of a space launch industry in Australia. It will allow Australian access to Russian space launch technology, facilitate the commercial application of such technology and encourage collaboration in related fields of research and development.
- 6.10 The proposed Agreement is of clear benefit to both parties:
- it will allow Australian based companies to use technology developed by one of the leading space faring nations in the world; and
 - it will allow the Russian space authorities to commercially exploit their technology in an environment that is not only politically and economically stable but is geographically and climatically suitable for launching space vehicles.
- 6.11 The prospects of establishing a new leading edge industry in Australia are exciting and we unreservedly support the proposed Agreement.

Recommendation 12

- 6.12 **The Committee supports the *Agreement with the Russian Federation on Cooperation in the Field of the Exploration and Use of Outer Space for Peaceful Purposes* and recommends that binding treaty action be taken.**
- 6.13 We note, and share, the Western Australian Government's concern to ensure that rocket launch operations do not have any detrimental impact on key industries in the North West of the State. The Minister for Industry, Science and Resources must ensure that these concerns are at the forefront of on-going negotiations with proponents of the Asia Pacific Space Centre facility.

4 Western Australian Government, *Submission No. 1* (Russia), p. 1.

Recommendation 13

- 6.14 **The Minister for Industry, Science and Resources should liaise with his counterpart in the Government of Western Australia to ensure that the development of the Asia Pacific Space Centre facility on Christmas Island does not have a detrimental impact on those living and working in the North-West of Western Australia.**

Amendments to the INTELSAT Agreement

Background

- 7.1 The International Telecommunications Satellite Organization (INTELSAT) began operation in 1964 and was established as an international organisation in 1971. Its purpose was to ensure the provision of the satellite capacity necessary to make international telecommunications services publicly available. At the time, the costs and risks of such activities were too great for normal commercial sponsors.¹
- 7.2 146 countries, including Australia, are party to the formal agreements which underpin the operation of INTELSAT. These agreements provide that satellite capacity is to be supplied on a commercial and non-discriminatory basis. Approximately 5% of Australia's international telecommunications traffic is carried via the INTELSAT system and there are 50 international destinations that can only be reached via INTELSAT. It is, therefore, an integral part of Australia's telecommunications system.
- 7.3 In April 1998, at an Assembly of State Parties, the decision was taken to restructure INTELSAT into a more market responsive organisation. All member States were of the view that INTELSAT's ability to respond quickly and efficiently to market developments and customer needs was constrained by the cumbersome decision making processes typical of international organisations. Moreover, the requirement that member States finance and bear full liability for new services had lead to slow and cautious assessments of commercial proposals.

1 Unless otherwise indicated the material in this section, and the section that follows, is drawn from the National Interest Analysis for the *Amendments to the Agreement and Operation Agreement relating to the International Telecommunications Satellite Organization (INTELSAT)*.

- 7.4 At the same time as having little capacity to respond quickly to changes in market demand and technology, INTELSAT is facing competition from new satellite operators, such as Panamsat, Astrolink, Skybridge and Teledisc.

Proposed treaty action

- 7.5 The proposed *Amendments to the Agreement and Operating Agreement of the International Telecommunications Satellite Organisation (INTELSAT)*, which seek to establish a new private entity (Intelsat Ltd) to provide the global communication services currently provided by INTELSAT, has four main objectives:
- to minimise government involvement in the provision of INTELSAT services;
 - to maintain the delivery of public service obligations to user countries and destinations where there is no cost effective alternative to INTELSAT;
 - to provide a fair and open competitive environment for all players; and
 - to reduce the privileges and immunities currently enjoyed by INTELSAT.
- 7.6 The amendments also provide for the establishment of an inter-governmental organisation to be known as the International Telecommunications Satellite Organisation (ITSO), the function of which is to oversee the delivery by Intelsat Ltd of its public service obligations. These obligations, which are reflected in the Core Principles of the Agreement, are to maintain global connectivity and coverage, serve lifeline connectivity customers and provide non-discriminatory access to its satellite systems.
- 7.7 To ensure the ongoing competitiveness of INTELSAT services, the reforms provided for by the amendments have already been implemented. The new entity, Intelsat Ltd, has been operating since July 2001.

Evidence presented

- 7.8 At our hearing, witnesses from the Department of Communications, Information Technology and the Arts reported international consensus

that reform of INTELSAT was vital if it is to compete in the medium to long-term and deliver on its public service obligations.²

- 7.9 Minimising the extent of direct and day-to-day government involvement in the operation of Intelsat Ltd will allow it to compete on a more commercially viable basis and will provide for expanded growth, increasing economies of scale and reduced costs for lifeline users – all in line with Australian Government policy.³
- 7.10 We also took evidence on the way Intelsat Ltd has been set up and the nature of its a public service agreement with ITSO.
- 7.11 It was stated in evidence that the public service obligation is guaranteed for a period of 12 years, which is also the guaranteed lifetime of the inter-governmental organisation.⁴
- 7.12 Each of the State and Territory Governments and principal stakeholders having been directly consulted, the consensus view was of strong support.⁵
- 7.13 In summary, Intelsat Ltd will continue to operate 20 geostationary satellites, with an additional nine satellites to be launched in the next two years. It will provide wholesale Internet, broadcast, telephony and corporate network solutions to over 200 countries and territories - services which earned revenues of over \$1 billion in the year 2000. In the Australian domestic context, the establishment of Intelsat Ltd will have a positive impact in respect of improved satellite access and require only minor alternations to existing domestic legislation.⁶

Conclusion and recommendation

- 7.14 There is no doubt that the international telecommunications market is vastly different now than it was 30 years ago, when the INTELSAT agreements were first negotiated. It is not surprising, therefore, that the agreements need updating to reflect the need for service providers to

2 Brenton Thomas, (Department of Communications, Information Technology and the Arts (DCITA)), *Transcript of Evidence*, 17 September 2001, TR55.

3 Brenton Thomas, (DCITA), *Transcript of Evidence*, 17 September 2001, TR55.

4 Rafiq Abbasi, Reach Networks Australia Pty Ltd (RNA), *Transcript of Evidence*, 17 September 2001, TR58.

5 Queensland Government, *Submission No. 2 (INTELSAT)*, p. 2.

6 Brenton Thomas, (DCITA), *Transcript of Evidence*, 17 September 2001, TR55-56.

adapt quickly to the opportunities provided by new communication technologies and the demands of the market.⁷

- 7.15 The effective and efficient operation of the INTELSAT system is of great importance to Australia, as it remains an integral part of our national telecommunications network. We note that the Government consulted with the State and Territory Governments, and other key stakeholders such as Telstra and Optus on the proposed reforms of INTELSAT. Each has supported the privatisation initiative,⁸ with the consensus view was that the reforms were in Australia's best interests.
- 7.16 We note also that the restructuring described in the proposed amendments has already taken place and that Intelsat Ltd is already operating.
- 7.17 There remain concerns about the nature of the oversight arrangements to be established by ITSO to ensure that Intelsat Ltd delivers each of the public service obligations described in the Core Principles of the Agreement (see Article III). While we understand that State Parties will not have a direct role in establishing the legally binding Public Service Agreement to be negotiated between ITSO and Intelsat Ltd, the Australian Government must be vigilant to ensure that the Public Service Agreement and ITSO's oversight are adequate for the purpose.

Recommendation 14

- 7.18 **Noting that the reforms proposed by the *Amendments to the Agreement and Operating Agreement of the International Telecommunications Satellite Organisation (INTELSAT)* have already been implemented, the Committee recommends that binding treaty action be taken.**

7 In our *Report 28, Fourteen Treaties Tabled on 12 October 1999* (December 1999) we supported a series of amendments to the *Convention and Operating Agreement for the International Maritime Satellite Organization*. The rationale and reform proposals were the same for these amendments as have been presented in support of the INTELSAT amendments. The former Committee, in its *4th Report, Treaties Tabled on 15 & 29 October 1996* (November 1996), supported amendments to the INTELSAT Agreements to allow member States to specify more than one 'signatory' as its 'designated telecommunications entity' – at the time, Telstra was Australia's only designated signatory.

8 Brenton Thomas, Department of Communications, Information Technology and the Arts (DCITA), *Transcript of Evidence*, 17 September 2001, TR54.

Recommendation 15

7.19 The Minister for Communications, Information Technology and the Arts should seek to ensure:

- **that Australia's interests are actively represented at meetings of the International Telecommunications Satellite Organisation;**
- **that the work program and priorities of the Executive arm of the International Telecommunications Satellite Organisation reflect Australia's interests; and**
- **that Australia's interests are protected by the Public Service Agreement to be negotiated between the International Telecommunications Satellite Organisation and Intelsat Ltd.**

World Radiocommunications Conference 2000 - Final Acts

Background

- 8.1 The International Telecommunications Union (ITU) is a specialised agency of the United Nations charged with ensuring international cooperation in the use of the radio-frequency spectrum and telecommunications. To this end the ITU proposed treaty level agreements and recommends world standards for telecommunication and radiocommunication services, including satellite services. Australia has been a member of the ITU and its predecessors since the 19th Century.¹
- 8.2 The Radio Regulations are one of the basic instruments of the ITU. Their purpose is to ensure the rational, efficient and equitable use of the radio-frequency spectrum. They contain allocations to over 40 radiocommunication services and provide technical, operational and regulatory conditions for the use of the radio-frequency spectrum and satellite orbits. The Radio Regulations are periodically reviewed by a World Radiocommunication Conference. The most recent Conference (WRC 2000) produced the revisions that are the subject of this treaty action.

1 The material in this section, and the following section, is drawn from the National Interest Analysis for the *Final Acts of the World Radiocommunication Conference 2000 of the International Telecommunication Union* (NIA for WRC 2000).

Proposed treaty action

- 8.3 *The Final Protocol and Partial Revision of the Radio Regulations, as incorporated in the Final Acts of the World Radiocommunication Conference 2000 of the International Telecommunication Union (the WRC 2000 revisions) provide for:*
- additional spectrum for third-generation International Mobile Communications (third generation mobile telephony incorporates mobile data services, mobile e-commerce, wireless Internet access and mobile video based services);
 - the operating conditions for a new wave of non-geostationary satellites, which will allow Internet and multimedia applications to be delivered anywhere in the world;
 - additional spectrum allocations for the radio navigation-satellite service used to support global positioning systems; and
 - allocations for high density fixed services, which can accommodate more users in a given area and allows operators to use wireless technologies rather than existing telephone infrastructure to support services such as Internet, video distribution and datacasting.
- 8.4 The proposed treaty action would place Australia in line with the rest of the world in its regulation of the radio-frequency spectrum. Australia would retain its sovereign right to control transmissions within and into its territory and to protect Australian users from interference from foreign systems.
- 8.5 Australia made one declaration at the time of signature in response to the declaration made by equatorial countries to exercise sovereign rights over segments of the geostationary satellite orbit. Australia's declaration reflects a long standing view that the geographical situation of particular countries does not support claims to any preferential rights to the geostationary orbit.
- 8.6 The National Interest Analysis reports that there is broad support for the treaty action from State and Territory governments, from the telecommunications and transport industries.

Evidence presented

- 8.7 WRC 2000 was the most recent in a three yearly regular series of meetings conducted by the ITU for the purpose of making amendments to its Radio Regulations. Through achieving common frequency allocations in different countries, Australia helps maximise the efficient usage of the scarce spectrum resource; make possible international roaming of radio equipment; enhances trade opportunities; and permits economies of scale in manufacturing.²
- 8.8 Meetings of the WRC have a long tradition of achieving harmonious agreements, even between countries that often do not cooperate on other matters. While there were some matters of dispute at the most recent conference, a unanimous outcome was eventually achieved.
- 8.9 The ITU Radio Regulations take effect in Australia via the *Radiocommunications Act 1992*, which requires the Australian Communications Authority to maintain a National Frequency Spectrum Plan incorporating the ITU regulations, and to revise this document after each world conference. Amendments to the Plan to reflect WRC 2000 are currently being prepared and will soon be tabled in Parliament. These amendments, like the Plan itself are 'disallowable instruments' and will be accompanied by a Regulation Impact Statement.³
- 8.10 In addition to the broad support from the States and Territories on this proposed treaty action, the Queensland Government gave specific written support.⁴

Conclusion and recommendation

- 8.11 The Radio Regulations are an important international instrument, ensuring that the radio frequency spectrum is managed, at a global level, efficiently and effectively.
- 8.12 The revisions arising from WRC 2000 are widely recognised as being beneficial and will make possible the introduction of new communication technologies and greater access to mobile telephone and broad-band services.

2 Australian Communications Authority (ACA), *Submission No. 2 (WRC 2000)*, p. 1.

3 Australian Communications Authority (ACA), *Submission No. 2 (WRC 2000)*, p. 1.

4 Queensland Government, *Submission No. 3 (WRC 2000)*, p. 2.

8.13 Accordingly, we make the following recommendation.

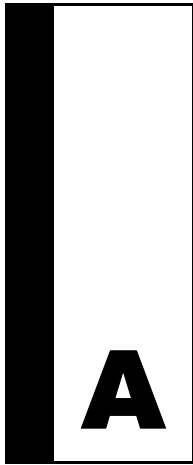
Recommendation 16

8.14 **The Committee supports the *Final Protocol and Partial Revision of the Radio Regulations, as incorporated in the Final Acts of the World Radiocommunication Conference 2000* and recommends that binding treaty action be taken.**

KERRY BARTLETT MP

Committee Chairman

25 September 2001



Appendix A - Additional comments by Senator Andrew Bartlett

Agreement on the Exploration and Use of Outer Space for Peaceful Purposes

This is an important treaty - one that could have done with further attention in relation to a number of issues if the time had been available. This treaty, along with others, was considered by the Joint Standing Committee on Treaties on Monday September 17. Unfortunately, I was not able to get to that hearing because of other commitments, which prevented me from asking a number of questions I would have liked to pursue.

The national interest analysis that was tabled along with the treaty states that it provides a framework for collaboration with Russia in a broad range of space projects. There are two proposed spaceports: the Asia-Pacific space centre proposed for Christmas Island and the spacelift facility proposed for Woomera, which would use wholly Russian launch vehicles, and the agreement is necessary to facilitate both. The agreement is a critical step in facilitating those proposed projects and any further projects that may emerge in the future.

I am a strong supporter of promoting science and the space industry for Australia and do not oppose opportunities for expanding space exploration, on the proviso, of course, that that it is done properly and effectively, in a forward-looking cutting edge way and in a manner that is environmentally sound for Australia and the globe.

There are 4 broad areas of concern in relation to the agreement and the proposed launch facilities:

1. potential restrictions on public access to information;

2. failure of the agreement to impose environmental standards;
3. the poor environmental history of the Russian space launch industry; and
4. space junk.

Much of the Russian Space launch industry is subject to both ownership and control of the Russian Government. One can legitimately assume that details of Russian technology and innovation will not be released. That may include information relating to environmental and health issues associated with the use of certain materials or fuels. It is not clear from the Treaty exactly what kinds of restrictions are being faced, only that laws of the states in regards to matters of national security shall apply. Australian governments frequently resort to national security arguments to avoid releasing information that is politically embarrassing. We simply do not know what restrictions on the release of information exist in Russia.

The Agreement makes it clear that information derived from the joint program will be available to both parties. That is one important aspect of developing Australian expertise. It is also important for Australia to ensure that Australia develops expertise in testing, monitoring and enforcement.

The Treaty imposes no environmental requirements. The environment is part of our national interest and should be considered by the Australian government as part of an agreement. In my view, you do not simply sign an agreement to enable transfer of technology without examining or putting in some requirements and procedures in relation to environmental matters. I believe that is a significant omission, and one that needs questioning.

In June this year a conference in the Netherlands discussed the viability of 'green' rocket fuels. Australia should be at the cutting edge of that sort of technology with rockets and rocket fuels. What is the future of green rocket fuels and can Australia be part of this innovation, rather than relying on old fuels and countries with particularly poor environmental records? This is not to say we should not explore the space industry with Russia, but we should ensure that we do it in a way that ensures environmental issues are properly addressed and we are developing new cutting-edge technology in the process.

Finally, the Democrats have some concerns in relation to the history of the Russian space launch industry, particularly environmental aspects. This national interest analysis talks about it being necessary to facilitate some of these projects including Christmas Island and Woomera and others in my home state of Queensland, potentially including the almost pristine Hummock Hill Island in central Queensland, which has been proposed for a rocket launch site. This national interest analysis talks about costs and benefits. There is not a mention of the environment at all in it.

More than 2,000 tonnes of space litter from the Russian space program is scattered across areas of Russia, with major environmental effects that have only recently come to light.

The safety council of the Russian federation assessed the environmental impacts of the release of toxic rocket fuels and noted that a serious ecological situation exists at the spent-stage fall sites for the first stages of rocket boosters, with ground and surface water toxic concentrations many times more than acceptable levels. Significant contamination of vegetation happens as a result of atmospheric transportation of vapours and aerosols with rocket fuels.

The fuel that has been used traditionally in the Russian space industry is not necessarily the same fuel that is likely to be used on Christmas Island. I understand that kerosene and liquid oxygen is the proposed fuel for Christmas Island. But there are still concerns about that fuel that I believe need to be properly considered, particularly the question of the unburned fuel in the rocket boosters.

Who is going to clean up the hydraulic pumps, electrolyte batteries and first stages of the rocket that will fall into the sea with each successful launch? What are the impacts of dumping approximately 40 kg of unburned fuel into the sea, which we understand is likely to occur with each launch?

I have received information that Russia's space industry has done so much damage in Uzbekistan that Uzbekistan has terminated the Russian space program there and is giving Russia two years to wind up their program. In that circumstance we need to look at what we are doing in expanding our operation in that direction.

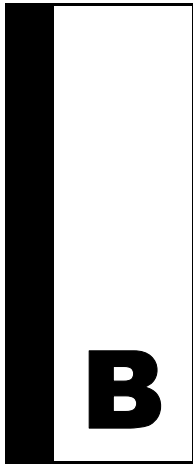
A related issue is ensuring that the payloads carried on satellites being launched from Australian soil do not contain toxic or nuclear materials.

One must also assume that Australia will now have to assume some responsibility for space junk. The expected rapid increase in the number of orbital satellites is eventually going to lead to international negotiations in relation to junk in space, debris falling from space and liability of countries for any impacts associated with either space collisions or falling debris.

The Democrats recommend that the Australian government take a proactive role in promoting early and cooperative agreements in relation to these issues.

SENATOR ANDREW BARTLETT

Australian Democrats Queensland



Appendix B – National Interest Analyses

This appendix contains the National Interest Analyses and, where appropriate the Regulation Impact Statements, prepared for each of the following treaty actions:

Agreement on Social Security with: Canada;

Agreement on Social Security with the Netherlands (National Interest Analysis and Regulation Impact Statement);

Agreement on Social Security with Spain;

Protocols to an Agreement on Social Security with Austria;

Amendment to an Agreement with United States on Cooperation in Defence Logistic Support;

Amendments to the Conservation of Nature in the South Pacific (Apia Convention);

Agreement with Thailand on Transfer of Prisoners;

Agreement with the Council of Europe on Transfer of Sentenced Persons;

Russian Space Agreement (National Interest Analysis and Regulation Impact Statement);

Agreement on Social Security with Portugal (National Interest Analysis and Regulation Impact Statement);

Agreement on Social Security with Germany;

Amendment to INTELSAT Convention and Operating Agreement; and

WRC-2000 Ratification of Final Acts.

Agreement on Social Security between the Government of Australia and the Government of Canada, done at Ottawa on 26 July 2001

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. It is proposed that Australia enter into a new Social Security Agreement with Canada.
2. When this Agreement enters into force, the Agreement on Social Security between the Government of Australia and the Government of Canada done at Canberra on 4 July 1988 will terminate. This termination will be subject to the provisions of Article 22 of the existing Agreement and Article 20 of the new Agreement. These Articles preserve the entitlements of those persons receiving benefits under the existing Agreement.

Date of proposed binding treaty action

3. The Agreement was signed on 26 July 2001.
4. In accordance with Article 22, this Agreement shall enter into force on a date specified in notes exchanged by the Parties through the diplomatic channel notifying each other that all constitutional or legislative matters as are necessary to give effect to the Agreement have been finalised. It is proposed that the exchange of notes will specify that the Agreement will enter into force on 1 January 2002.

Date of tabling of the proposed treaty action

5. 7 August 2001.

Purpose of the proposed treaty action and why it is in the national interest

6. The new Agreement will bring economic and political benefits to Australia. Not only will it assist in maximising the foreign income of Australian residents, and the flow-on effect of these funds into the Australian economy, but it will also serve to reinforce Australia's political, business and strategic interests. The Agreement will further facilitate people-to-people contact and exchange between Australia and Canada, as well as strengthen bilateral relations and provide choices in retirement for individuals who have or will migrate to Australia or Canada during their working lives.
7. The existing Agreement entered into force on 1 September 1989. Minor amendments were made to the Agreement by way of a Protocol in 1990. Since that date, substantial changes have occurred within the Australian social security system. The new Agreement provides for enhanced access to certain Australian and Canadian social security benefits and greater portability of these benefits between the countries. Portability of benefits allows for the payment of a benefit from one country into another country and is an underlying principle of Australia's bilateral agreements on social security where the responsibility for providing benefits is shared. Under the new Agreement, residents of Australia and Canada will be able to move between Australia and Canada with the knowledge that their right to benefits is recognised in both countries.

Reasons for Australia to take the proposed treaty action

8. Australia's network of bilateral social security agreements improves access to income support for people whose adult lives are split between Australia and the other country that is a party to the Agreement. Most people benefiting from the agreements are age pensioners. Such agreements also improve income support coverage for people with disabilities, widowed persons and some carers.
9. The new Agreement with Canada incorporates the same general principles as a number of other agreements Australia has on social security, including with Austria, Cyprus, Denmark, Ireland, Italy, Malta, the Netherlands, Portugal and Spain. A key element in the new Agreement and these other social security agreements is the sharing of responsibility between the Parties in providing adequate social security coverage for former residents of their countries.
10. The Australian Government currently pays benefits under the existing Agreement to a total of 871 people. 821 of these people are in Canada, 21 are in Australia and 29 are in third countries. The Canadian Government has advised that as at December 2000, it was paying 3,414 pensions into Australia, 1,217 of these under the Agreement.
11. The existing Agreement has been in force since 1 September 1989. The Agreement has worked well for the last 12 years but substantial changes to both countries' social security systems have necessitated the updating of the Agreement. In Australia, for example, the invalidity pension is now known as disability support pension and, following changes introduced in the Social Security Act 1991, is usually only paid overseas on a permanent basis (that is for more than 26 weeks) to people who are considered to be severely disabled.
12. For Australia, the new Agreement will cover access to age pensions, disability support pensions (DSP) for the severely disabled, carer payment in respect of partners of persons who receive DSP or age pensions, pensions payable to widowed persons, and additional child amounts. For Canada, it will cover access to payments under the Old Age Security Act and the Canadian Pension Plan, which include retirement benefits, disability benefits and survivor benefits (including surviving partner and children benefits).
13. The new Agreement provides that both countries will share the financial responsibility for providing these benefits. This means that individuals may be eligible for benefits from both countries if they meet certain eligibility criteria and they have lived and/or worked in both countries during their working life. Residents of Australia and Canada will be able to continue to move between Australia and Canada knowing their right to benefits is recognised in both countries and that each country will contribute fairly to support those who have spent part of their working lives in both countries.
14. The new Agreement differs from the existing Agreement in the following ways:
 - DSP is restricted to people who are considered to be severely disabled, that is people assessed as having no capacity to work or no prospects for rehabilitation within two years of being granted DSP or of leaving Australia to reside overseas. This change is in line with the general restriction on the payment of DSP to people overseas who are not severely disabled which was introduced in November 1991 in the *Social Security Act 1991*. It reflects the growing focus in Australia on rehabilitation, something that is not possible to administer overseas.
 - The minimum period of working life residence needed in order to claim Australian DSP under the Agreement has been reduced to one year for people outside Australia. In the existing Agreement a person residing outside Australia required a minimum of two years Australian residence before they could claim Australian DSP under the Agreement. For Australian residents, no minimum period of residence is required before they can claim benefits under the new Agreement. In the existing Agreement, two years residence is required for DSP and one year for other benefits. This change brings the Agreement with Canada in line with the policy adopted in Australia's other agreements.
 - A person residing in Australia and receiving a carer payment because they are caring for a person who is being paid under the Agreement, will no longer be deemed to be receiving that carer payment

under the Agreement. This change brings the Agreement with Canada in line with the policy adopted in Australia's other agreements.

- Wife pension and widow B pensions have been removed from the scope of the Agreement. This is in line with changes to the *Social Security Act 1991* (there have been no new grants of wife pensions since June 1995 and no new grants of widow B pensions since March 1997). Current recipients will be protected by Article 22 of the existing Agreement and Article 20 of the new Agreement.
- Canada recently introduced legislation giving same-sex common-law partners the same benefits and obligations as opposite-sex common-law partners. As Australia does not legally recognise same-sex couples for the purposes of paying benefits under Australian social security law, it was necessary to include a definition of 'partner' in the new Agreement. This was included to prevent the payment of certain benefits, for example carer payments and bereavement allowances to same-sex couples.

15. The new Agreement with Canada is one of five of Australia's existing bilateral social security agreements that have been revised. The others are the agreements with Austria, the Netherlands, Spain and Portugal. These agreements are the subject of separate National Interest Analyses.

Obligations

16. The new Agreement places equivalent obligations on both Australia and Canada. Article 1 defines terms used in the Agreement and in some cases limit Australia's obligations under it. Carer payment is limited to individuals in Canada who care for a partner (also in Canada) in receipt of a pension. Article 2 sets out for both countries the scope of the social security benefits covered by the Agreement as described in paragraph 13 of this National Interest Analysis.

17. Article 3 describes the group of people to whom the Agreement applies. It provides that the Agreement shall apply to any person who is or has been an Australian resident or is or has been a Canadian resident, and, where applicable, to any partner, dependant or survivor of such a person.

18. Article 4 is a statement of principle, common to all bilateral social security agreements. It ensures that all persons to whom this Agreement applies shall be treated equally in regard to rights and obligations derived from relevant Australian or Canadian legislation or under the Agreement.

19. Article 5 deems a person in Canada to be an Australian resident and in Australia for the purposes of lodging a claim for an Australian benefit.

20. Article 6 establishes the circumstances in which Canadian creditable periods can be used to satisfy minimum residence requirements for an Australian benefit stipulated in the *Social Security Act 1991*. Under Article 6, the claimant is able to add these 'deemed' periods to actual periods of residence in Australia in order to qualify for an Australian benefit. Article 9 imposes a similar obligation on Canada to treat relevant periods of residence in Australia as Canadian creditable periods.

21. The method of calculating the rate of Australian benefits is set out in Article 7. This Article obliges Australia, when calculating a person's entitlement, to modify the method of calculation under Australian social security law, both inside and outside Australia. Paragraph 1 specifies that certain Canadian benefits paid to Australian pensioners outside Australia will attract concessional treatment under the Australian income test. This is consistent with concessions given in other agreements and with the principle of shared-responsibility.

22. Article 12 enables the lodgement of social security claims, notices or appeals in either country. This Article obliges Australia and Canada to accept the date such documents are lodged with the other Party as the date of lodgement.

23. Article 13 deals with portability of benefits and provides for the payment of benefits under the Agreement by Australia and Canada into the other country.

24. Article 14 sets out the means, subject to relevant domestic laws, regulations and policies, through which the relevant authorities are to cooperate in order to implement the Agreement and ensure its effective operation. It also provides for the exchange of information so that the Agreement can be applied.

25. Article 18 describes the means by which any dispute with regard to the interpretation or application of the terms of the Agreement is to be resolved. All differences are to be settled in the first instance by the competent authorities of both Parties, that is, on behalf of Australia, the Department of Family and Community Services and, on behalf of Canada, the Department of Human Resources Development. This Article also provides for the Parties to consult on matters in dispute at the request of either Party. If the dispute is not able to be resolved through consultation, Article 18 provides for the establishment of an arbitral tribunal. The decision of the tribunal will be final.

26. When the new Agreement enters into force, Article 20 ensures that a person's qualification to receive a benefit under the existing Agreement is not affected by the terms of the new Agreement.

Implementation

27. A new Schedule containing the full text of the new Agreement will be added to the Social Security (International Agreements) Act 1999. The regulation making powers contained in Sections 8 and 25 of that Act will be used to implement the Agreement. Article 15 specifies that the Agreement will be implemented in accordance with separate administrative arrangements. The administrative arrangements are currently under negotiation.

Costs

28. The new Agreement is expected to result in a small increase in administered outlays of \$0.070m in the forward estimate period to 30 June 2005, resulting from the changes to the minimum periods of working life residence. Departmental costs of \$0.186m in the same period represent the costs of implementation of the Agreement, including the costs of changes required to administrative processes, such as new forms and staff training.

29. There will also be costs (\$3.738 million) involved with system enhancements over the period to 30 June 2005 for the five revised agreements (Austria, Canada, Portugal, Spain, the Netherlands) and a new Agreement with the United States of America.

Consultation

30. State and Territory Governments were advised of the proposed new Agreement through the Commonwealth-States-Territories Standing Committee on Treaties, and through separate explanatory information sent out 14 June 2001 as part of the consultation process. Replies were received from the Chief Minister's Office ACT and Department of the Premier and Cabinet in South Australia. Neither made any comment on the new Agreement.

31. The views of nine Canadian community groups in Australia were sought. A reply was received from the Canada Club of Victoria Inc who expressed their support for the new Agreement. The views of major welfare organisations in Australia were also sought, but no comments were received. A list of these organisations and groups is attached.

Future treaty actions: amendments, protocols, annexes or other legally binding instruments

32. The Agreement does not specifically provide for the negotiation of any future legally binding instruments although Article 19 obliges the Parties to review the Agreement when requested to do

so by either Party. While the Agreement does not specifically deal with amendments, it may be amended at any time by agreement between the Parties.

Withdrawal or denunciation

33. Article 21(1) provides that the Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other a note through the diplomatic channel indicating its intention to terminate the Agreement. In the event of termination, Article 21(2) preserves the rights of those people who have claimed or are receiving benefits under the Agreement.

Contact Details

International Agreements
International Branch
Department of Family and Community Services

Attachment

Table 1: Community Groups

Mr Shawn Boyle Executive Director Western Australian Council of Social Service	Ms Shirley Watters Director Queensland Council of Social Service Inc
Ms Pam Simmons Executive Officer South Australian Council of Social Services	Ms Dimity Fifer Chief Executive Officer Victorian Council of Social Service
Mr Daniel Stubbs Director ACT Council of Social Service Inc	Ms Linda Frow Senior Policy Officer NSW Council of Social Service
Ms Sandra Koller National Welfare Rights Network NSW	Ms Suzanne Varghese Co-ordinator Welfare Rights Centre, Queensland
Ms Fiona McGuinness Coordinator Welfare Rights Centre SA	Ms Carolyn Stuart Chairperson Welfare Rights Centre, ACT
Ms Dale Nelson Community Education Worker Welfare Rights Unit Inc, Victoria	Mr Michael Raper President Australian Council of Social Services
Mr Albert Schluter OAM Chairperson Ethnic Communities Council of Tasmania	Mr Nick Xynias OAM BEM Chairperson Federation of Ethnic Communities' Councils of Australia Inc
Ms Beryl Mulder President Multicultural Council of the Northern Territory	Father Nicolas Frances Executive Director Brotherhood of St Laurence
Ms Irene Gibbons Executive Director Carers Association of Australia	Mr Kevin Byrne Executive Director Disability Council of NSW
Mrs Edna Russell Secretary Australian Pensioners and Superannuants Federation	Ms Phillipa Smith Chief Executive Officer Association of Superannuants Funds of Australia Ltd
Mr Tony Aveling Chief Executive Officer Australian Bankers' Association	
Ms Betty Hounslow	Ms Jane Alley

Director
Australian Council of Social Services

Executive Director
Northern Territory Council of Social
Services

Ms Elizabeth De Vries
Executive Director
Tasmanian Council of Social Services

Chief Executive Officer
NSW Council of the Ageing

Chief Executive Officer
Australian Pensioner's and Superannuants's
Federation

Ms Norah McGuire
President
Combined Pensioners & Superannuants
Association

Agreement between the Government of Australia and the Government of the Kingdom of the Netherlands on Social Security, done at The Hague on 2 July 2001

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. It is proposed that Australia enter into a new Social Security Agreement with the Netherlands.
2. When this Agreement enters into force, the Agreement between Australia and the Kingdom of the Netherlands on Social Security done at The Hague on 4 January 1991 (the existing Agreement) will terminate in accordance with the provisions of Article 28(1) of the new Agreement. This termination will be subject to the provisions of Article 20(3) of the existing Agreement and Article 28 of the new Agreement. These Articles preserve the entitlements of people receiving benefits under the existing Agreement.

Date of proposed binding treaty action

3. The Agreement was signed on 2 July 2001.
4. In accordance with Article 29(1), this Agreement will enter into force on the first day of the third month after the date of the last notification by the Parties in writing of the completion of their respective statutory and constitutional procedures required for entry into force of the Agreement. It is proposed that the exchange of notes will take place in October 2001 to enable entry into force on 1 January 2002.

Date of tabling of the proposed treaty action

5. 7 August 2001.

Purpose of the proposed treaty action and why it is in the national interest

6. The new Agreement will bring economic and political benefits to Australia. Not only will it assist in maximising the foreign income of Australian residents, and the flow-on effect of these funds into the Australian economy, but it will also serve to reinforce Australia's political, business and strategic interests. The Agreement will further facilitate people-to-people contact and exchange between Australia and the Netherlands, as well as strengthen bilateral relations and provide choices in retirement for individuals who have or will migrate to Australia or the Netherlands during their working lives.
7. The new Agreement provides for enhanced access to certain Australian and Dutch social security benefits and greater portability of these benefits between the countries. Portability of benefits allows for the payment of a benefit from one country into another country and is an underlying principle of Australia's bilateral agreements on social security where the responsibility for providing benefits is shared. Under the new Agreement, residents of Australia and the

Netherlands will be able to move between Australia and the Netherlands with the knowledge that their right to benefits is recognised in both countries.

8. Importantly for eligible Australian residents, the new Agreement protects their access to certain Dutch benefits that would otherwise be withdrawn from 1 January 2003 under the Netherlands *Export Restrictions on Benefits Act*.

Reasons for Australia to take the proposed treaty action

9. Australia's network of bilateral social security agreements improves access to income support for people whose adult lives are split between Australia and the other country that is a party to the Agreement. Most people benefiting from the agreements are age pensioners. Such agreements also improve income support coverage for people with disabilities, widowed persons and some carers.

10. The new Agreement with the Netherlands incorporates the same general principles as a number of other agreements Australia has on social security, including with Austria, Canada, Cyprus, Denmark, Ireland, Italy, Malta, Portugal and Spain. A key element in the new Agreement and these other social security agreements Australia has is the sharing of responsibility between the Parties in providing adequate social security coverage for former residents of their countries.

11. The Australian Government currently pays benefits under the existing Agreement to a total of 4,030 people. 3,979 of these people are in the Netherlands, 14 are in Australia and 37 are in third countries. The Dutch Government is unable to provide figures on the total number of pensions it pays under the Agreement but has advised that it pays 8,837 pensions into Australia.

12. The existing Agreement has been in force since 1 April 1992. It has worked well for the last nine years but substantial changes to both countries' social security systems, for example, the introduction of restrictions of the payment of certain benefits outside their territories, have necessitated the updating of the Agreement.

13. The new Agreement also includes provisions to avoid double coverage of seconded employees from both countries. In certain specified circumstances, the obligation on Australian and Dutch employers to pay "double superannuation" when they send employees to work in the other country is removed. The removal of this obligation will result in a decrease in labour costs which will benefit employers in both countries.

14. For Australia, the new Agreement will cover access to age pensions and disability support pensions (DSP) for the severely disabled, enabling claims for those benefits to be made from the Netherlands. It will also provide limited coverage in relation to wife pension, pensions payable to widows, bereavement allowance and double orphan pension to overcome restrictions on the payment of these benefits outside Australia and into the Netherlands. For the Netherlands, it covers old age pensions, invalidity pensions, survivors' pensions, children's allowances, sickness and unemployment benefits.

15. The new Agreement provides that both countries will share the financial responsibility for providing these benefits. This means that an individual may be eligible for benefits from both countries if they meet certain eligibility criteria and they have lived and/or worked in both countries during their working life. Residents of Australia and the Netherlands will be able to continue to move between Australia and the Netherlands knowing that their right to benefits is recognised in both countries and that each country will contribute fairly to support those who have spent part of their working lives in both countries.

16. The new Agreement differs from the existing Agreement in the following ways:

- DSP is included in the scope of the Agreement, but is restricted to people who are severely disabled. People are considered to be severely disabled if they are assessed as having no capacity to work or no prospects for rehabilitation within two years of being granted DSP or on leaving Australia to reside overseas. DSP has been included to reciprocate coverage by the Netherlands. Its restriction to people who are severely disabled is in line with the general restriction on the payment of DSP to people overseas who are not severely disabled which was introduced in November 1991 in

the *Social Security Act 1991*. It reflects the growing focus in Australia on rehabilitation, something that is not possible to administer overseas;

- Guaranteed portability to the Netherlands of Australian pensions payable to widowed persons and double orphan pension has been included to reciprocate the coverage provided by the Netherlands to survivors (including surviving partners and surviving children);
 - The way Australia calculates the rate of benefits will continue to be based on whether a person is inside or outside Australia. However, the new Agreement ensures that when a person comes to Australia temporarily their rate will remain the same for the first 26 weeks. Similarly, when a person temporarily departs Australia, their rate will remain the same for the first 26 weeks of the absence. This will ensure that a person's rate of benefit will not change when they take a holiday outside the country they normally reside in and is consistent with existing domestic portability rules under Australian social security law.
 - Double coverage provisions have been included to ensure that Australian and Dutch employers do not have to make two superannuation contributions for an employee seconded to work in the other country. Under current arrangements, the employer would be required to make contributions under both Australian and Dutch legislation. The new provisions will ensure the employer, and employee where compulsory employee contributions are required, have to contribute only to the relevant superannuation scheme in their home country.
17. The new Agreement with the Netherlands is one of five of Australia's existing bilateral social security agreement that have been revised. The others are the Agreements with Austria, Canada, Portugal and Spain. These Agreements are the subject of separate National Interest Analyses.

Obligations

34. The new Agreement places equivalent obligations on both Australia and the Netherlands. Article 1 defines key terms which are used in the Agreement and in some cases limits Australia's obligations under it. For example, widowed person is defined to limit Australia's obligations in regard to payment of benefits under the Agreement to de jure widows and widowers. Article 2 specifies the social security benefits covered by the new Agreement as described in paragraph 15 of this National Interest Analysis.

35. Article 3 describes the group of people to whom the Agreement applies. It specifies that the Agreement shall apply to any person who is or has been an Australian resident or is or has been subject to the legislation of the Netherlands, and where applicable, to any spouse, dependant or survivor of such a person.

36. Article 4 is a statement of principle, common to this kind of Agreement. Article 4(1) is largely declaratory and simply underwrites each country's adoption of the concept of non-discrimination on the basis of citizenship under their legislation. It is required by the Netherlands because citizenship is important in relation to the calculation of certain Dutch social security payments. Article 4 (2) seeks to ensure that all persons to whom this Agreement applies shall be treated equally in regard to rights and obligations relating to benefits paid by virtue of the Agreement.

37. Article 5 deals with portability of benefits and provides for the payment of benefits made under the Agreement by Australia and the Netherlands to be paid into the other country.

38. The provisions of Part II (Articles 6 to 9) deal with the situation of employees who are sent from one country to the other to work. These Articles are generally aimed at avoiding double coverage of employees or liability of employers in, for example, the case of superannuation. Article 8 specifies that in certain circumstances only one country's legislation relating to coverage

will apply. The general rule is that only the legislation of the country in which the employee is working will apply. The main exception to this is where the employee has been seconded to work temporarily in that country (a five-year limit applies for non-Government employees). In such situations, only the relevant legislation of the employee's home country will apply. If the employee is working on a ship or aircraft in international traffic then only the relevant legislation of the country where the employee is resident will apply.

39. Article 12 deems a person in the Netherlands (and in some other countries with which Australia has an Agreement) to be an Australian resident and in Australia for the purposes of lodging a claim for an Australian benefit. This obliges Australia to accept a claim for Australian benefit made by an individual in the Netherlands and these other countries.

40. Article 13 deals with the partner related Australian benefit, wife pension. Wife pensions are payable to women whose partners receive Australian age pension and DSP. Although there have been no new grants of wife pension since 1995, some women established entitlement to receive wife pensions prior to 1995. Article 13 provides that where the partner of a person entitled to a wife pension receives an age pension under the Agreement, then the wife pension is deemed also to be received by virtue of the Agreement. This will continue under the new Agreement.

41. Article 14 establishes the circumstances in which periods of insurance under the Dutch social security scheme can be used to satisfy the minimum residence requirements for an Australian benefit stipulated in the Social Security Act 1991. Under this Article, the claimant is able to add these 'deemed' periods to actual periods of residence in Australia to qualify for an Australian benefit.

42. The method of calculating the rate of Australian benefits is set out in Article 15. This Article obliges Australia, when calculating a person's entitlement, to modify the method of calculation under domestic social security law, both inside and outside Australia. Paragraph 2 specifies that certain Dutch benefits paid to Australian pensioners outside Australia will attract concessional treatment under the Australian income test. This is consistent with concessions given in other agreements and with the principle of shared-responsibility. Paragraphs 3 and 5 specify that the rate paid will remain unchanged for the first 26 weeks of a temporary visit to or from Australia.

43. Article 16 requires Australia to exclude specified payments made under the Netherlands State Assistance Scheme of the 1940-1945 Victims of Persecution from the Australian income test. This obliges Australia not to take such payments into account when determining the rate of payment of certain benefits under Australian social security law.

44. Article 20 specifies that both Parties will disregard income tested benefits paid by the other Party in applying any income test to benefits paid by them to people residing in the territory of the other Party. This is consistent with concessions given in other agreements to avoid circularity in income testing where both Parties use income tests to determine the rate of benefits and with the principle of shared-responsibility.

45. Article 21 enables the lodgement of social security claims, notices or appeals in either country. This Article obliges Australia and the Netherlands to accept any such documentation lodged with the other Party, to deem claims for benefits as claims for corresponding benefits from the other Party and to forward all such documents to the other Party without delay.

46. Article 22 provides a mechanism by which a Party may recover overpayment of a benefit resulting from the subsequent grant (with arrears) of an equivalent benefit from the other Party. This Article is particularly necessary for Australia's income tested social security system and is a standard provision in Australia's bilateral agreements on social security.

47. Article 23 protects the portability of benefits under this Agreement and specifies that neither country will deduct administrative costs for the transfer of benefits when it pays its benefits into the other country or a third country.

48. Article 24 sets out the means, subject to relevant domestic laws, regulations and policies, through which the relevant authorities are to cooperate in order to implement the Agreement and ensure its effective operation. It also provides for the exchange of information so that the Agreement can be applied.

49. Article 27 provides that, when determining the eligibility or entitlement of a person to a benefit under the Agreement, all events and periods that have a bearing on the entitlement are taken into account. Paragraph 3 ensures that benefits granted under the Agreement will not be paid in respect of any period prior to the date of implementation of the Agreement.

50. Article 28 provides that the existing Agreement will terminate upon entry into force of the new Agreement. This Article also protects the rights of people receiving benefits under the existing Agreement and ensures that an individual's qualification to receive that benefit is not affected by the terms of the new Agreement.

Implementation

51. A new Schedule containing the full text of the new Agreement will be added to the *Social Security (International Agreements) Act 1999*. The regulation making powers contained in Sections 8 and 25 of that Act will be used to implement the Agreement. A new regulation will also be made under the *Superannuation Guarantee (Administration) Act 1992* to give effect to the double coverage provisions. Article 25 specifies that the Agreement will be implemented in accordance with a separate administrative arrangement that was signed on 2 July 2001.

Costs

52. The Agreement will result in an increase in administered outlays in the forward estimates period to 30 June 2005 of \$1.682m. Departmental costs of \$0.434m in the same period represent the costs of the implementation of the Agreement, including the costs of changes required to administrative processes such as new forms and staff training, and the costs of processing additional claims for the new benefits included in the Agreement.

53. There will also be costs (\$3.738 million) involved with system enhancements over the period to 30 June 2005 that will be spread across the five revised agreements (Austria, Canada, Portugal, Spain and the Netherlands) and a new Agreement with the United States of America.

Consultation

54. State and Territory Governments were advised of the proposed new Agreement through the Commonwealth-States-Territories Standing Committee on Treaties, and through separate explanatory information provided on 2 July 2001. Replies were received from the Chief Minister's Office ACT and Department of the Premier and Cabinet in South Australia. Both had no comment on the new Agreement.

55. The views of 87 Dutch community and social groups in Australia were sought. No comments were received from any of the 87 organisations. A list of these organisations is attached.

56. The views of major welfare organisations in Australia were also sought but no comments were received. A list of these organisations is attached.

Future treaty action: amendments, protocols, annexes or other legally binding instruments

57. The Agreement does not specifically provide for the negotiation of any future legally binding instruments although Article 26 obliges the Parties to review the Agreement when requested to do so by either Party. While the Agreement does not specifically deal with amendments, it may be amended at any time by agreement between the Parties.

Withdrawal or denunciation

58. Article 29(3) provides that the Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other a note through the diplomatic channel indicating its intention to terminate the Agreement. In the event of termination, Article 29(4) preserves the rights of those people who are receiving benefits or who have lodged claims and would have been entitled to receive benefits under the Agreement.

Contact details

International Agreements
International Branch
Department of Family and Community Services

*ATTACHMENT***The Netherlands' community groups contacted:**

Australian Netherlands Chamber of Commerce North Sydney Catholic Dutch Migrant Association Australia Marrickville NSW Dutch Australian Centre Chester Hill NSW Dutch Australian Society Illawarra Corrimal Dutch Folkdancing Group Toongabbie NSW Federation of Netherlands Societies Ltd in NSW Nederlandse Vereniging in Sydney	Blue Mountains Dutch Club Warrimoo NSW CDMA Wollongong Balgownie NSW Dutch Australian Centre Lavington NSW Dutch Australian Society Neerlandia Narrabeen NSW Dutch Society 'Concordia' Cardiff NSW Juliana Village Association Miranda NSW Netherlands Ex-Servicemen & Women's Association in Australia (NESWA) Ruse NSW NSW Klaverjas Federation
Netherlands Societies in the Sutherland Shire NSW Queen Beatrix Village Illawarra Ltd	Rembrandt Club St Marys The Abel Tasman Village Association Ltd Chester Hill NSW Holland Festival Committee Rowville Victoria Dutch Australian Centre (Vic)
Sunrise Choral Society St Marys NSW The Associated Netherlands Societies in Victoria Inc Dutch Courier Pty. Ltd. Upwey Victoria Australian Netherlands Chamber of Commerce Sandringham Victoria	Catholic Dutch Australian-Migrant Association Newborough Victoria
Dutchcare Ltd. Carrum Downs Victoria	Dutch Australian Community Council (DACC) North Sunshine Victoria Dutch Community Group-Warrnambool
Dutch Club- Abel Tasman Carnegie Victoria D.S.C. Diamond Valley Victoria Netherlands Churchwork Glen Iris Victoria Ringwood City-Wilhelmina Soccer Club Kilsyth Victoria St. Wiilibord's Care Boronia Victoria Westernport Koalas Karnavals Club Erasmus Foundation Northcote Victoria Holland Australia Club (HAC) Essendon Victoria Limburger Kangaroos	Netherlands Providence Elderly Citizens Homes Devon Meadows Victoria Nieuw Holland D.S.C. Inc Victoria St. Gregorius Dutch Male Choir Mt. Evelyn Victoria Tempo Doeloe Victoria Eltham Dutch Over 50's Geelong Dutch Club Inc. Klaverjas Federation of Victoria Melbourne Tukkers Social Club Inc.

Dandenong Victoria	Victoria
Mornington Dutch Australian Seniors Club	Netherlands Ex-Servicemen & Women's Ass. (NESWA)
Rosebud Victoria	Chelsea Victoria
The Dutch Club N.A.Q. Queensland	Limburger Karnavals Club The Stirrers Queensland
Queensland Holland Festival Association	Netherlands Ex-Servicemen & Womens Association in Australia (NESWA)
Netherlands Sunshine Club	Loganholme Queensland
Buderim Queensland	Dutch Friends Group
Nederlandse Gemeente Brisbane	Pialba Queensland
	Dutch Australian Community Action (DACA) Federation Qld. Inc. Queensland
Gold Coast Community Association Queensland	Nederlandse over Vijftigers Queensland
Netherlands Retirement Village Association Brisbane	Australian Netherlands Chamber of Commerce Brisbane
Dutch Care Supporters Group Sunnybank Hills Queensland	Dutch Australian Social Club of Townsville Inc. Townsville
Algemene Vereniging Oud Marine Personeel A.V.O.M.	Bambu
Bellbird Park Queensland	Buderim Queensland
Corps oud Mariniers (COM)	Dutch Social & Welfare Club
Clontarf	Greenfields South Australia
Netherlands Chamber of Commerce	Lady's Club
Richmond South Australia	Seacombe Gardens South Australia
Dutch Australian Tenpin Bowling League	Netherlands Australian Relief Fund
Plympton South Australia	Linden Park South Australia
Netherlands Australian Aged Care Services Association (NAASA)	Rembrandt Court
Oaklands Park South Australia	Oaklands Park
Warrina Homes Inc.	South Australia
Paradise South Australia	Dutch Australian Association
Dutch Australian Society Abel Tasman Inc	St. Leonards Tasmania
Sandy Bay Tasmania	Dutch Card Club "Ons Genoegen" Mornington Tasmania
Kingsborough Christian Choral Society Tasmania	Canberra Dutch Club
The Windmills of Canberra	Mawson ACT
Wanniassa ACT	Dutch Society Neerlandia Inc. Wembley Western Australia
Netherlands Ex-Servicemen's & Women's Association Inc. Western Australia	Klaverjasclub "Neerlandia" WesternAustralia
Woensdag kaartclub in het Clubhuis Western Australia	Australian Netherlands Chamber of Commerce Western Australia
The Dutch Clog Dancers Western Australia	Carnavalsclub The Sandgropers Western Australia

Dutch Australian Community Services
(DACS)
Western Australia

The Welfare Organisations contacted:

Federation of Ethnic Community Councils of Australia Deakin ACT	Australian Council of Social Service Strawberry Hills NSW
St Vincent De Paul Manuka ACT	Association of Superannuation Funds of Australia Sydney NSW
ACROD (National Industry Association for Disability Services) Curtin ACT	Australian Pensioners and Superannuants Federation Surrey Hills NSW
Salvation Army National Secretariat Manuka ACT	Australian Retirement Incomes Streams Association Sydney NSW
Australian Catholic Social Welfare Commission (Curtin, ACT)	Combined Pensioners & Superannuants Association (Surrey Hills, NSW)
Australian Council of Retiree Organisations Canberra ACT	National Seniors Association Brisbane QLD
National Ethnic Disability Alliance Mawson ACT	National Welfare Rights Network Surrey Hills NSW
Brotherhood of St Laurence Fitzroy VIC	St Vincent de Paul Society National Council Summer Hill NSW
Council on the Ageing Australia Melbourne VIC	Association of Independent Retirees Buderim QLD
Australian Red Cross Society Carlton VIC	Federation of Ethnic Community Councils of Australia St Georges SA

The State and Territory Government Contacted:

Mr Donald Speagle Senior Adviser Government Branch Victoria	Mr Mark Duckworth Principal Project Officer Intergovernmental and Regulatory Reform Branch New South Wales
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Ms Kate Kent
Director
Policy Division
Tasmania

Mr Andrea Michailidis
Director
Federal and Constitutional Affairs
Western Australia

Ms Liz Wilson
Director
Social Policy and Intergovernmental
Relations
South Australia
Mr David Bush
Intergovernmental Relations
Australian Capital Territory

Mr Jim Colvin
Department of the Chief Minister
Northern Territory

Mr Chris Goodreid
Director
Intergovernmental Relations
Queensland

Attachment**Table 2 Canadian Community Groups Contacted**

Mr Brian Bentley President The Canadian Club of WA Inc Western Australia Canada Club of Victoria Mount Waverley Victoria	Paola King Canadian Australian Club Inc Sydney NSW Jill MacLaurin-Hudspeth President Canada Australia Club Mt Rumney TAS Canada Association Inc Toowong Queensland
Norm Wuest President Australian-Canadian Association of Canberra ACT Canada Club of Brisbane Stafford Heights Queensland	Australia Canada Association Adelaide South Australia

Table 3 State and Territory Government Contacts

Mr Donald Speagle Senior Adviser Government Branch Victoria	Mr Mark Duckworth Principal Project Officer Intergovernmental and Regulatory Reform Branch New South Wales
Ms Kate Kent Director Policy Division Tasmania	Mr Andrea Michailidis Director Federal and Constitutional Affairs Western Australia
Ms Liz Wilson Director Social Policy and Intergovernmental Relations South Australia	Mr Jim Colvin Department of the Chief Minister Northern Territory
Mr David Bush Intergovernmental Relations Australian Capital Territory	Mr Chris Goodreid Director Intergovernmental Relations Queensland

REGULATION IMPACT STATEMENT

Exemption from the Superannuation Guarantee to remove double coverage

Policy objective

The policy objective is to remove 'double coverage' obligations that can arise under superannuation legislation where an employee is sent to work temporarily in another country.

Background

The Government has decided to enter into international agreements with other countries to overcome the problem of double superannuation coverage. Double coverage can arise where an employee is sent to work temporarily in another country and the employer is required to make superannuation contributions under the legislation of both countries. Under these international agreements it is intended that only the home country's superannuation scheme will apply.

For example, a foreign employer who sends a foreign employee to work temporarily in Australia would be exempted from the Superannuation Guarantee in respect of salary or wages paid to the employee for their work in Australia but will remain subject to the superannuation scheme of their home country. Similarly, an Australian employer who sends an Australian employee to work temporarily in the other country will be exempted from the other country's superannuation scheme but will remain subject to the Superannuation Guarantee.

Implementation Options

Only one option is being considered. This involves amending the *Superannuation Guarantee (Administration) Regulations* to provide that payment of salary or wages to an employee will not give rise to a Superannuation Guarantee obligation where a international social security agreement provides that the employer is not subject to the Superannuation Guarantee legislation in respect of the work for which the payment was made (on the basis that their home country legislation continues to apply).

Assessment of impacts (costs and benefits)

Impact group identification

Employers

Employers from a country which has an appropriate agreement with Australia, and who send employees to work temporarily in Australia, will benefit from a reduction in labour costs due to no longer being required to pay the Superannuation Guarantee.

Reciprocal benefits for Australian employers will arise where the employer sends an Australian employee to work temporarily in another country with which an agreement is in place. In these cases the employer will only be required to make Superannuation Guarantee contributions, and not contributions under the other country's legislation.

While employers will be required to determine if they are eligible for the new exemption, this is a self assessment process and consistent with existing practices. There are no significant compliance costs expected for employers.

Employees

Employees will no longer have contributions made for them under the legislation of both countries, however they will remain appropriately covered under the legislation of their home country (where they are likely to retire).

Other Impacts

Where a foreign employer is exempted from Superannuation Guarantee under these regulations (and in accordance with an international agreement), this will result in less Superannuation Guarantee contributions being made than would otherwise have been the case. Accordingly the 15% tax normally levied on those contributions will also not be collected. The impact on Government revenue cannot be quantified (as it would depend on the particular countries that become party to the agreements) but is expected to be small.

The reduction in labour costs for these employers may have some impact in promoting investment in Australia, though this cannot be quantified.

Consultation

Groups representing employers and the superannuation industry have been consulted on the proposed agreements and have not expressed any concerns.

Conclusion

Provisions for avoiding double superannuation coverage are common practice amongst most industrialised countries.

Such provisions ensure that employers do not have to make two amounts of contributions for an employee's retirement in respect of the same work undertaken by the employee.

The proposed amendment to the regulations will achieve the objective of removing Superannuation Guarantee obligations from an overseas employer in respect of an employee sent to work temporarily in Australia (provided this is appropriately provided for in an international agreement). Consequently the amendment will remove the double coverage obligation on the employer.

Agreement between Australia and Spain on Social Security

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. It is proposed that Australia enter into a new Social Security Agreement with Spain.
2. When this Agreement enters into force, the Agreement between Australia and Spain on Social Security of 10 February 1990 will terminate in accordance with the provisions of Article 30(2) of the new Agreement. This termination will be subject to the provisions of Article 24(3) of the current Agreement and Article 29 of the new Agreement. These Articles preserve the entitlements of those persons receiving benefits under the current Agreement.

Date of proposed binding treaty action

3. It is expected that the Agreement will be signed in August/September 2001. The Spanish Government has agreed to tabling the new Agreement prior to signature.
4. In accordance with Article 30(1), the Agreement shall enter into force one month after an exchange of notes by the Parties, through the diplomatic channel, notifying each other that all constitutional or legislative matters as are necessary to give effect to the Agreement have been finalised. It is proposed that the exchange of notes will take place on 1 December 2001 to enable entry into force on 1 January 2002.

Date of tabling of the proposed treaty action

5. 7 August 2001.

Purpose of the proposed treaty action and why it is in the national interest

6. The new Agreement will bring economic and political benefits to Australia. Not only will it assist in maximising the foreign income of Australian residents, and the flow-on effect of these funds into the Australian economy, it will also serve to reinforce Australia's political, business and strategic interests. The Agreement will further facilitate people-to-people contact and exchange between Australia and Spain, as well as strengthen bilateral relations and provide choices in retirement for individuals who have or will migrate to Australia or Spain during their working lives.
7. The current Agreement entered into force on 3 June 1991. Since that date, significant changes have occurred in both the Australian and Spanish social security systems. The new Agreement provides for enhanced access to certain Australian and Spanish social security benefits and greater portability of these benefits between the countries. Portability of benefits allows for the payment of a benefit from one country into another country and is an underlying principle of Australia's

bilateral agreements on social security where the responsibility for providing benefits is shared. Under the new Agreement, residents of Australia and Spain will be able to move between Australia and Spain with the knowledge that their right to benefits is recognised in both countries.

Reasons for Australia to take the proposed treaty action

8. Australia's network of bilateral social security agreements improves access to income support for people whose adult lives are split between Australia and the other country that is a party to the Agreement. Most people benefiting from these agreements are age pensioners. Such agreements also improve income support coverage for people with disabilities, widowed persons and some carers.

9. The new Agreement with Spain incorporates the same general principles as a number of other agreements Australia has on social security, including with Austria, Canada, Cyprus, Denmark, Ireland, Italy, Malta, the Netherlands and Portugal. A key element in the new Agreement and these other social security agreements is the sharing of responsibility between the Parties in providing adequate social security coverage for former residents of their countries.

10. The Australian Government currently pays benefits to 3,285 people in Spain including 2,353 people that are paid under the existing Agreement. The Spanish Government pays benefits to 1,925 people in Australia of which 1,593 are paid under the Agreement.

11. The current Agreement has been in force since 3 June 1991. This Agreement has worked well for the last 10 years but substantial changes to both countries' social security systems have necessitated the updating of the Agreement. In Australia, for example, the invalidity pension is now known as the disability support pension and, following changes introduced in the Social Security Act 1991, is usually only paid overseas on a permanent basis (that is, for more than 26 weeks) to people who are considered to be severely disabled.

12. For Australia, the Agreement will cover access to age pensions, disability support pensions (DSP) for people who are severely disabled, wife pensions, double orphan pensions, pensions payable to widowed persons, additional child amount and carer payments in respect of partners of persons who receive DSP or age pension. For Spain, it will cover cash benefits for temporary incapacity to work in cases of ordinary illness or non-work related accidents, cash benefits for maternity and risk during pregnancy, benefits for permanent incapacity for ordinary illness and non-work related accidents, retirement, death and survivorship, family benefits for a dependent child, unemployment benefits and work accidents and occupational diseases.

13. The new Agreement provides that both countries will share the financial responsibility for providing these benefits. Under the Agreement individuals may be eligible for benefits from both countries if they meet certain eligibility criteria and they have lived and/or worked in both countries during their working life. Residents of Australia and Spain will be able to continue to move between Australia and Spain knowing that their right to benefits is recognised in both countries and that each country will contribute fairly to support those who have spent part of their working lives in both countries.

14. The new Agreement differs from the existing Agreement in the following ways:

- DSP is restricted to people who are considered to be severely disabled, that is, people assessed as having no capacity to work or no prospects for rehabilitation within two years of being granted DSP or on leaving Australia to reside overseas. This change is in line with the general restriction on payment of DSP to people overseas who are not severely disabled which was introduced in November 1991 in the *Social Security Act 1991*. This reflects the growing focus in Australia on rehabilitation, something that is not possible to administer overseas;
- Pensions payable to widows are extended to widowed persons. This change reciprocates the coverage provided by Spain to surviving spouses. Pensions payable to widowed

persons includes the benefits of parenting payment single for de jure widowed persons with dependant children and bereavement allowance (a short term payment for widowed persons without dependant children);

- Double orphan pension has been included to reciprocate the coverage provided by Spain to surviving children; and
- The new Agreement ensures that when a person comes to Australia temporarily their rate of pension will remain the same for the first 26 weeks. Similarly, when a person temporarily departs Australia, their rate will remain the same for the first 26 weeks of the absence. This is consistent with the changes introduced in September 2000 in the *Social Security Act 1991* to standardise the rules for portability of social security benefits.

15. The new Agreement with Spain is one of five of Australia's existing bilateral social security agreements that have been revised. The others are the agreements with Austria, Canada, the Netherlands and Portugal. These agreements are the subject of separate National Interest Analyses.

Obligations

16. The new Agreement places equivalent obligations on both Australia and Spain. Article 1 defines terms used in the Agreement and in some cases limits Australia's obligations under it. For example, carer payment is limited to individuals in Spain who are caring for a partner (also in Spain) in receipt of either an Australian age pension or a disability support pension for the severely disabled. Article 2 sets out the scope of social security benefits covered by the new Agreement as described in paragraph 12 of this National Interest Analysis.

17. Article 3 describes the group of people to whom the Agreement applies. It provides that the Agreement shall apply to any person who is or has been an Australian resident or is or has been subject to the legislation of Spain, and where applicable, to any spouse, dependant or survivor of such a person.

18. Article 4 is a statement of principle, common to all bilateral social security agreements. It ensures that all persons to whom this Agreement applies shall be treated equally in regard to rights and obligations derived from either relevant Australian or Spanish legislation or under the Agreement.

19. Article 5 deals with portability of benefits and provides for the payment of benefits made under the Agreement by Australia and Spain to be paid into the other country.

20. Article 7 deems a person in Spain to be an Australian resident and in Australia for the purposes of lodging a claim for an Australian benefit.

21. Article 8 deals with partner related Australian benefits. Such benefits, for example wife pensions, may be payable to persons whose partners receive certain Australian benefits. There have been no new grants of wife pension since 1995. However, where existing social security agreements provided for the payment of such a benefit, those in receipt of it (by virtue of these agreements) will continue to be entitled to it under the new agreements. This Article provides that where the partner of a person entitled to a wife pension receives a benefit under the Agreement, then the wife pension is deemed also to be received by virtue of the Agreement. The Article also enables continuing qualification for carer payment for people in Spain by deeming them to be in Australia.

22. Article 9 establishes the circumstances in which Spanish creditable periods can be used to satisfy the minimum residence requirements for an Australian benefit stipulated in the *Social Security Act 1991*. Under this Article, the claimant is able to add these 'deemed' periods to actual

periods of residence in Australia in order to qualify for an Australian benefit. Article 11 imposes a similar obligation on Spain to treat the relevant periods of residence in Australia as Spanish creditable periods.

23. The method of calculating the rate of Australian benefits is set out in Article 10. This Article obliges Australia, when calculating a person's entitlement, to modify the method of calculation under domestic social security law, both inside and outside Australia. Paragraph

1 specifies that certain Spanish benefits paid to Australian pensioners outside Australia will attract concessional treatment under the Australian income test. This is consistent with concessions given in other agreements and with the principle of shared-responsibility. Paragraphs 3 and 6 specify that the rate paid will remain unchanged for the first 26 weeks of a temporary visit to or from Australia.

24. Article 21 provides that each country's income-tested family benefits will not be treated as income under the other country's income test.

25. Article 22 specifies the method for lodgement of claims and Article 22(1) enables the lodgement of social security claims, notices or appeals in either country in accordance with the administrative arrangements to be put in place under Article 27.

26. Article 23 provides that, when determining the eligibility or entitlement of a person to a benefit under the Agreement, all events and periods that have a bearing on the entitlement are to be taken into account. Paragraph 2 ensures that benefits granted under the Agreement will not be paid in respect of any period prior to the Agreement's start date.

27. Article 24 provides a mechanism by which a Party may recover overpayment of a benefit resulting from the subsequent grant, with arrears, of an equivalent benefit from the other Party.

28. Article 25 ensures the portability of benefits under this Agreement and specifies that neither country will deduct administrative costs for the transfer of benefits.

29. Article 26 sets out the means, subject to relevant domestic laws, regulations and policies, through which the relevant authorities are to cooperate in order to implement the Agreement and ensure its effective operation. It also provides for the exchange of information so that the Agreement can be applied.

30. Article 29 ensures that a person's qualification to receive a benefit under the current Agreement will not be affected by the terms of the new Agreement.

Implementation

31. A new Schedule containing the full text of the new Agreement will be added to the *Social Security (International Agreements) Act 1999*. The regulation making powers contained in Sections 8 and 25 of that Act will be used to implement the Agreement. Article 27 specifies that the Agreement will be implemented in accordance with separate administrative arrangements. The administrative arrangements are currently under negotiation.

Costs

32. The new Agreement is expected to result in savings of \$0.128m in administered outlays in the forward estimates period to 30 June 2005. Departmental costs of \$0.230m in the same forward estimates period represent the costs of the implementation of the Agreement, including the costs of changes required to administrative processes such as new forms and staff training.

33. There will also be costs (\$3.738 million) involved with system enhancements over the forward estimates period that will be spread across the five revised agreements (Spain, Portugal, the Netherlands, Canada and Austria) and a new Agreement with the United States of America.

Consultation

34. State and Territory Governments were advised of the proposed new Agreement through the Commonwealth-States-Territories Standing Committee on Treaties, and through separate explanatory information provided on 15 June 2001. Replies were received from the South Australian Department of the Premier and Cabinet and the ACT Chief Minister's Department but both had no comments on the Agreement.

35. The views of 17 Spanish community groups in Australia were sought and a response was received from a Spanish Immigration Counsellor in Glebe, NSW. The Counsellor did not agree that Spanish pensions should be considered as income in the Australian pensions income test. The Spanish Club of South Australia held a public meeting on 1 July 2001 to discuss the new Agreement. A departmental officer attended and explained the reasons for the revision of the Agreement and what the changes were being made. About 40 members of the Spanish community attended. The views of major welfare organisations in Australia were also sought but no comments were received. A list of these organisations is attached.

Future treaty action: amendments, protocols, annexes or other legally binding instruments

36. The Agreement does not specifically provide for the negotiation of any future legally binding instruments although Article 28 obliges the Parties to review the Agreement when requested to do so by either Party. While the Agreement does not specifically deal with amendments, it may be amended at any time by agreement between the Parties.

Withdrawal or denunciation

37. Article 31(1) provides that the Agreement shall remain in force indefinitely unless terminated by one of the Parties, and that termination shall take effect 12 months from the date of that Party's advice to the other Party through the diplomatic channel. In the event of termination, Article 31(2) preserves the rights of those people who are receiving benefits or who have lodged claims and would have been entitled to receive benefits under the Agreement.

Contact Details

International Agreements
International Branch
Department of Family and Community Services

ATTACHMENT**The Spanish Community Organisations consulted were:**

Spanish- Australian Club of Canberra Inc	The Spanish Centre Archerfield QLD
Comision Coordinadora de Emigrantes Españoles de ACT	Hispanic Club of Far North Queensland
The Spanish Club Ltd. Haymarket NSW 2000	Asociacion Española de Ciudadanos de la Tercera Edad Annerley QLD
Club Vasco "Gure Txoko" Darlinghurst NSW 2010	Hogar Español Fitzroy VIC
Amigoss Association Glebe NSW 2037	Casal Catalá de Victoria
The Wollongong Spanish Club	Spanish Club of Western Australia Inc.
Spanish & Latinamerican Community Organization (SALCO) Wollongong East NSW	Spanish Union Club Inc Whyalla Norrie SA
Casal Catalá de Nueva Gales del Sur Bexley NSW	Spanish Club of South Australia Inc Asociacion de Españoles de Tercera Edad del Sur de Australia Flinders Parade SA

The Welfare Organisations consulted were:

Western Australian Council of Social Service	Queensland Council of Social Service Inc
South Australian Council of Social Services	Victorian Council of Social Service
ACT Council of Social Service Inc	NSW Council of Social Service
National Welfare Rights Network, NSW	Welfare Rights Centre, Queensland
Welfare Rights Centre, SA	Welfare Rights Centre, ACT
Welfare Rights Unit Inc, Victoria	Australian Council of Social Services
Ethnic Communities Council of Tasmania	Federation of Ethnic Communities' Councils of Australia Inc
Multicultural Council of the Northern Territory	Brotherhood of St Laurence

Carers Association of Australia

Disability Council of NSW

Association of Superannuants Funds of Australia
Ltd

Australian Pensioner's and Superannuants'
Federation

Combined Pensioners & Superannuants
Association

Australian Council of Social Services

Northern Territory Council of Social Services

Tasmanian Council of Social Services

NSW Council of the Ageing

Protocol to the Agreement between Australia and the Republic of Austria on Social Security, done at Vienna on 26 June 2001.

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. It is proposed that Australia enter into a Protocol to amend the existing Agreement between Australia and the Republic of Austria on Social Security done at Canberra on 1 April 1992.

Date of proposed binding treaty action

2. The Protocol was signed on 26 June 2001.
3. In accordance with Article III (1), the Protocol shall enter into force on the first day of the third month following the month in which the last of the notes are exchanged by the Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to the Protocol have been finalised. It is proposed that the exchange of notes take place in October 2001 to enable entry into force on 1 January 2002.

Date of tabling of the proposed treaty action

4. 7 August 2001.

Purpose of the proposed treaty action and why it is in the national interest

5. The Agreement, as amended by the Protocol, will bring economic and political benefits to Australia. Not only will it assist in maximising the foreign income of Australian residents, and the flow-on effect of these funds into the Australian economy, it will also serve to reinforce Australia's political, business and strategic interests. The amended Agreement, will further facilitate people-to-people contact and exchange between Australia and Austria, as well as strengthen bilateral relations and provide choices in retirement for individuals who have migrated or will migrate to Australia or Austria during their working lives.
6. The existing Agreement entered into force on 1 December 1992. Since that date significant changes have occurred in both the Australian and Austrian social security systems. The amended Agreement provides for enhanced access to certain Australian and Austrian social security benefits and greater portability of these benefits between the countries. Portability of benefits allows for the payment of a benefit from one country into another and is an underlying principle of Australia's bilateral agreements on social security where the responsibility for providing benefits is shared. Under the amended Agreement, residents of Australia and Austria will be able to move between Australia and Austria with the knowledge that their right to benefits is recognised in both countries.

Reasons for Australia to take the proposed treaty action

7. Australia's network of bilateral social security agreements improves access to income support for people whose adult lives are split between Australia and the other country that is a party to the Agreement. Most people benefiting from these agreements are age pensioners. Such agreements also improve income support coverage for people with disabilities, widowed persons and some carers.
8. The amended Agreement with Austria incorporates the same general principles as a number of other agreements Australia has on social security, including with Canada, Cyprus, Denmark, Ireland, Italy, Malta, the Netherlands, Portugal and Spain. A key element in the amended Agreement and these other social security agreements is the sharing of responsibility between the Parties in providing adequate social security coverage for former residents of their countries.
9. The Australian Government currently pays benefits under the Agreement to a total of 794 people. 779 of these people are in Austria, five are in Australia and 10 are in third countries. The Austrian Government is unable to provide figures on the total number of pensions it pays under the Agreement but has advised that it pays 6,244 pensions into Australia.
10. The existing Agreement has been in force since 1 December 1992. The Agreement has worked well for the last nine years but substantial changes to both countries' social security systems have necessitated the amendment of the Agreement. In Australia, for example, the invalidity pension is now known as disability support pension and, following changes introduced in the *Social Security Act 1991*, is usually paid overseas on an indefinite basis (that is, for more than 26 weeks) only to people who are severely disabled.
11. For Australia, the amended Agreement will cover access to age pensions, disability support pensions (DSP) for people who are severely disabled, wife pensions, double orphan pensions, pensions payable to widowed persons and carer payments in respect of the partners of persons who receive DSP or age pensions. For Austria, it covers retirement pensions, early retirement pensions, disability pensions, surviving spouse's pensions, orphan pensions, care benefits (including for people who are disabled), additional amounts for dependant children and (income tested) supplementary payments.
12. Under the amended Agreement both countries will share the financial responsibility for providing these benefits. This means that individuals may be eligible for benefits from both countries if they meet certain eligibility criteria and have lived and/or worked in both countries during their working lives. Residents of Australia and Austria will be able to continue to move between Australia and Austria knowing their right to benefits is recognised in both countries and that each country will contribute fairly to support those who have spent part of their working lives in both countries.
13. The Agreement as amended will differ from the existing Agreement in the following ways:
 - DSP is effectively being restricted to people who are considered to be severely disabled, that is, people assessed as having no capacity to work or no prospects for rehabilitation within two years of being granted DSP or of leaving Australia to reside overseas. This change is in line with the general restriction on payment of DSP to people overseas who are not severely disabled (introduced in November 1991 in the *Social Security Act 1991*) and reflects the growing focus in Australia on rehabilitation, something that is not possible to administer overseas;
 - The above restrictions on payment of DSP overseas will have minor flow-on effects to carer payment in that only partners of people who are severely disabled will qualify;
 - Pensions payable to widowed persons (Bereavement Allowance and Parenting Payment Single) are extended to widowed persons who were not legally married to

their late partner. This reciprocates the coverage provided by Austria to survivors and is consistent with current domestic policy. Bereavement Allowance is a short-term payment for widowed persons without dependant children.

- Double orphan pension has been included to reciprocate the coverage provided by Austria to surviving children.

14. The Agreement with Austria, as amended by the Protocol, is one of five of Australia's existing bilateral social security agreements that have been revised. The others are the agreements with Canada, the Netherlands, Portugal and Spain. These agreements are the subject of separate National Interest Analyses.

Obligations

15. The Agreement, as amended by the Protocol, continues to place equivalent obligations on both Australia and Austria.

16. The Protocol is divided into three Articles. Article I is concerned with general terminology, Article II amends various provisions of the existing Agreement and Article III deals with the entry into force of the Protocol and imposes certain qualifications on amendments made under Article II.

17. Subparagraph 1(d) of Article II replaces the existing definition of 'carer pension' with one for 'carer payment', the new name for this benefit in Article 1 of the Agreement. The revised definition confines payment to partners of people receiving an Australian age pension or DSP. This is necessary because since the existing agreement was negotiated, carer payment has been extended to people whose partners do not receive social security payments.

18. Subparagraph 1(e) of Article II replaces the existing definition in Article 1 of the Agreement of 'widowed person' with one which extends eligibility to widowed persons who were not legally married to their late partner. This is consistent with current domestic policy.

19. Paragraph 2 of Article II updates Article 2(1)(a) of the Agreement concerning the legislative scope and the types of benefits covered for Australia. Double orphan pension is the only new benefit included for Australia. Its inclusion reciprocates Austria's existing obligation with regard to this benefit.

20. Paragraph 3 of Article II deletes references to Austria in Article 2(3) of the Agreement. This has no impact on Australia's existing obligations.

21. Paragraph 5 of Article II amends Article 5 of the Agreement and obliges Australia to pay double orphan pensions where both the child and the person caring for the child are residents of Austria, provided that the child was an Australian resident at the time he/she was orphaned. This is a new obligation for Australia and reciprocates the existing coverage provided by Austria to surviving children.

22. Paragraph 6 of Article II amends Article 5 of the Agreement. It restricts the payment of DSP outside Australia in respect of people who are not considered to be severely disabled (although existing cases in Austria are 'saved' by virtue of paragraph 2 of Article III). This results in reduced obligations on Australia's part.

23. Paragraph 9 of Article II amends Article 7 of the Agreement. This ensures that the concessional calculation method (available for other Australian benefits) does not apply to the Australian double orphan pension.

24. Paragraph 10 of Article II amends Article 8 of the Agreement. This effectively removes 'carer payment' from the current Article, by referring only to wife pensions. The change relates to the amendment described in paragraph 17 of this National Interest Analysis.

25. Paragraphs 11-13 of Article II delete Articles 9-13 of the Agreement ('Provisions concerning Austrian benefits') and replace them with Articles 9 and 10. These refer only to Austria's obligations and have no impact on Australia's existing obligations.

26. Paragraph 2 of Article III preserves the entitlements of DSP cases who are not severely disabled and are resident in Austria. This is necessary because otherwise many of those people would lose their entitlement.

Implementation

27. The text of the amending Protocol will be added to Schedule 10 of the *Social Security (International Agreements) Act 1999* which contains the text of the existing Agreement. The regulation making powers contained in Sections 8 and 25 of that Act will be used to implement the revised Agreement. The Administrative Arrangement, established by virtue of Article 17 of the Agreement, is currently being renegotiated.

Costs

28. The Agreement, as amended by the Protocol, is expected to result in minor savings in administered outlays of \$0.179m in the forward estimates period to 30 June 2005. Departmental costs of \$0.196m over the same period represent the costs of the implementation of the amended Agreement, including the costs of changes required to administrative processes, such as new forms and staff training.

29. There will also be costs (\$3.738 million) involved with system enhancements over the period to June 2005 for the five revised agreements (Austria, Canada, Portugal, Spain and the Netherlands) and a new Agreement with the United States of America.

Consultation

30. State and Territory Governments were advised of the proposed amendments to the Agreement through the Commonwealth-States-Territories Standing Committee on Treaties, and through separate explanatory information provided when the Protocol amending the Agreement was signed. Replies were received from the South Australian Department of the Premier and Cabinet and the ACT Chief Minister's Department but neither had comments on the Agreement.

31. The views of 19 Austrian community groups as well as Austrian Government representatives in Australia were sought. The only reply received was from the Austrian Honorary vice-Consul in Perth who advised that, generally speaking, people had commented favourably on the operation of the Agreement, but had raised a number of other issues not directly related to the Agreement, including the operation of the Australian means test, social security amnesty and certain taxation related matters. The views of major welfare organisations in Australia were also sought but no comments were received. A list of these organisations is attached.

Future treaty action: amendments, protocols, annexes or other legally binding instruments

32. Neither the Protocol nor the amended Agreement specifically provides for the negotiation of any future legally binding instruments. While the Agreement does not specifically deal with amendments, it may be amended further at any time by agreement between the Parties.

Withdrawal or denunciation

33. The Protocol does not provide for withdrawal or denunciation. Article 22 (2) of the existing Agreement provides that it shall remain in force until the expiration of twelve months from the date on which either Party receives from the other a note through the diplomatic channel indicating its intention to terminate the Agreement. In the event of termination, Article 22 (3) preserves the rights of those people who are receiving benefits or who have lodged claims and would have been entitled to receive benefits under the Agreement.

Contact details

International Agreements

International Branch

Department of Family and Community Services

ATTACHMENT

The Austrian Community Organisations and Austrian Government representatives in Australia consulted were:

Austrian Club Sydney (Frenchs Forest, NSW)	Austrian Associations of Australasia (Killarney Heights, NSW)
Austria Society "Edelweiss" (Melbourne, VIC)	Austrian Club Geelong (Corio, VIC)
Austrian Club Melbourne Inc. (West Heidelberg, VIC)	Austrian Society Queensland (Toowong, QLD)
Austrian-Australian Club Gold Coast (Palm Beach, QLD)	Austrian Association of South Australia (Ovingham, SA)
Old Austria Club of WA (Maddington, WA)	Austrian-Australian Club (Mawson, ACT)
German-Austrian Society of Australia (Cabramatta, NSW)	Rhein-Donau-Hastings Verein Inc. (Port Macquarie, NSW)
German Austrian Association Coffs Harbour (Bayldon, NSW)	Australian-German-Austrian Club Germania Ltd (Berkeley, NSW)
German-Austrian Club (Wodonga, VIC)	German-Austrian Oktoberfest Society (Melbourne, VIC)
German Austrian Swiss Association F.N.Q. Inc. (Cairns, QLD)	German Austrian Club Townsville (Townsville, QLD)
Rhein-Donau Club (Myaree, WA)	Embassy of Austria (Forrest, ACT)
Consulate General of Austria (Sydney, NSW)	Consulate General of Austria (Fitzroy, VIC)
Consulate General of Austria (Albion, QLD)	Consulate of Austria (Cairns, QLD)
Consulate of Austria (Bowden, SA)	Consulate of Austria (Cloisters Square, WA)
Consulate of Austria (Mt Nelson, TAS)	

The major welfare organisations consulted were:

NSW Council on the Ageing (Sydney, NSW)	National Welfare Rights Network (Surry Hills, NSW)
Welfare Rights Centre Inc (Stone's Corner, QLD)	Welfare Rights Centre (Adelaide, SA)
Welfare Rights Centre (Turner, ACT)	Welfare Rights Unit Inc (Collingwood, VIC)
Australian Council of Social Service (Strawberry Hills, NSW)	Ethnic Communities' Council of Tasmania (Hobart, TAS)
Federation of Ethnic Communities' Councils of Australia	Multicultural Council of the Northern Territory

(Curtin, ACT)	(Darwin, NT)
Brotherhood of St Laurence (Fitzroy, VIC)	Carers Association of Australia (Deakin, ACT)
Disability Council of NSW (Sydney, NSW)	Australian Pensioners and Superannuants Federation (Canberra, ACT)
Association of Superannuation Funds of Australia (Sydney, NSW)	Australian Bankers' Association (Melbourne, VIC)
Combined Pensioners & Superannuants Association (Surry Hills, NSW)	Tasmanian Council of Social Service (Battery Point, TAS)
Northern Territory Council of Social Service (Darwin, NT)	Western Australian Council of Social Service (Perth, WA)
Queensland Council of Social Service (Red Hill, QLD)	South Australian Council of Social Service (Adelaide, SA)
Victorian Council of Social Service (Melbourne, VIC)	ACT Council of Social Service (Canberra, ACT)
NSW Council of Social Service (Surry Hills, NSW)	National Disability Advisory Council (Canberra, ACT)
Deafness Forum Ltd (Braddon, ACT)	Head Injury Council of Australia (Mawson, ACT)
National Council on Intellectual Disability (Mawson, ACT)	National Ethnic Disability Alliance (Harris Park, NSW)
Blind Citizens Australia (Prahran, VIC)	Physical Disability Council of Australia (Northgate, QLD)
Women With Disabilities Australia (Dickson, ACT)	National Association of People Living with HIV / AIDS (Darlinghurst, NSW)
ACROD (Curtin, ACT)	Association for Competitive Employment (Seven Hills, NSW)
Australian Association of the Deaf (Sydney, NSW)	

Exchange of Notes Constituting an Agreement between the Government of Australia and the Government of the United States of America to amend the Agreement between the Government of Australia and the Government of the United States of America concerning Cooperation in Defense Logistic Support done at Sydney on 4 November 1989.

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1 The proposed Agreement, to be done by exchange of Diplomatic Notes (“the proposed exchange of notes”) will extend and amend the Agreement between the Government of Australia and the Government of the United States of America concerning Cooperation in Defense Logistic Support (CDLSA) done at Sydney on 4 November 1989. The exchange of Diplomatic Notes was completed on 30 July 2001. The proposed exchange of notes will enter into force on the date that Australia advises the United States via the diplomatic channel that all our necessary domestic procedures have been satisfied.

Date of proposed binding treaty action

2. It is proposed that Australia's advice allowing for entry into force be provided as soon as practicable after the expiry of the 15 sitting day tabling period, with retrospective effect from 4 November 1999.

Date of tabling of the proposed treaty action

3. The proposed exchange of notes is to be tabled on 7 August 2001.

Purpose of the proposed treaty action and why it is in the national interest

4. The purpose of the proposed exchange of notes is to extend the 1989 CDLSA, which expired on 4 November 1999, and to make some minor amendments to it. The 1989 Agreement provided for the exchange of mutual logistics support to enhance the capabilities of both countries' armed forces. In March 1999 it was agreed between senior defence officials of both countries that the CDLSA was important to the Australia / United States military relationship because it enables

the reciprocal provision of military support (both supplies and services) from within respective military systems; it provides for the establishment of maintenance programs which enhance industry capability; and it contributes to Australia's military preparedness through expeditious provision of equipment in contingent circumstances. Accordingly, extension of the CDLSA is beneficial to both nations. In negotiating the proposed exchange of notes, the Parties also agreed on some minor amendments to the original CDLSA text, which would bring references in it to computers and computer data, and to Australian legislation, up to date.

Reasons for Australia to take the proposed treaty action

5. The proposed exchange of notes will extend the CDLSA for 10 years from 1999 until 2009. Except as discussed below, all provisions of the CDLSA remain as previously in force. Both the United States and Australia view the CDLSA as an integral part of the Australian and United States alliance by allowing for the reciprocal provision of logistics support in all situations which extend from peacetime to circumstances of armed conflict, involving either or both Parties. The CDLSA enables Australia to seek provision of logistics support (including supply of material, repair and maintenance services, transportation and applicable technical data) to supplement Australian Defence Force and defence industry capabilities.

6. At the same time, the Parties have agreed to take the opportunity provided by this treaty action to amend two other provisions of the CDLSA. These amendments are not controversial in nature and raise no new international policy issues.

7. Firstly, the proposed exchange of notes amends the definitions section (Article I) of the original CDLSA to take into account updated definitions proposed by the United States in relation to computer databases, programs and software. The United States requested that the definitions be changed in this way. Doing so benefits both Parties in broadening, and bringing up to date, the coverage of the CDLSA as it relates to computer-related material.

8. Secondly, the proposed exchange of notes replaces paragraph (b) of Article XII of the CDLSA with a new paragraph which refers to the Financial Management and Accountability (FMA) Act 1997 instead of the Audit Act 1901 as originally stated. This amendment merely updates the reference so that it is in line with current Australian legislation, and does not make any material change to the provision in question.

Obligations

9. The proposed exchange of notes will not change Australia's obligations from those which existed under the original CDLSA. Within the context that each Party's commitment under the CDLSA shall be subject to its national laws, regulations and policies and to case-by-case review and determination, the key obligations on both Parties under the CDLSA are to:

- provide or facilitate the provision of logistic support to the other Party on a cooperative basis, as far as possible within its defence policies and the exigencies of war (Article II);
- approve the commercial export of defence articles and services purchased or to be purchased by the other Party (Article IV);
- provide, arrange or facilitate the provision of logistic support to operate and maintain acquired defence articles and services throughout their service life (Article IV);

- provide assistance, when mutually arranged, in the activation and expansion of their respective defence industrial bases as necessary to produce selected items of equipment, spare parts and munitions of the other Party's origin during periods of international tension or circumstances of armed conflict involving either or both Parties (Article IV);
- endeavour to continue, and when requested to expedite, the delivery of all defence articles and services during periods of international tension or in circumstances of armed conflict involving either or both Parties (Article IV);
- provide, or assist with, transportation of defence articles during periods of international tension or circumstances of armed conflict involving either or both Parties (Article IV);
- as appropriate, exchange releasable information concerning equipment plans, programs and logistic requirements (Article IV);
- approve the export of technology which each Party sells to effectively and efficiently support defence articles and services purchased from each other (Article V);
- assist in negotiations, where appropriate, with private sector firms to transfer releasable technologies (Article V);
- on a case-by-case basis, secure the waiver or reduction of license and royalty fees associated with the manufacture of defence articles (Article VI); and
- work together in the planning of cooperative logistic support that may be required during periods of international tension or in circumstances of armed conflict involving either or both Parties (Article X).

Implementation

10. No legislation is required to give effect to Australia's obligations under the proposed exchange of notes, nor the CDLSA which will re-enter into force. These obligations can be met under the *FMA Act*.

11. The amendment has been drafted to operate retrospectively, extending the CDLSA from the date it previously ceased to be in force (4 November 1999). This ensures that there is no lapse of operation of the CDLSA. This does not present an implementation problem, as both Parties have continued to observe the terms of the CDLSA since it ceased to be in force.

12. Under Article XV of the CDLSA, the Australian Department of Defence and the United States Department of Defense have direct responsibility for its implementation. The extension and amendment of the CDLSA will not effect any change to the existing roles of the Commonwealth and the States and Territories.

Costs

13. Article XII (b) of the CDLSA, as amended by the proposed exchange of notes, provides that all defence articles and defence services provided to the United States by the Australian

Department of Defence under it shall be priced on a full cost basis as required by regulations made under the Australian *FMA Act*.

14. The issue of charging in respect of all defence articles and defence services provided to Australia by the United States Department of Defense under Article XII (a) of the CDLSA remains unchanged.

Consultation

15. The proposed exchange of notes has been provided to the States and Territories for their consideration through the Standing Committee on Treaties' Schedule of Treaty Action. To date there have been no comments, or requests for further information, from any State or Territory Government. The exchange of notes does not require State or Territory cooperation for its domestic implementation.

16. Industry has not been consulted about the proposed exchange of notes. However, noting that much of the logistics support which the Defence organisations provide each other originate from their respective industrial bases, it is expected that there will be continuing opportunities for Australian industry participation in the provision of logistics support as required and requested by US Defense forces.

Future treaty action: protocols, annexes or other legally binding instruments

17. Article VII of the CDLSA, which the exchange of notes extends, allows for both countries to enter into legally binding Agreements or implementing arrangements where necessary to put the general provisions of the CDLSA into detailed effect. A treaty-status Australia/ United States Acquisition and Cross Servicing Agreement (ACSA) has been negotiated and entered into force on 22 September 1999. The ACSA is designed to facilitate the reciprocal provision of support, supplies and services primarily during combined exercises, training, deployments, operations and other exigencies.

18. The CDLSA can also be amended by written agreement of the Parties under Article XVIII. Amendments would enter into force automatically on written agreement of the Parties.

Withdrawal or denunciation

19. Once renewed by the proposed exchange of notes, the CDLSA may be terminated by either Party on 180 days notice (Article XIX). The CDLSA provides under Article XIX that if it is terminated or expires, the rights and obligations of the Parties regarding security and the provisions relating to the protection, transfer and use of information, defence articles and defence services furnished pursuant to the CDLSA, shall remain in force.

Contact Details

Directorate of International Logistics
Headquarters, Joint Logistics Command
Department of Defence

Amendments to the Convention on Conservation of Nature in the South Pacific adopted by consensus at the Fifth Meeting of the Contracting Parties held in Guam on 9 October 2000

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. The proposed binding treaty action is ratification of the amendments to the Convention on Conservation of Nature in the South Pacific, 1976 ('the Apia Convention') that were adopted by the Fifth Meeting of the Parties in Guam on 9 October 2000.

Date of proposed binding treaty action

2. It is proposed to ratify the amendments as soon as practicable after 21 September.

Date of tabling of the proposed treaty action

3. 7 August 2001.

Purpose of the proposed treaty action and why it is in the national interest

4. The proposed amendments are of a technical nature to bring the Convention up to date. They establish procedures for making amendments to the Convention; change references to the Secretariat from the "South Pacific Commission" to the "South Pacific Regional Environment Programme"; change a reference to "Western Samoa" to "Samoa"; and make other minor changes.
5. Australian ratification of the amendments is in the national interest as it will encourage regional commitment to the Apia Convention and through it to conservation of nature and biodiversity in the Pacific, without imposing additional obligations on the Parties.
6. Australia's ratification would also send a positive signal to Pacific Island Countries regarding Australia's commitment to the region and its development. It may also encourage accession by a greater number of Pacific Island Countries (currently there are only three).

Reasons for Australia to take the proposed treaty action

7. The Apia Convention was concluded in 1976 and came into force on 26 June 1990, following ratification by four Parties. Australia became the fourth Party to ratify the Convention, on 28 March 1990. The current membership is Australia, the Cook Islands, Fiji, France and Samoa. The Convention is the principal international legal instrument concerning regional cooperation for nature conservation in the Pacific. While current membership is low among the countries of the Pacific, most Pacific countries still participate in activities under the Convention.
8. The proposed amendments to Articles VII and VIII of the Apia Convention would replace references to the South Pacific Commission (SPC) with the South Pacific Regional Environment Programme (SPREP). SPREP has effectively provided the Secretariat functions to the Convention on behalf of the SPC for many years. Following entry into force of the Agreement Establishing SPREP on 31 August 1995, SPREP is now able to legally perform the role of Secretariat to the Apia Convention in its own right. The proposed amendments reflect this existing situation.

9. The proposed amendment to Article IX would allow Parties to make a declaration on any matter consistent with the objectives of the Convention, and with the principles of international law, on their ratifying or otherwise becoming a Party to the Convention. The amendment broadens the range of declarations permitted in the original Article IX and brings the Convention into line with current international practice. This amendment would allow new Parties to join who might otherwise have considered themselves unable to do so, thus strengthening regional commitment to the Convention.
10. It is proposed that a new Article X be included to provide a formal process for amending the Convention. This process requires a three quarters majority, which presently means that four of the five members of the Convention must agree to any amendments to bring them into force.
11. Until this amendment comes into force there is no formal mechanism for amending the Convention. Despite this lack of a formal process the present amendments to the Convention were adopted by a Meeting of the Parties to the Convention. To date Samoa has ratified these amendments.
12. The existing Article X would be amended to reflect the fact that "Western Samoa" is now known as "Samoa".
13. The existing Article XII would be amended to allow all States which are members of SPREP to become Parties to the Apia Convention whereas currently the provision only allows for members of the South Pacific Commission. Other nations can still be invited to become Parties by the unanimous decision of the existing Parties.
14. Ratification of the amendments by Australia will facilitate the implementation of the Apia Convention and encourage additional Pacific Island Countries to become Parties. It would also demonstrate a commitment to the Convention and to conservation of nature and biodiversity in the Pacific, without imposing additional obligations on Australia. Ratification of the amendments would also send a positive signal to Pacific Island Countries regarding Australia's commitment to the region and its development.

Obligations

15. No additional obligations will be imposed on Australia as a result of the proposed treaty action.
16. The Convention as a whole requires in a general way that Australia protect biodiversity through the creation and management of national parks and other reserves. Australia is required to report on relevant actions to other Parties. The major operative articles are Articles II to VII. To date, Australia has met its obligations through existing government policies.

Implementation

17. No changes to Australian law or policy are required to implement the amendments.

Costs

18. No additional costs on Australia are anticipated as a result of the proposed treaty action.

Consultation

19. The States and Territories have been advised of the proposed treaty action through the Commonwealth-State-Territory Standing Committee on Treaties and relevant Commonwealth Departments have been consulted. Given the technical nature of these amendments to the Convention, public consultations were not seen as warranted, although notification of the amendments will be provided to Australian environmental non-government organisations

Future treaty action: amendments, protocols, annexes or other legally binding instruments

20. The amendments to the Apia Convention include the addition of a formal amendment procedure to the Convention.

Withdrawal or denunciation

21. Article XIV of the Apia Convention provides for unilateral denunciation by written notification. Denunciation takes effect twelve months after notification.

Contact details

International Regional Unit
Strategic Development Division
Environment Australia

Agreement between the Government of Australia and the Government of the Kingdom of Thailand on the Transfer of Offenders and Co-operation in the Enforcement of Penal Sentences, done at Hanoi on 26 July 2001.

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. The proposed treaty action is to ratify the Agreement Between the Government of Australia and the Government of the Kingdom of Thailand on the Transfer of Offenders and Co-operation in the Enforcement of Penal Sentences (the Agreement). The Agreement was signed on 26 July 2001.

Date of proposed binding treaty action

2. Article 12 of the Agreement provides for its entry into force on the date on which instruments of ratification are exchanged.

Date of tabling of the proposed treaty action

3. 21 August 2001.

Purpose of the proposed treaty action and why it is in the national interest

4. The Agreement will allow Australia to arrange for Australian nationals serving prison sentences in Thailand to return to Australia to serve out their sentences here. It will also allow Thai nationals serving sentences in Australian gaols to be repatriated to Thailand. Each transfer may only be made with the consent of both countries and the prisoner concerned.

5. Repatriating Australians in prison in Thailand has a number of benefits for Australia. It will relieve the hardship and burden on the relatives of the prisoner. It will facilitate the prospects of that prisoner's rehabilitation. It will reduce the burden on Australian consular officials in Thailand. Transferring foreign nationals in Australian gaols to their countries of origin also benefits Australia because Australia will no longer have to pay the ongoing costs of their incarceration.

6. The Commonwealth *International Transfer of Prisoners Act 1997* (the Act) received Royal Assent on 18 June 1997. The Act provides the Commonwealth legislative framework for Australia's participation in international prisoner transfer schemes. To give effect to the Act and to enable transfers to occur, Australia needs to conclude appropriate international prisoner transfer agreements with other countries. Thailand is not a party to any multilateral convention relating to the transfer of prisoners. Accordingly, the negotiation of a bilateral treaty with Thailand was required. The Agreement will provide a basis on which Australia can engage in prisoner transfers with Thailand.

Reasons for Australia to take the proposed treaty action

7. The legislative basis for Australia's participation in international prisoner transfers is already in place, having been developed through extensive consultations and co-operation with State and Territory authorities. However, Australia cannot participate in the international prisoner transfer scheme until a number of Administrative Arrangements have been finalised and Australia has concluded international agreements with other countries for the transfer of prisoners.

8. There has been growing public pressure over the last decade for Australia to participate in the international prisoner transfer scheme. This pressure has come from a wide range of individuals and groups, including parliamentarians, senior academics, human rights organisations, prisoner support groups, friends and families of prisoners, and the prisoners themselves. In addition, Australia has also been approached by a number of countries about the possibility of Australian involvement in prisoner transfers. The negotiation of a prisoner transfer treaty with Thailand has been a particular priority for some time. Thailand has a relatively high number of Australian nationals in its prisons (there are currently 12 Australians imprisoned in Thailand) and there has been pressure exerted, both through ministerial representations and through the media, for many of these prisoners to be returned to Australia to complete their sentences.

9. It is difficult to estimate precisely the exact number of prisoners likely to be transferred out of Australia to Thailand each year once prisoner transfers commence. However, an overall reduction in the number of Australians incarcerated in Thailand (there are currently 12 Australians imprisoned in Thailand) is likely. If this occurred, the resource burdens placed on Australia's consular staff at our official overseas mission in Bangkok would be significantly reduced - thereby providing significant financial savings. DFAT consular staff visit prisoners on a regular basis and assist prisoners in communicating with next of kin. This is a resource intensive process.

10. From an international perspective there are also good reasons for participating in the international prisoner transfer scheme. The international transfer of prisoners is forming an increasingly important part of international co-operation in the administration of criminal justice. Most of the developed countries of the world already participate in prisoner transfers and have done so for some time. These countries include the United Kingdom, the United States of America, Canada and most European countries. The number of participating countries is continually increasing.

11. Since 1985, Thailand has concluded bilateral treaties relating to the transfer of prisoners with 17 other countries. As of March 2001, Thailand had transferred a total of 232 foreign prisoners out of Thailand. Countries which already have bilateral prisoner transfer treaties with Thailand, and which have had nationals transferred out of Thailand, include the United States of America (65 prisoners), the United Kingdom (14 prisoners) and Canada (15 prisoners). Given the number of countries which are already engaging in prisoner transfers with Thailand, the conclusion of the Agreement with Thailand is a strong indication of Australia's willingness to become an effective participant in the international prisoner transfer scheme.

12. Under the scheme, the offender will continue to be punished, but the punishment will be in accordance with the humanitarian and rehabilitative ideals of his or her home country. The international prisoner transfer scheme appears to work well in a large number of other countries, including the United States of America, Canada and the United Kingdom. Participation in the international prisoner transfer scheme can be said to be recognising the humanitarian, rehabilitative and social objectives of prisoner transfers while ensuring, so far as possible, that the original custodial sentence of a transferred prisoner is carried out.

Obligations

13. The Agreement would not oblige Australia to agree to the transfer of a prisoner either to, or from Australia. The Agreement would simply provide the basis on which prisoners may be apply to be transferred between Australia and Thailand if they satisfy the Agreement and the domestic legislative requirements of both parties.
14. The Agreement sets out the basic criteria and procedures for prisoner transfers. The main requirements and conditions contained in the Agreement are as follows:
15. Article 3 sets out the conditions pursuant to which a transfer may take place, which include a requirement that the prisoner be a national of the country to which he or she wishes to transfer, and the requirement for the consent of the prisoner and both countries.
16. Article 4 sets out the manner in which transfers are to commence, the information to be provided to the transferring State, consent verification procedures, agreement requirement for delivery of the prisoner, and designation of a competent authority in each State to administer requests.
17. Under Article 5 the transferring State will retain exclusive jurisdiction regarding the judgments of its courts, the sentences imposed by them, and any procedures for revision, modification or cancellation of those judgments and sentences. Article 6 sets out the procedures relating to the continued enforcement of the sentence.
19. Under Article 7, the parties are required to co-operate in facilitating the transit of prisoners from third States through their respective territories.
20. Article 8 provides that the expenses incurred in the transfer of the prisoner, or in the continued enforcement of the sentence after transfer, shall be borne by the receiving State. However the receiving State may seek to recover all or part of the costs of transfer from the prisoner.²¹
- Article 10 provides that the Agreement will be applicable to the enforcement of sentences imposed either before or after its entry into force. This means that persons now in gaol in either country will be eligible to apply for transfer.

Implementation

22. Australia's obligations under the Agreement would be implemented in accordance with the *International Transfer of Prisoners Act 1997*, the substantive provisions of which have not yet commenced operation.
23. The Act provides a framework for the transfer of prisoners between Australia and foreign countries declared by regulations made under the Act. The Act provides that transfers are to be consensual, requiring the consent of the person to be transferred, the Commonwealth and State/Territory Government where relevant, and the foreign country.
24. Regulations will be required under section 8 of the Act to enable Australia to give effect to obligations under the Agreement and to conduct transfers of prisoners with Thailand.
25. As many prisoners to be transferred out of Australia will have been sentenced for State and or Territory offences, and as only the States and the Northern Territory presently have prisons, the scheme will require a framework for co-operation between the Commonwealth and the States and Territories. The Standing Committee of Attorneys-General has therefore been a forum for consultation and discussion on this matter for several years.
26. All States and Territories have passed implementing legislation to participate in the scheme.
27. The finalisation of Administrative Arrangements between the Commonwealth and the States and Territories on the transfer of prisoners will also be required to enable Australia to give

effect to the Agreement. The Arrangements will set out the administrative protocols and arrangements for the possible transfer out of foreign prisoners who are held in gaol as either State or Federal offenders, and the transfer in of Australians who were imprisoned overseas. The Commonwealth Attorney-General's Department has been liaising with the States and Territories to finalise the Administrative Arrangements. They are close to agreement on a final draft.

28. Australia will be able to ratify and implement the Agreement following consideration by the Joint Standing Committee on Treaties, once the necessary regulations have been enacted under the Act, and once the Administrative Arrangements have been finalised.

Costs

29. In accordance with the general principles of the international prison transfer scheme, transfers under the Agreement would operate on the basis of the "receiver pays" principle. This means that the country to which the prisoner wishes to transfer (the receiving country) would be responsible for meeting the costs associated with the transfer. The costs associated with moving the prisoner from the prison in which he or she is presently incarcerated to the nearest point of international departure would be borne by the transferring country.

30. It is difficult to estimate the exact number of prisoners who are likely to apply to be transferred out of Australia each year once the Agreement is in operation. However, each out-going prisoner transfer will represent a cost saving of over \$50,000 (the approximate annual cost of maintaining a person in prison in Australia) for each year the prisoner would otherwise have spent in a prison in an Australian State or Territory.

31. Apart from the costs involved in moving out-going prisoners to the nearest point of international departure, Australia will only have to meet the costs relating to in-coming prisoners. In this regard, it has been agreed between the Commonwealth, the States and the Territories that:

- the Commonwealth will meet all general administrative costs involved in the processing of transfers; and
- the State or Territory to which a prisoner wishes to return will be responsible for meeting the costs of transporting the prisoner to Australia and maintaining him or her in prison in Australia.

Consultation

32. The States and Territories have been notified of the proposed treaty action through the Commonwealth-State-Territory Standing Committee on Treaties process, and the Standing Committee of Attorneys-General.

33. Since Australia's participation in the international prisoner transfer scheme was first mooted in the early 1990s, there has been extensive consultation with a number of other Governments and organisations. In particular, and in light of the fact that there are no federal prisons, there has been considerable consultation with all State and Territory Governments whose agreement and co-operation are essential if Australia is to conduct international transfers of prisoners. In this regard, Australia's participation in the scheme has been discussed and developed in the Standing Committee of Attorneys-General forum in which all of the major elements of the scheme have been agreed.

34. In late 1996 the House of Representatives Standing Committee on Legal and Constitutional Affairs conducted an inquiry into the (then) International Transfer of Prisoners Bill 1996. It consulted a number of community groups and organisations, including the Human Rights and Equal Opportunity Commission, the NSW Council for Civil Liberties, the various State and Territory Attorneys-General, the Commonwealth Departments of Foreign Affairs and Trade and

Immigration and Multicultural Affairs, the Public Defenders Group, a number of academics, and the members of families with relatives in prisons overseas. In February 1997 the Committee issued an Advisory Report in which it expressed its support for Australia's proposed participation in the international prisoner transfer scheme.

Future treaty action: amendments, protocols, annexes or other legally binding instruments

35. The Agreement is silent as to amendment. In the absence of an amendment provision, Article 39 of the Vienna Convention on the Law of Treaties would apply to allow amendment by agreement between the Parties.

36. The Agreement does not provide for the negotiation of future legally binding instruments.

Withdrawal or denunciation

36. The Agreement is to remain in force for five years from the date upon which it enters into force. Thereafter, either party may terminate the Agreement by written notice at any time. The Agreement will cease to be in force six months from the date upon which notice is given (Article 12).

Contact details

International Branch
Criminal Justice Division
Attorney-General's Department
CANBERRA

Council of Europe Convention on the Transfer of Sentenced Persons, done at Strasbourg on 21 March 1983.

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. The proposed treaty action is to accede to the Council of Europe Convention on the Transfer of Sentenced Persons (the Convention), pursuant to Article 19 of the Convention.

Date of proposed binding treaty action

2. The Convention provides that the Committee of Ministers of the Council may invite a State which is not a Member of the Council to accede to the Convention (Article 19(1)). Australia expects to be given such an invitation later this year. Assuming this happens and once Australia's domestic requirements for the Convention's entry into force have been completed, Australia would be in a position to lodge an instrument of accession. Completion of Australia's domestic requirements in advance of the Council's formal invitation would expedite the Convention's entry into force with respect to Australia.
3. Under Article 19(2) of the Convention, the Convention would enter into force for Australia on the first day of the month following the expiration of three months after the deposit of Australia's instrument of accession with the Secretary General of the Council.

Date of tabling of the proposed treaty action

4. 21 August 2001.

Purpose of the proposed treaty action and why it is in the national interest

5. Acceding to the Convention will allow Australia to arrange for Australian nationals serving prison sentences in countries that are Parties to the Convention to return to Australia to serve out their sentences here. It will also allow nationals of Parties to the Convention serving sentences in Australian gaols to be repatriated to their countries of origin.
6. Repatriating Australians in prison abroad has a number of benefits for Australia. It will relieve the hardship and burden on the relatives of the prisoner and facilitate the prospects of that prisoner's rehabilitation. It will reduce the burden on Australian consular officials abroad. Transferring foreign nationals in Australian gaols to their countries of origin also benefits Australia. It is likely that there would be a net cost benefit to Australia as we would transfer more prisoners from Australian gaols than we would be accepting back.
7. The Commonwealth *International Transfer of Prisoners Act 1997* (the Act) received Royal Assent on 18 June 1997. The Act provides the Commonwealth legislative framework for Australia's participation in international prisoners transfer schemes. To give effect to the Act and to enable transfers to occur, Australia needs to conclude appropriate international prisoner transfer

agreements with other countries. The Convention is the principal multilateral instrument for the international transfer of prisoners.

Reasons for Australia to take the proposed treaty action

8. The legislative basis for Australia's participation in international prisoner transfers is already in place, having been developed through extensive consultations and co-operation with State and Territory authorities. However, Australia cannot participate in the scheme until a number of Administrative Arrangements have been finalised and Australia has concluded international agreements with other countries for the transfer of prisoners.

9. There has been growing public pressure over the last decade for Australia to participate in the international prisoner transfer scheme. This pressure has come from a wide range of individuals and groups, including parliamentarians, senior academics, human rights organisations, prisoner support groups, friends and families of prisoners and the prisoners themselves. In addition, Australia has been approached by a number of countries about the possibility of Australian involvement in prisoner transfers.

10. It is difficult to estimate the exact number of prisoners likely to be transferred out of Australia each year once prisoner transfers commence. However, an overall reduction in the number of Australians incarcerated overseas (there are currently approximately 200 Australians imprisoned overseas) is likely. If this occurred, the resource burdens placed on Australia's consular staff at our official overseas missions would be significantly reduced - thereby providing significant financial savings. DFAT Consular staff visit prisoners on a regular basis and assist prisoners in communicating with next of kin. This is a resource intensive process, particularly where prisoners are located in remote areas with limited alternative outside contact.

11. From an international perspective there are also good reasons for participating in the international prisoner transfer scheme. The international transfer of prisoners is forming an increasingly important part of international co-operation in the administration of criminal justice. Most of the developed countries of the world already participate in the scheme and have done so for some time. These countries include the United Kingdom, the United States of America, Canada and most European countries. The number of participating countries is continually increasing. Participation would further enhance and supplement Australia's relations with other countries in the field of criminal justice co-operation.

12. As at 3 July 2001, 49 countries were parties to the Convention. Parties to the Convention include the United Kingdom, most European countries, the United States of America, and Canada. Accession to the Convention would provide a basis on which Australia could engage in prisoner transfers with those countries. Given the number of countries that are already parties, accession to the Convention is desirable if Australia is to become an effective participant in the international prisoner transfer scheme. The alternative of concluding a separate bilateral treaty with each country is much less attractive, both in terms of efficiency, costs and timing.

13. Under the scheme, the offender will continue to be punished, but the punishment will be in accordance with the humanitarian and rehabilitative ideals of their home country. The international prisoner transfer scheme appears to work well in a large number of other countries, including the United States of America, Canada and the United Kingdom. Participation in the international prisoner transfer scheme can be said to be recognising the humanitarian, rehabilitative and social objectives of prisoner transfers while ensuring, so far as possible, that the original custodial sentence of a transferred prisoner is carried out.

Obligations

14. The Convention would not oblige Australia to agree to the transfer of a prisoner either to, or from Australia. The Convention would provide the basis on which prisoners may apply to be

transferred between Australia and foreign countries which are parties to the Convention. In line with other like-minded countries, such as the United Kingdom, it is proposed that two declarations be lodged with the Council of Europe. At this stage it is contemplated that those declarations would relate to Article 3, paragraph 4, and Article 17, paragraph 3, of the Convention (*see below*). However, other declarations may be necessary to ensure that transfers conducted pursuant to the Convention meet with the requirements of Australia's domestic legislation.

15. The Convention sets out criteria and procedures for prisoner transfers that would have to be satisfied by the parties to the Convention. The main requirements and conditions are as follows:

16. Article 3 sets out the conditions pursuant to which a transfer may take place. Those conditions include a requirement that the prisoner be a national of the country to which he or she wishes to transfer. It is proposed that Australia would lodge a declaration with the Council of Europe Secretariat under paragraph 4, so that for our purposes, the term 'national' would include permanent residents. Other criteria for transfer are that the acts and omissions for which the prisoner has been sentenced constitute a criminal offence in the administering country (the country to which the prisoner wishes to transfer); the prisoner has at least 6 months of his or her sentence remaining to serve at the time of application; the judgment against the prisoner in the sentencing country is final; and the consent of the prisoner and both countries concerned has been given.

17. Article 4 sets out the information which the sentencing country (the country where the sentence was imposed and from which the prisoner wishes to transfer) is required to provide to the administering country when a prisoner has expressed an interest in being transferred. Such information includes the prisoner's name; date and place of birth and address; a statement of facts upon which the prisoner's sentence was based; and the nature, duration and date of commencement of the sentence.

18. Article 6 sets out the documents that may be required to be provided by one country to the other as part of the transfer process. Such documents include a document indicating that the prisoner is a national of the administering country; a document setting out the method of sentence enforcement which the administering country proposes to adopt (*see the discussion of Article 9, below*); a copy of the relevant law of the administering country which provides that the acts or omissions on which the prisoner's current sentence was based constitutes a criminal offence under its law or would constitute a criminal offence if committed in its territory; a copy of the judgment which preceded the sentence and a copy of the law on which it was based; a document indicating how much of the sentence has already been served, including details on remissions; a document setting out the relevant consents to the transfer; and any medical or social reports on the prisoner.

19. Article 8 provides that once the prisoner has been taken into charge by the authorities of the administering country, the enforcement of the sentence in the sentencing country is suspended.

20. This Article 9 provides that the administering country shall either continue the enforcement of the prisoner's sentence under the conditions set out in Article 10 (referred to as the "continued enforcement" method), or convert the sentence into a decision of that country, thereby substituting the sentence imposed by the sentencing country with a sanction imposed by the administering country under the conditions set out in Article 11 (referred to as the "converted enforcement" method).

21. Under the continued enforcement as set out in Article 10, the administering country shall be bound by the legal nature and duration of the sentence as determined by the sentencing country - to the extent that its nature and duration is compatible with the laws of the administering country. The Article further provides that in relation to the nature of the sentence, the punishment shall, as far as possible, correspond with that imposed by the sentence to be enforced. It also provides that the punishment shall not aggravate, by its nature or duration, the sanction imposed by the sentencing country, nor exceed the maximum duration prescribed by the law of the administering country.

22. Article 11 describes how the converted enforcement method will operate. It provides that the authorities of the administering country shall, when using this method, be bound by the

findings as to the facts as they appear from the judgment imposed in the sentencing country; they may not convert a sanction involving deprivation of liberty into a pecuniary sanction; they shall deduct the full period of deprivation of liberty already served by the prisoner; they shall not aggravate the penal position of the prisoner; and they shall not be bound by any minimum sentence length which the law of the administering country may provide for the offence committed.

23. Under Article 14 the administering country shall terminate the enforcement of the sentence as soon as it is informed by the sentencing country of any decision or measure as a result of which the sentence ceases to be enforceable.

24. Article 16 obliges each party to the Convention to grant, in accordance with its law and subject to this Article, a request for transit of a prisoner through its territory. Such a request may be made by another party and that party has agreed with another party or with a third country to the transfer of the prisoner to or from its territory. A party may refuse to grant transit if the prisoner is one of its nationals or if the offence for which the sentence was imposed is not an offence under its own law.

25. Article 17 deals with the language in which the requests for transfer and supporting documents are required to be written. In summary, the documents are required to be in the language of the country to which they are addressed, or to be in one of the official languages of the Council of Europe. The Article also sets out the circumstances in which translations of such documents are required.

26. It is proposed that Australia lodge a declaration under paragraph 3 or Article 17 relating to translations of requests into the English language. A similar declaration has been made by the United Kingdom. The declaration would apply to those States which have made a declaration under Article 17 that they require requests for transfer and supporting documents to be accompanied by a translation into their own language or into a language or languages other than English. The declaration would require, on the basis of reciprocity, that requests for transfer and supporting documents from such States be accompanied by a translation into the English language.

Implementation

27. Australia's obligations under the Convention would be implemented under the International Transfer of Prisoners Act 1997, the substantive provisions of which have not yet commenced operation.

28. The Act provides a framework for the transfer of prisoners between Australia and foreign countries declared by regulations made under the Act. The Act provides that transfers are to be consensual, requiring the consent of the person to be transferred, the Commonwealth and State/Territory Government where relevant, and the foreign country.

29. Regulations will be required under section 8 of the Act to enable Australia to give effect to obligations under the Convention and to conduct transfers of prisoners with other States which are parties to the Convention.

30. As many prisoners to be transferred out of Australia will have been sentenced for State and or Territory offences, and as only the States and the Northern Territory presently have prisons, the scheme will require a framework for co-operation between the Commonwealth and the States and Territories. The Standing Committee of Attorneys-General has therefore been a forum for consultation and discussion on this matter for several years.

31. All States and Territories have passed implementing legislation to participate in the scheme.

32. The finalisation of Administrative Arrangements between the Commonwealth and the States and Territories on the transfer of prisoners will also be required to enable Australia to give

effect to the Convention. The Arrangements will set out the administrative protocols and arrangements for the possible transfer out of foreign prisoners who are held in gaol as either State or Federal offenders, and the transfer in of Australians who were imprisoned overseas. The Commonwealth Attorney-General's Department has been liaising with the States and Territories to finalise the Administrative Arrangements. They are close to agreement on a final draft.

33. Australia will be able to ratify and implement the Convention following consideration by the Joint Standing Committee on Treaties, once the necessary regulations have been enacted under the Act, and once the Administrative Arrangements have been finalised.

Costs

34. The international scheme operates on the basis of the "receiver pays" principle. This means that the country to which the prisoner wishes to transfer (the administering country) is responsible for meeting the costs associated with the transfer. The costs associated with moving the prisoner from the prison in which he or she is presently incarcerated to the nearest point of international departure would be borne by the sentencing country. Article 17(5) of the Convention has this effect.

35. It is difficult to estimate the exact number of prisoners who are likely to be transferred out of Australia each year once the Convention is in operation. However, each out-going prisoner transfer will represent a cost saving of over \$50,000 (the approximate annual cost of maintaining a person in prison in Australia) for each year the prisoner would otherwise have spent in a prison in an Australian State or Territory.

36. Apart from the costs involved in moving out-going prisoners to the nearest point of international departure, Australia will only have to meet the costs relating to in-coming prisoners. In this regard, it has been agreed between the Commonwealth, the States and the Territories that:

- • the Commonwealth will meet all general administrative costs involved in the processing of transfers; and
- • the State or Territory to which a prisoner wishes to return will be responsible for meeting the costs of transporting the prisoner to Australia and maintaining him or her in prison in Australia.

Consultation

37. The States and Territories have been notified of the proposed treaty action through the Commonwealth-State-Territory Standing Committee on Treaties process, and the Standing Committee of Attorneys-General.

38. Since Australia's participation in the international prisoner transfer scheme was first mooted in the early 1990s, there has been extensive consultation with a number of other Governments and organisations. In particular, and in light of the fact that there are no federal prisons, there has been considerable consultation with all State and Territory Governments whose agreement and co-operation are essential if Australia is to conduct international transfers of prisoners. In this regard, Australia's participation in the scheme has been discussed and developed in the Standing Committee of Attorneys-General forum in which all of the major elements of the scheme have been agreed.

39. In late 1996 the House of Representatives Standing Committee on Legal and Constitutional Affairs conducted an inquiry into the (then) International Transfer of Prisoners Bill 1996. It consulted a number of community groups and organisations including the Human Rights and Equal Opportunity Commission, the NSW Council for Civil Liberties, the various State and

Territory Attorneys-General, the Commonwealth Departments of Foreign Affairs and Trade and Immigration and Multicultural Affairs, the Public Defenders Group, a number of academics, and the members of families with relatives in prisons overseas. In February 1997 the Committee issued an Advisory Report in which it expressed its support for Australia's proposed participation in the international prisoner transfer scheme.

Future treaty action: amendments, protocols, annexes or other legally binding instruments

40. The Convention is silent as to amendment. In the absence of an amendment provision, Article 39 of the Vienna Convention on the Law of Treaties would apply to allow amendment by agreement between the Parties.

41. There is an Additional Protocol to the Council of Europe Convention on the Transfer of Sentenced Persons. It was opened for signature in 1997. The Protocol addresses the issue created by an offender who escapes and returns to his/her country of citizenship. The Protocol is designed to address the problems posed by countries whose domestic legislation does not allow them to extradite their nationals. Accession to the Protocol would require amending the Act or the introduction of new legislation. Accession might also be controversial as it provides for the forcible transfer of prisoners, albeit under a limited number of circumstances. Accession to this Protocol is not being considered at this point.

Withdrawal or denunciation

42. Article 24 of the Convention provides that any party may at any time denounce the Convention by means of a notification addressed to the Secretary General of the Council of Europe. Such denunciation would become effective three months after the date of receipt of the notification by the Secretary General. The Convention would, however, continue to apply in relation to persons transferred under the Convention prior to the denunciation taking effect.

Contact details

International Branch
Criminal Justice Division
Attorney-General's Department
CANBERRA

Agreement between the Government of Australia and the Government of the Russian Federation on Cooperation in the Field of the Exploration and Use of Outer Space for Peaceful Purposes, done at Canberra on 23 May 2001

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. The Agreement between the Government of Australia and the Government of the Russian Federation on Cooperation in the Field of the Exploration and Use of Outer Space for Peaceful Purposes done on 23 May 2001 (the Agreement) shall enter into force when Australia and the Russian Federation have notified one another, in writing and through diplomatic channels, that domestic procedures necessary for entry into force are complete. The date of entry is the date of the latter notification. At the time of submission, the Russian Federation has not provided such notice. It is proposed that Australia provide the Russian Federation with written notice that Australian domestic procedures necessary for entry into force are complete.
2. On the date of the Agreement's entry into force the Agreement between the Government of Australia and the Government of the Union of Soviet Socialist Republics on Cooperation in Space Research and the Use of Space for Peaceful Purposes of 1 December 1987 will cease to have effect.

Date of proposed binding treaty action

3. Australia and the Russian Federation signed the Agreement on 23 May 2001.
4. It is proposed that Australia send written notification to the Russian Federation, confirming completion of domestic procedures necessary for entry into force, as soon as practicable after the tabling of the Agreement in Parliament, its consideration by JSCOT and the passage of the Space Activities Amendment (Bilateral Activities) Bill 2001 (see paragraph 27).

Date of tabling of the proposed treaty action

5. The Agreement will be tabled on 21 August 2001.

Purpose of the proposed treaty action and why it is in the national interest

6. The Agreement provides a treaty framework for collaboration in a broad range of scientific and industrial space projects with Russia. These will bring together the complementary capabilities of Australia and the Russian Federation in the space sector. Australia is seeking to develop its own space sector, with particular focus on the potential for commercial launch operations arising from our geographic and climatic circumstances and our stable political and economic conditions. The Russian Federation is recognised as one of the leading space-faring nations of the world, and is among the most advanced in launch technologies. An early focus under the Agreement will be collaboration in the development of commercial spaceports. Two proposed spaceports – the Asia

Pacific Space Centre facility proposed for Christmas Island and the Spacelift facility proposed for Woomera – would use wholly Russian launch vehicles. The Agreement is necessary for both projects to proceed.

Reasons for Australia to take the proposed treaty action

7. In facilitating collaboration in commercial projects as well as scientific projects, the Agreement extends more broadly than does the 1987 Agreement which it will supersede. It embraces the potential for a diverse range of activities in manufacturing and commercial services related to space, as well as a wider range of scientific activities than had been provided for under the 1987 Agreement. It also specifies obligations or norms relating to such commercially sensitive matters as the security of technologies, protection of intellectual property, duty relief and liability.

8. The Agreement thus reflects the current focus of Australian space policy on industry development, and that of the Russian Federation on internationalising its space industry. The Agreement particularly opens access to Russian launch technologies for Australian spaceport operators.

9. The need for the Agreement arises from the particular nature of the Russian space sector and the technologies involved. The Russian Government holds equity in, and exercises a degree of administrative control over, most if not all of the Russian space industry and research sector. The Russian Government also controls exports of much if not all space technology, partly in accordance with its undertakings within the Missile Technology Control Regime. Finally, in the event of an accident during a launch, the Russian Government may be liable for damage caused to third parties.

10. For these reasons, the Russian Government normally requires framework agreements with other countries before allowing collaboration in space projects. Such agreements identify the fields of collaboration, the administering agencies, and broad principles for engagement, as well as providing for more detailed agreements to be negotiated to deal with such matters as technology safeguards, intellectual property, liability and exchange of information.

11. In this context, the Agreement is a critical step in facilitating the proposed Asia Pacific Space Centre and Spacelift projects, and any further projects that may emerge in the future. It provides that the Department of Industry, Science and Resources and the Russian Aviation and Space Agency may agree to involve other organisations in activities carried out within the framework of the Agreement (Article 3(2)). In this way, Australian industry may be authorised to cooperate in space activities involving Russian technology. Without the Agreement and the more detailed agreements or arrangements which will follow under it, the Russian Government would not allow the transfer of launch technology to Australia or Australian industry, blocking the development of such projects and depriving Australia of an opportunity to capture a share of the lucrative satellite launch market. Australia is competing with a number of other countries to host projects drawing on Russian technology.

12. The Asia Pacific Space Centre project has a capital value of \$A800 million and will generate \$1.3 billion in net gains to Australia over 20 years. It is expected to create up to 400 jobs in its construction phase and up to 550 jobs in operation. It would especially benefit the economy of Christmas Island and potentially reduce future calls on Commonwealth funds to support the Island.

13. More generally, it is estimated the Australian space launch sector has the potential to capture between 10 and 20 per cent of the global launch market over the coming decade. Russian launch technology will be vital to achieving global market share, and the benefits to Australia will expand significantly beyond those identified for the Asia Pacific Space Centre project as further launch projects proceed and synergies develop with the broader space sector.

Obligations

14. Both Parties are obliged to fund participation in projects under the Agreement (**Article 6**) in accordance with their respective budgetary norms and rules and subject to the availability of funds. The Government will thus be liable only for costs for which it has budgeted and agreed to pay. Funding of projects outside of governmental budgets or programs shall be the responsibility of relevant participants and may be the subject of project specific agreements negotiated under the framework Agreement.

15. Both Parties are obliged to protect intellectual property created or provided under the Agreement in accordance with their respective international obligations and domestic laws (**Article 7**). Both Parties are obliged to ensure that their respective collaborating entities enter intellectual property agreements which are guided by the principles expressed in the Attachment on intellectual property to the Agreement (see paras 25 and 26 below). In the absence of intellectual property agreements, the principles of the Attachment will apply.

16. Both Parties are obliged to exchange scientific and technical data and information obtained through joint activities, subject to the Attachment on Intellectual Property Principles (**Article 8**). This obligation does not extend to information which relates to the national security interests of either Party, or is considered 'classified' according to domestic law and regulations of the country.

17. Both Parties are obliged to ensure the observance of the interests of the other in the legal protection of property located on its territory for the purpose of activity carried out within the framework of the Agreement (**Article 9**). It provides for subsequent agreements to afford immunity for specified categories of goods against seizure or executive action. Australia has not yet agreed to any such immunity.

18. The Agreement provides for a cross-waiver of liability in any 'protected activity' as may be agreed by the Parties from time to time (**Article 10**). This means that, in respect of any protected activity, each Party waives any claims for damages against the other Party. The cross-waiver would apply in respect of claims for damages under the United Nations Convention on International Liability for Damage Caused by Space Objects, or in respect of any other claims under international law, or claims in contract arising from participation by the other Party or its competent agencies. The Parties have not yet entered into any negotiations on this matter.

19. Both Parties are obliged to allow duty free entry of goods intended for cooperation within the framework of the agreement (**Article 11**). Such goods may include, but would not be limited to, spacecraft, space transportation systems, their elements, instruments, control, testing and other types of equipment required for a launch, as well as information and data recorded on material media. Many such goods already enter Australia at zero rates of duty. Australia will effect duty relief on all goods for use in authorised space projects on a Most Favoured Nation (MFN) basis, regardless of country of origin or whether the projects are covered by inter-governmental agreements. This will be consistent with Australia's World Trade Organisation (WTO) obligations and the objective of establishing Australia as a competitive site for commercial space launch operations.

20. Both Parties are obliged to control export of technology arising from any joint activity under the Agreement in accordance with their domestic law and the requirements of the Missile Technology Control Regime (**Article 12**). Australia takes its undertakings under the Regime seriously and it will take necessary steps to ensure these are observed. Existing border controls under the Customs Act 1901 and those applying under the Weapons of Mass Destruction (Prevention of Proliferation) Act 1995 will be supplemented, as appropriate, through the security arrangements required of spaceport operators under the Space Activities Act 1998. Particular arrangements will be detailed, and legislative provisions reviewed as necessary, in light of the

Technology Safeguards Agreement currently being negotiated with the Russian Federation in respect of the Christmas Island project.

21. Both Parties are obliged to assist in the processing of entry visas for personnel assigned to activities under the Agreement, in accordance with domestic law (**Article 13**).

22. Both Parties are obliged to encourage economic and industrial activities under the Agreement, in accordance with domestic law (**Article 14**). This should include the facilitation of trade and commerce.

23. Both Parties are obliged to resolve disputes relating to the Agreement through consultations in the first instance, and through the appointment of an Arbitral Tribunal in the second (**Article 15**).

24. Australia's obligations under the current *Agreement between the Government of Australia and Government of the Union of Soviet Socialist Republics on Co-operation in Space Research and the Use of Space for Peaceful Purposes* of 1 December 1987 will cease when the new Agreement enters into force (**Article 16**). While the 1987 Agreement would remain in force even after its termination in relation to any 'uncompleted working arrangements' (**Article 9, 1987 Agreement**), no such arrangements exist.

25. The **Attachment** applies to all joint activities pursued under the Agreement and aims to allocate intellectual property rights between the Parties or cooperating organisations. It obliges both Parties to allow cooperating organisations to acquire intellectual property rights in accordance with the **Attachment**, but it does not change the domestic law or international obligations of the Parties and it does not alter the rights of collaborating organisations to their background intellectual property. It obliges both Parties or cooperating organisations to jointly develop plans for managing intellectual property rights in their own and third countries. Where such plans have not been developed within four months of the joint creation of an object of intellectual property, each of the Parties or cooperating organisations may receive all rights and benefits from such intellectual property on its State's territory. In these circumstances, cooperating organisations shall negotiate the allocation of intellectual property rights taking account of their respective contributions, and shall consult on the protection and distribution of intellectual property rights in third countries.

26. The **Attachment** provides for separate agreements to specify arrangements for the free publication of scientific and technical publications, the allocation of rights in computer programs, and the acquisition and use of rights from non-joint activities. It obliges both Parties to designate confidential information in an appropriate manner in accordance with their domestic laws and to adopt all necessary measures for protecting its confidentiality. It obliges both Parties to set out in written agreements any grant of rights to third persons and procedures for the distribution of referred results.

Implementation

27. The Space Activities Amendment (Bilateral Agreement) Bill was introduced on 6 June 2001 to allow the Commonwealth to impose certain obligations arising under the Agreement on Australian organisations collaborating under it. The Bill will do this by amending the Space Activities Act 1998 to provide for the making of regulations to give effect to the provisions of the Agreement. The Senate Scrutiny of Bills Committee considered the Bill on 20 June and had no comments.

28. Relief from customs duty on goods to be imported into Australia within the framework of the Agreement has been given effect by Customs Tariff Proposal No 5 2001. This was tabled in Parliament on 27 June 2001. This proposal created a new concessional item (Item 69) in Schedule 4 of the *Customs Tariff Act* 1995, which item allows the duty free entry of goods imported into Australia for use in space projects authorised by the Minister. This Proposal takes effect on 1

August 2001 and will be given permanent effect by Customs Tariff Amendment Bill No 4 2001, introduced on 28 June 2001.

Costs

29. Provision for relief from duty may lead to revenue foregone. The Department's estimate of possible revenue which might be foregone between 2000-01 and 2004-05, in the event that five spaceports were to proceed through construction in that period, was an estimated \$10.2 million. Treasury has agreed with this estimate. The actual revenue foregone will almost certainly be very much less than this. Currently the Asia Pacific Space Centre is the only commercial launch proponent ready to commence construction. The duty relief provided in the Agreement will have minimal or no bearing on that project as Christmas Island is duty free. Should other proposals proceed to construction, the revenue impact would remain minimal. We would expect no more than two further proposals to commence construction by 2004-05, and in any case most launch related equipment is already duty free.

30. It should be noted that Commonwealth revenues from commercial space activities in Australia, including those which rely on Russian technology, are expected to offset revenue loss from relief of customs duty by significant orders of magnitude.

Consultation

31. The State and Territory Governments were invited by letter of 11 July 2001 to comment on the Agreement. The New South Wales, Victorian, Queensland and Tasmanian Governments have advised they have no concerns with the Agreement. The ACT Government noted only the possibility of some erosion of the GST revenue as a consequence of existing duty relief under Article 11 of the Agreement – any such erosion would be marginal. The Western Australian Government has deferred comment pending tabling of the Agreement in the Parliament. The Governments of South Australia and the Northern Territory had not commented at the time of this submission.

32. Launch proponents and the broader industry were consulted at various stages during the course of negotiating the Agreement during 1999 and 2000. Specific comment was invited by letter of 11 July 2001 from the International Space Advisory Group, comprising some 17 eminent space industry and research leaders appointed by the Hon Warren Entsch, MP, Parliamentary Secretary to the Minister for Industry, Science and Resources. The Group, which includes representatives of the launch sector, advises on priorities and strategies for Australian engagement in international space programs. Industry and the research community have expressed no objections to, or comments upon, the Agreement in response to the Department's letter of 11 July. The launch proponents who would use Russian technology have consistently made representations to the Government advocating the earliest possible conclusion of the Agreement.

33. The Departments of Foreign Affairs and Trade, Defence and Attorney-General, and the Australian Customs Service, participated directly in negotiating the Agreement with officials of the Russian Federation. These Departments, together with the Departments of Prime Minister and Cabinet, Transport and Regional Services, Treasury, and Finance and Administration, were consulted prior to its consideration by the Government. The Government approved the Agreement as proposed jointly by the Minister for Industry, Science and Resources and the Treasurer, and it was authorised by Executive Council prior to signature by the Minister for Industry, Science and Resources on behalf of the Government on 23 May 2001.

Future treaty action: amendments, protocols, annexes or other legally binding instruments

34. Article 16(4) provides that the Agreement may be amended or supplemented by the agreement of the Parties in written form. Article 1(d) provides for the conclusion of subsequent agreements pursuant to this Agreement. Currently, the two Governments are negotiating a Technology Safeguards Agreement (TSA) for the Christmas Island project. This will provide for the protection of sensitive Russian goods and technologies in Australia. Similarly, where applicable, it will provide for the protection of sensitive Australian goods and technologies.

Withdrawal or denunciation

35. Article 16 provides that the Agreement will be concluded for a period of ten years and will automatically be extended for a subsequent ten-year period if neither Party notifies the other of an intention to terminate. This notification must be given twelve months before the expiry of the initial ten-year period. Either Party may terminate the Agreement in the period following its automatic extension, by twelve months' written notice to the other Party through diplomatic channels.

Contact details

Space and Aerospace Policy Branch
Services and Emerging Industries Division
Department of Industry, Science and Resources

REGULATION IMPACT STATEMENT

Problem

What is the problem being addressed?

Need for Bilateral Arrangement

A number of companies are proposing to establish commercial space launch facilities in Australia, including the Asia Pacific Space Centre on Christmas Island and the Kistler Aerospace Corporation and Spacelift Australia at Woomera in South Australia.

Two of these projects envisage the use of Russian launch technology. However, the sensitive and dual-use nature of the technology required agreement between governments to facilitate its release and ensure control of access. Without a bilateral arrangement and subsequent project-specific agreements, the Russian Government would not transfer the technology and expertise to Australia, blocking the development of two space launch projects which are based on Russian systems, and depriving Australia an opportunity to capture a share of the lucrative global satellite market.

Inter-Government Agreement with Russia

The Australian and Russian Governments on 23 May 2001 signed an umbrella, treaty-level Agreement on Space Cooperation. The Agreement provides a legal and organisational framework for the transfer of rocket and other space-related technologies and expertise to Australian launch proponents, and encourages collaboration in scientific research and technology development. Key provisions include an outline of the areas and forms of cooperation, procedures to negotiate liability for damage resulting from activities covered by the Agreement, protection of intellectual and physical property, duty free entry of goods to be used within the framework of the Agreement entering in each other's territory, the exchange of information, provision to enter into other agreements and settlement of disputes. **Attachment A** provides a description of the Agreement, by clause.

Duty-Free Entry of Space Equipment

The Agreement provides for the duty-free entry of space-related goods and equipment to be used in projects conducted in either country. Launch vehicles, satellites, scientific equipment, telemetry and guidance equipment can currently enter Australia free of duty. However, specialised equipment such as transporter-erectors, launch vehicle lifting gear, fuel handling equipment and instrumentation for mission control centres, attract an Australian duty of up to 5 per cent. The Russian Government applies import duties of up to 30% on space-related goods. The Russian duties will only be waived if reciprocated by the importing country and if the commitment to a mutual exemption is reflected in a bilateral treaty (international obligations override domestic law in Russia).

The obligations on Australia arising out of the Treaty are being implemented by domestic legislation, including the relief from customs duty. The Agreement, which will have effect for ten

years, makes provision for authorisation of the Parties to access the Agreement and separate agreements covering both individual projects and particular issues, such as protection of intellectual property and the security of technology. A Technology Safeguards Agreement is being negotiated with the Russian Government to facilitate the use of Russian technology for the establishment of a space launch complex on Christmas Island, and this may require a separate Regulation Impact Statement (RIS). This RIS is, however, limited to the Agreement between Australia and Russia on Space Cooperation and the enforcement of obligations arising out of the Treaty, including the mechanism to provide relief from duty.

Why is government action needed to correct the problem?

The emerging Australian space launch industry operates in a highly competitive global environment. Its commercial success is critically dependent on access to relevant technology, such as the ability to access technical data and to import launch vehicles and satellites. Two potential launch proponents intend to use Russian launch technology. An umbrella agreement at the government level is seen as crucial to the development of the domestic industry, as it will facilitate the transfer of sensitive technology and establish a basis for scientific collaboration and technology development.

The Russian Government has been actively seeking partners in the use of its technology, and its preference lies with Australia at this stage. However, there is intense international interest in cooperation with Russia on commercial space activities, given the availability of the technology and its relative low cost. Australia is thus competing with a number of other countries to host projects drawing on Russian technology.

The need for the Agreement arises from the particular nature of the Russian space sector and the technologies involved. The Russian Government holds equity in, and exercises a degree of administrative control over, most if not all of the Russian space industry and research sector. The Russian Government also controls exports of much if not all space technology, partly in honour of its undertakings within the Missile Technology Control Regime. The Russian Government may further be implied in liability for damages to third parties that may arise from accidents involving its launch technology.

For these reasons, the Russian Government normally requires framework agreements with other countries before allowing collaboration in space projects. Such agreements identify the fields of collaboration, the administering agencies, and broad principles for engagement, and provide for more detailed agreements to be negotiated dealing with such matters as technology safeguards, intellectual property, liability, exchange of information, and so forth.

In this context, the Agreement is a critical step in facilitating the proposed Asia Pacific Space Centre and Spacelift projects, and any further projects that may emerge in the future. Without the Agreement and the more detailed agreements which will follow under it, the Russian Government would not allow the transfer of launch technology to Australia, blocking the development of such projects and depriving Australia of an opportunity to capture a share of the lucrative satellite launch market. Australia is competing with a number of other countries to host projects drawing on Russian technology.

Objectives

What are the objectives of government action?

The objective is to provide a coherent and robust framework for commercial space launch operations in Australia using Russian technology and to facilitate the secure transfer of technology, expertise and equipment between the two countries.

Government action will aim to ensure that potential launch proponents can access the benefits conferred by the Treaty and, in particular, provide duty-free importation for all space goods and equipment used in activities under the proposed Agreement. In the case of relief from duty, the objective is to trigger a reciprocal exemption from Russian import duties, and provision of technology to enable the Australian space industry to compete in the international market.

Is there a regulation/policy currently in place?

Australia maintained an agreement with the former Soviet Union covering basic cooperation in space research (that is, the Agreement between the Government of the Union of the Soviet Socialist Republics and the Government of Australia on Cooperation in the Field of the Exploration and Use of Outer Space for Peaceful Purposes of 1 December 1987). The Agreement is outdated, extremely narrow in its scope, and thus insufficient to facilitate the transfer of space launch technology to Australia. The Space Cooperation Agreement will supersede this arrangement.

Implementation in Domestic Law

The implementation of the Agreement, other than the custom's duty relief, is being pursued through the passage of Space Activities Amendment (Bilateral Agreement) Bill 2001 to make amendments to the Space Activities Act 1998 to provide for the making of regulations to give effect to the provisions of the Agreement. The Bill was introduced on 5 June 2001. The senate Scrutiny of Bills Committee considered the Bill on 20 June and it had no comments on the Bill.

Duty Relief

As regards relief of customs duty on goods to be imported into Australia within the framework of the Agreement, Customs Tariff Proposal No 5 (2001) was tabled in Parliament on 27 June 2001. This proposal created a new concessional item (item 69) in Schedule 4 of the Customs Tariff Act 1995 which allows the duty free entry of certain specific goods imported into Australia for use in space projects. This Proposal is being implemented by amendment to Schedule 4 of the Customs Tariff Act 1995 and commences on 1 August 2001. Customs Tariff Amendment Bill No 4 (2001) was introduced on 28 June 2001.

There is no regulation or policy able to provide relief from duty for items to be imported under the Agreement for commercial purposes and which are currently subject to duty. The *Tradex Scheme Act 1999* exempts imported goods from duty and other taxes, provided that the goods are subsequently exported or incorporated in other goods that are exported.

However, given that the goods and equipment to be used in the construction and operation of domestic commercial spaceports would not be exported, the Tradex Scheme does not provide appropriate relief from duty. This scheme also makes provision for capital goods only, hence some of the proposed items to be used in the construction and operation of a commercial spaceport may be excluded.

Item 16 of Schedule 4 of the *Customs Tariff Act 1995* provides for the duty free entry of goods to be used for scientific purposes under an agreement or arrangement between the Australian Government and the government of another country on cooperation in the field of science and technology. This could be utilised in certain circumstances where cooperation is in respect of some scientific projects. However, as the proposed Agreement with the Russian Federation is largely concerned with the facilitation of commercial space activities, it could not be used to facilitate the duty-free importation of commercial goods.

Options

Bilateral Agreement on Space Cooperation

Given the security issues concerning the transfer of sensitive Russian technology, a treaty-level agreement was the only feasible option. Without this Agreement and separate project-specific agreements the Russian Government would not transfer space technology to companies seeking to establish commercial space facilities in Australia.

Provision of Relief from Duty

Key to ensuring the operation of the Australian space launch industry has been a reciprocal obligation for relief from duties on space-related equipment in a bilateral agreement. Given that existing customs duty concessions are not sufficient to provide the required relief from duty, three possible options were explored:

1. Insert a new item to Schedule 4 of the *Customs Tariff Act 1995*, which provided access for authorised projects and for By-laws in respect of each authorised project;
2. Extend the *Tradex Scheme Act 1999* to cover space-related goods and equipment; or
3. Provide grants to space proponents equal to the imposed cost of Australian and Russian duties as a possible non-regulatory option.

Impact Analysis

The Agreement will have an impact on:

- the (emerging) Australian space launch industry;
- Australian industry generally; and
- Government agencies with direct involvement in space-related activities.

In general, the Agreement will facilitate mutually beneficial cooperation between Australia and Russia in the development and use of space technologies and equipment for commercial purposes. At present, the Asia Pacific Space Centre (APSC) and Spacelift are directly affected, however any future projects will also be impacted upon. In the absence of an umbrella agreement and relief from duty, these companies (and future proponents) will not be able to obtain space launch technology, nor access the expertise required to set up and conduct space launch operations. As a result, the Australian industry will fail to establish a commercial space industry and share in the global launch market.

In respect of options to implement the relief from duty:

- Option 1 involved the insertion of a new item into Schedule 4 of the *Customs Tariff Act 1995*. Under this arrangement, the Minister for Industry, Science and Resources or his / her delegate would authorise projects to access the concession under policy guidelines to be developed for this purpose. The Department of Industry, Science and Resources would certify goods to confirm that they are for use in authorised projects.

Option 2 required amendments to the *Tradex Scheme 1999* and would allow the importation of goods which are used to manufacture, rather than goods used in manufacture. This proposal,

therefore, would be contrary to the policy intent of the Tradex Scheme. There might also be WTO implications associated with changing the policy supporting this Scheme.

- Option 3 was non-regulatory.

All options would be consistent with Australia's obligations under the WTO if it was ensured that the concession would be extended to all goods for use in space-related projects irrespective of the country of origin of the goods and would be implemented in such a way that prohibited subsidies were not provided.

Relief from duty may have some impact on Australian industry, however, this should be minimal (only one of the current proponents is expected to make significant use of the customs provision). Australian industry capabilities in the relevant sectors are either limited or non-existent, especially in relation to the supply of specialist launch technology and support equipment. In the medium-term, the Agreement may enhance Australian industry prospects in high technology areas such as remote sensing and satellite manufacturing by fostering clusters of expertise around the space launch sector.

Likely Benefits and Costs

Removal of impediments for the space launch industry by the Agreement and the creation of a competitive environment should generate significant economic benefits regional development, new research activity and employment (discussed at **Attachment B**). Up to A\$1.5 billion in national benefits could be generated by the industry over the next 11 years, if it achieves 20 per cent of the international launch market. The National Benefit Cost Ratio is estimated at \$7.44 per dollar of investment. The positive contribution to the balance of trade is estimated at up to A\$2.55 billion. An estimated 779 new jobs would be created in the first year of operation, peaking at 4,278 in year three and averaging at 2,232 jobs over subsequent years.

A cost of the Agreement would include the compliance costs for a company seeking to import duty-free goods. Such compliance costs would include the cost to business of making an application for the duty-free concession. In particular, there will be some costs to business involved with provision of an Australian Industry Impact Statement to the Minister of Industry, Science and Resources."

In the absence of an umbrella agreement, Australia would be foregoing an opportunity to enter an expanding, high technology, and high value-added industry that required considerable investment and a long-term commitment to Australia.

By providing relief from duties for specialised space equipment, competition in the market would be increased and consumer welfare enhanced. The relief from duty is expected to cost \$10.2 million in revenue foregone over five years. In respect of each option:

- Option 1 was seen as clear, transparent and not difficult to administer within existing arrangements. It would also facilitate consideration of local sourcing. Option 1 did, however, require the development of new policy guidelines and certification of goods by the Department of Industry, Science and Resources. To comply with Australia's WTO obligations, this option would also need to be implemented on a Most Favoured Nation basis.
- Option 2 (amend the Tradex Scheme Act 1999) required the amendment to legislation. Such amendments would be a departure from the policy intent of the Scheme, which is to provide a mechanism to facilitate temporary importation of goods without paying duty. Amendment to the policy underpinning the Scheme may have WTO implications.
- Option 3 (provision of grants) would involve significant expenditure by the Commonwealth Government, given that both Australian and foreign duties would need to be offset. It would

be consistent with our WTO obligations if implemented to ensure that prohibited subsidies were not provided. This option was, however, unlikely to satisfy the Russian Government.

Distributional Effects

The space projects propose establishing facilities in regional Australia, that is, in areas with limited alternative employment opportunities. In the short-term, direct and indirect employment will be generated by the construction of facilities, which will, in turn, stimulate local economies. Ongoing launch operations would foster employment opportunities, both at the spaceport and in support activities. The Regional Impact Statement, at **Attachment C**, encapsulates the anticipated distributional effects.

Economic data has been sourced from *The Potential Economic Contribution of an Australian Space Launch Industry*, an analysis conducted by PricewaterhouseCoopers for the Commonwealth Department of Industry, Science and Resources.

Consultation

There has been extensive consultation with Government and industry during the negotiations of the Agreement.

The State and Territory Governments have been informed of the Agreement in writing. The New South Wales and Victorian Governments have advised they have no concerns with the Agreement. The ACT Government noted only the possibility of some erosion of the GST revenue as a consequence of existing duty relief under Article 11 of the Agreement – any such erosion would be marginal. The Western Australian Government has deferred comment pending tabling of the Agreement in the Parliament. No other State or Territory Government has commented at the time of writing.

All launch proponents were consulted in the course of negotiating the Agreement. The broader industry has been consulted in writing via the International Space Advisory Group, comprising some 17 eminent space industry and research leaders appointed by the Hon Warren Entsch, MP, Parliamentary Secretary to the Minister for Industry, Science and Resources. The Group advises on priorities and strategies for Australian engagement in international space programs. Industry and the research community have expressed no objections to, or comments upon, the Agreement, and are known to be very supportive of it.

In regards to the provision of relief from duty, consultation was necessary with Kistler, Spacelift and Asia Pacific Space Centre, given that they are furthest advanced and that this matter directly affects the establishment of their businesses in the short term. Relevant Government agencies were consulted, given the need to introduce a new Item in customs legislation and the need to ensure that any measures are consistent with Australia's WTO obligations. The Department of Industry, Science and Resources has sought further views of industry, the research community, and the States and Territory Governments on the Agreement.

Conclusion and Recommended Option

Australia's only viable option has been to enter into a bilateral Agreement with Russia to establish a coherent and robust framework for the conduct of commercial space launch operations in Australia, as well as to facilitate scientific cooperation and joint technology development. In the absence of an umbrella agreement and project specific agreements the Russian Government would not transfer technology and expertise to Australia, blocking the two space launch projects based on

Russian systems and depriving Australia an opportunity to capture a share of the expanding global satellite market.

Under the Agreement, cooperation with Russia (a key space-faring nation) will foster the development of the Australian space industry, with potential significant economic benefits. To ensure the competitiveness of the domestic industry, relief from customs duty for space-related goods imported into Australia under Article 11 of the Agreement is required.

Each of the options canvassed provided the required relief from customs duty. Option 1, the new item proposed for Schedule 4 of the *Customs Tariff Act 1995*, was clear, transparent and provided control over parties' ability to enter goods. Option 2 (amend the *Tradex Scheme Act 1999*) facilitated competitiveness and revenue foregone was minimal. The third option proposed a compensatory arrangement, involving the provision of grants to offset the duty paid by proponents, and would require significant expenditure by the Commonwealth Government.

On this basis, Option 1 was the preferred mechanism given that it provided broad relief from duty for space-related goods and equipment that would otherwise be subject to duty, and met the needs of the Russian Government. Option 1 represented a low-cost, clear, and straightforward option in terms of its introduction and implementation. Minimal costs are imposed on business, competition is enhanced, and revenue foregone is minimal.

The preferred option is self-limiting as it involves relief from tariffs in a climate where, broadly speaking, tariffs are decreasing over time.

Implementation and review

Under the Agreement, the Cooperating Agencies are the Russian Aviation and Space Agency (on behalf of the Government of the Russian Federation) and the Commonwealth Department of Industry, Science and Resources (on behalf of the Government of Australia). These agencies may designate other organisations to be involved in activities under the Agreement. Activities will be conducted in accordance with Australia's current legislative and administrative arrangements. However, new legislation will also be required to implement some of the obligations on Australia arising out of the Treaty.

The implementation of the Agreement, other than the custom's duty relief, is being pursued through the passage of Space Activities Amendment (Bilateral Agreement) Bill 2001 to make amendments to the Space Activities Act 1998 to provide for the making of regulations to give effect to the provisions of the Agreement.

As regards relief of customs duty on goods to be imported into Australia within the framework of the Agreement, Customs Tariff Proposal No 5 (2001) was tabled in Parliament on 27 June 2001. This proposal created a new concessional item (item 69) in Schedule 4 of the Customs Tariff Act 1995 which allows the duty free entry of certain specific goods imported into Australia for use in space projects. This Proposal is being implemented by amendment to Schedule 4 of the Customs Tariff Act 1995 and commences on 1 August 2001.

Arrangements to implement and administer the new Item in Schedule 4 of the *Customs Tariff Act 1995* are being finalised. These arrangements are clear and comprehensible, and easily understood by the launch proponents, the broader industry, and the Russian Government. There is no cost to business, rather a reduction in costs. Administration of the arrangement is expected to be minimal, as it will involve parallel processing by business in notifying the Department of Industry, Science and Resources of shipments of goods and equipment at the same time as preparing certificates of trade.

The effectiveness of the Agreement may be judged by the development of an Australian space launch industry. This will be assessed at least yearly by the Commonwealth Department of Industry, Science and Resources.

ATTACHMENT A**DESCRIPTION OF THE INTER-GOVERNMENT
AGREEMENT, BY CLAUSE****Article 1 - Aim**

The Agreement is intended to provide a robust organisational and legal basis for mutually beneficial cooperation between Australia and the Russian Federation in the development and application of space technologies and equipment for peaceful purposes. It provides a framework for commercial space launch operations in Australia using Russian technology, the conduct of space research and development, and the exchange of technology, expertise and equipment.

The Agreement explicitly allows for specific agreements to be entered into under its framework to facilitate the use of Russian technology, such as launch vehicles, in commercial space activities in Australia.

Article 2 - Applicable Law

Activities conducted in Australia or the Russian Federation must be in accordance with the domestic law and regulations of that country, and the Parties' existing international obligations.

Article 3 - Cooperating Agencies and Organisations

For the purposes of the Agreement, the Cooperating Agencies are the Russian Aviation and Space Agency (on behalf of the Government of the Russian Federation) and the Department of Industry, Science and Resources (on behalf of the Government of Australia). These agencies may designate other organisations to be involved in specialised activities under the Agreement.

Article 4 - Areas of Cooperation

Areas of cooperation under the Agreement include - but are not limited to - radioastronomy, astrophysics and other scientific study of outer space, remote sensing, materials processing, space medicine and biology, information technology and communications, satellite navigation systems, research, development and design of manufacture and operation of space-related and ground systems, spin-off industrial and commercial applications, protection of the outer space environment, and the development of a space launch capability in Australia.

Article 5 - Forms of Cooperation

To facilitate cooperation, organisational, financial, legal and technical aspects of space projects must be set out in separate agreements between Cooperating Agencies or designated organisations. There is scope for involvement of specialist government or private organisations from other nations, as well as international space agencies.

The Agreement identifies possible forms of cooperation under its framework, which include the planning and implementation of joint projects, the mutual provision of scientific and technological data and expertise, development and manufacturing of space-related equipment, use of ground systems for tracking and communications, training, the conduct of joint symposia, and facilitation of access to government industry development and innovation programs, as well as international space development initiatives.

Working groups can also be established to conduct joint activities and research.

Article 6 - Financing

Cooperating Agencies, or designated organisations, will be responsible for funding space activities under the framework of the Agreement. The financing of joint activity falling outside budgetary allocation and / or government programs shall be the responsibility of the participants in the activity.

Article 7 - Intellectual Property

The Parties agree to protect intellectual property relevant to this Agreement in accordance with their international obligations, and their respective domestic legislation. In terms of implementation, organisations are required to enter into separate agreements in relation to the treatment and protection of intellectual property, or alternatively apply the principles outlined in the Attachment to the Agreement.

Article 8 - Exchange of Information

The Agreement provides for the exchange of scientific and technical data and information obtained through joint activities. However, this does not extend to information which relates to the national security interests of either Australia or the Russian Federation, or is considered 'classified' according to domestic law and regulations of the country.

Article 9 - Protection of Property

Both Australia and the Russian Federation must guarantee the interests of the other Party and its agencies by ensuring the legal protection of property connected to space activities conducted in each other's territory. This includes, if agreed to by both Governments, immunity of specified goods from any seizure or executive action.

Article 10 - Liability

Without prejudice to the *Convention on International Liability for Damage caused by Space Objects of 14 January 1972* (to which Australia and the Russian Federation are signatories), the Parties can agree on additional arrangements in relation to liability, including apportionment of liability and indemnity for damage. The Agreement specifies the extent and conditions under which a cross-waiver of liability between the Governments of Australia and the Russian Federation will apply.

The Agreement also requires that the Parties will consult promptly on any potential liability under international law and cooperate fully with a view to establishing the facts in the investigation of any accident, and in particular, through the exchange of experts and information.

Article 11 - Customs Regulation

The Agreement provides for the duty free entry of specified space-related goods and equipment for joint activities, in accordance with the domestic law and regulations of either country.

Article 12 - Export Controls

In conducting joint activities under the Agreement, and in particular, technology transfer, both Parties are to observe their respective domestic and international commitments in regards to the enforcement of export controls, including their obligations under the Missile Technology Control Regime.

Article 13 - Assistance to the Activities of Personnel

Each Party, in accordance with their respective domestic law and regulations, shall facilitate the entry of designated personnel engaged in Australia or the Russian Federation for the conduct of activities under the Agreement.

Article 14 - Economic and Industrial Types of Activity

Both Australia and the Russian Federation undertake to encourage activity by public and private sector organisations in support of the joint cooperative programs to be carried out in the field of exploration and uses of outer space.

Article 15 - Settlement of Disputes

Both Parties shall seek to resolve any disputes through prompt and amicable negotiations and consultations, including through diplomatic channels. Disputes are to be referred to the Senior Executives of the respective organisations involved. If consensus is not reached, disputes may be referred to settlement through conciliation. In the event disputes remain outstanding for a period of six months, the Agreement provides that such matters should be referred to an Arbitral Tribunal. The Agreement specifies the procedures for the establishment and conduct of the Arbitral Tribunal.

Article 16 - Final Provisions

Upon entry into force, the Agreement is concluded for a period of ten years and shall be automatically extended for a further ten years, if neither Party notifies its intention by written notice to terminate 12 months before the expiry of the initial period. The Agreement can also be terminated by either Party in the period following the automatic extension, however, 12 months written notice must be given to the other Party through diplomatic channels.

The Agreement can be amended by the Agreement of both Parties in writing.

ATTACHMENT B**SUMMARY OF PRICEWATERHOUSECOOPERS
DRAFT REPORT ON THE PROSPECTS FOR THE
AUSTRALIAN SPACE LAUNCH INDUSTRY**

The global space market has experienced significant change over the past few years, such as the increase in commercial spending on space, which now exceeds government spending. Innovation in the communications industry is a further driver, with new satellite systems being released onto the market. Technological advances have led to the development of new launch vehicles and the formation of new international alliances and space launch ventures. Despite high start-up costs and high levels of risk, an increasing number of organisations are seeking to capitalise on the demand for space launch services over the next ten to fifteen years. In Australia, a number of business groups are currently developing plans for commercial launch operations based on American and Russian rocket technology.

The changing dynamics of the world satellite and launch services market will have an impact on the success of the commercial launch industry in Australia and its ability to deliver benefits to the economy. The Department of Industry, Science and Resources has commissioned PricewaterhouseCoopers to report on the prospects of a commercial launch industry in Australia and its contribution to the national economy. This report is to analyse the dynamics of the world satellite market, including forecast demand for launch services and its potential effects on the domestic launch industry. It is also to assume that all four current launch proposals will proceed, but is not to assess the prospects of any individual project proceeding or directly compare the net benefits of each of the four proposals.

The report is still in draft form and is expected to be finalised and released to the public in September. Draft findings are summarised as follows:

Viability of the Industry

The viability of a commercial launch industry in Australia will depend on its ability to attract sufficient launch clients in the longer-term to recover substantial initial investments (although one of the four projects aims to have a low establishment cost). The forecast level of global demand is a critical factor, as well as the number and competitiveness of alternative commercial launch services around the world.

The demand for commercial satellite launches over the next 10 to 15 years will largely be driven by the level of demand from the communications industry for new satellites and the type of satellite systems to be utilised by the industry. For the period 2000 to 2010, it is forecast that between 245 to 337 large geostationary (GEO) satellites will require launches, with the number of launches estimated at between 184 to 258 (that is, between 17 and 23.5 launches per year). 552 to 772 non-GEO satellites are expected to be launched, with the number of launches required ranging from 194 to 274 (that is, between 18 and 25 launches per year).

The international market for commercial launch services will be extremely competitive, given that the supply of vehicles through to 2010 is expected to exceed demand. However, this should have a positive impact on the price of launches, which in itself may generate more launch opportunities. It will also facilitate an increased effort by suppliers to enhance the reliability of vehicles and improve availability by reducing turnaround times. Demand for launches should increase over time, given that launch cost, and launch and schedule risk, are regarded as significant factors which currently constrain the commercial use of space.

A number of the new heavy launch vehicles, such as the European Ariane 5, the Russian Proton, the Japanese H-2 vehicle, and Boeing's Delta, have experienced failures. Demonstrated lower failure rates of the vehicles planned to be used in Australia, relative to those currently in use, could be a key factor in assisting Australian-based proponents to establish a share in the global market. The proponents are aiming to create a cost advantage over their competitors, and competitive advantage through rapid deployment of launch vehicles.

The report does not make projections for the share of the global launch market that the Australian-based projects might achieve over the next decade. However, using the forecasts for global satellite launches, the report presents two scenarios for a commercial launch industry in Australia.

Under the most likely scenario, where the industry gains a 10 per cent share of the global launch market, the proponents would win 48 launches. Under an optimistic scenario of 20 per cent share of the market, the industry would win 96 launches. Commercial viability of the industry and the potential benefits to the national economy have been analysed in Net Present Value terms using discount rates of 7 to 10 per cent. According to this analysis, the industry would be commercially viable under both scenarios and discount rates, although its viability would be marginal at the 10 per cent discount rate if only a 10 per cent share of the global market is achieved.

Costs for the industry are taken to include both private and government infrastructure costs and private operational costs. Benefits are comprised of the value-added by the private and public sectors during the construction and operational phases of the industry. For both scenarios, an aggregated launch industry would result in net economic benefits in terms of GDP, balance of trade, balance of payments and employment.

Under the optimistic scenario, national benefits of up to \$1.5 billion are estimated over the 11 year period. Taking into account both costs to the Government and to private industry, approximately \$7 would be generated per every dollar invested. Under the second scenario, national benefits of \$835 million are estimated, with a benefit-cost ratio of 3.90. The industry would create between 22,962 and 24,052 person years of employment ('full-time jobs') during the 11 year period, under the 10 and 20 per cent market share scenarios respectively.

The report indicates that the Australian industry should generate a positive balance of trade, estimated at \$1,906 million from 2000 to 2010, if the industry achieves a 20 per cent share of the market, and \$887 million over the same period under the 10 per cent share scenario. It would also contribute up to \$2.5 billion to the Balance of Payments. There are likely to be significant social and economic benefits from the development of a launch industry in Australia. These benefits would include increased space-related research and development and exports of education services, as well as the development of high technology activities related to space launch operations.

ATTACHMENT C

REGIONAL IMPACT STATEMENT

CHRISTMAS ISLAND - REGIONAL IMPACT STATEMENT

**Non-Capital city population centres	Under 10,000	Under 25,000	Over 25,000	Other
1. Services	P	NA	NA	P
Education				NT
Infrastructure				P
Social				P
Employment	P	NA	NA	P
INVESTMENT	P	NA	NA	P

*N=Negative P=Positive

NT=Neutral NA=Not Applicable.

General assumptions:

- Approx 23,000 new person years of employment over 11 years (over the four launch facilities); and
- 10% launch market gained = approx 1 launch per company per year. However, it is possible that the industry would secure up to 20% of the launch market.

Christmas Island Economic Summary*898 persons employed**27 businesses**1909 persons resident**\$110 million infrastructure construction since 1992***Estimated Economic Effects of Launch Facility**

INVESTMENT / INFRASTRUCTURE - Positive Effect

1992-2000 Value of Construction: \$110 million

Value of Construction of Launch Facility: total capital investment of \$550 million

EMPLOYMENT - Positive Effect

Ongoing Direct Employment: Approx 400

SERVICES - Positive Effect

It is anticipated that a transfer of technology and responsibility to locally based employees at the launch facility will occur over time. In addition, clusters of local companies servicing launch operations may arise. Support services for personnel will also be required, including hospitality and accommodation. The quantum of service support required is difficult to quantify, given the uncertainty surrounding the nature of the industry development process, the emerging nature of the industry and the time frames involved.

TOURISM / TRANSPORT - Positive Effect

A launch facility in the region is a tourism attraction and is therefore expected to increase visitor numbers. The launch proponent has purchased the former casino on Christmas Island in anticipation of the increase in tourism. In addition, business for the transport industry will be generated through the normal operations of the launch centre.

EDUCATION - Neutral

While a positive impact on national education is anticipated, this will be at the university level and in research institutions. It will, therefore, not have an impact on this region.

GENERAL SOCIAL BENEFITS - Positive Effect

Expected regional benefits from a launch facility will flow from the direct employment and flow on consumption effects for businesses in the region. The operation of launch facilities will also increase the region's profile, both domestically and internationally.

Source:

The Potential Economic Contribution of an Australian Space Launch Industry (DRAFT) July 2000,
PricewaterhouseCoopers.

Australian Bureau of Statistics

Commonwealth Department of Transport and Regional Services

GLADSTONE - REGIONAL IMPACT STATEMENT

**Non-Capital city population centres	Under 10,000	Under 25,000	Over 25,000	Other
Services	NA	NA	P	P
Education				P
Infrastructure				P
Social				P
Employment	NA	NA	P	P
Investment	NA	NA	P	P

*N=Negative P=Positive

NT=Neutral

NA=Not Applicable.

General assumptions:

- Approx 23,000 new person years of employment over 11 years (over the four launch facilities); and
- 10% launch market gained = approx 1 launch per company per year. However, it is possible that the industry would secure up to 20% of the launch market.

Gladstone Economic Summary

12012 persons employed

1521 businesses

27220 persons resident

\$35 million construction annually

Estimated Economic Effects of Launch Facility**INVESTMENT/INFRASTRUCTURE - Positive Effect**

1998 Value of Construction: \$35 million

Value of Construction of Launch Facility: total investment of \$570 million

EMPLOYMENT - Positive Effect

Ongoing Direct Employment: Approx 1050

SERVICES - Positive Effect

It is anticipated that a transfer of technology and responsibility to locally based employees at the launch facility will occur over time. In addition, clusters of local companies servicing launch operations may arise. The establishment of a technology park, and residential and leisure facilities will generate further demand for support services, including in the hospitality and tourism sectors. The quantum of service support required is difficult to quantify, given the uncertainty surrounding the nature of the industry development process, the emerging nature of the industry and the time frames involved.

TOURISM/TRANSPORT - Positive Effect

A launch facility in the region is a tourism attraction and is therefore expected to increase visitor numbers. In addition, business for the transport industry will be generated through the normal operations of the launch centre.

EDUCATION - Positive Effect

A positive impact on national education is anticipated at the tertiary level. The Central Queensland University, which has a campus in Gladstone, would be expected to benefit from the

launch facility. The launch proponent also intends to construct a space and technology park, which is expected to draw research and commercial activities to the area.

GENERAL SOCIAL BENEFITS - Positive Effect

Expected regional benefits from a launch facility will flow from the direct employment and flow on consumption effects for businesses in the region. Operation of the launch facility will also increase the region's profile both domestically and internationally.

Source:

The Potential Economic Contribution of an Australian Space Launch Industry (DRAFT) July 2000,
PricewaterhouseCoopers.

Australian Bureau of Statistics

Agreement between Australia and the Republic of Portugal on Social Security

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. It is proposed that Australia enter into a new Social Security Agreement with Portugal.
2. When this Agreement enters into force, the Agreement between Australia and Portugal on Social Security done at Lisbon on 30 April 1991 will terminate in accordance with the provisions of Article 32(2) of the new Agreement. This termination will be subject to the provisions of Article 26(3) of the current Agreement and Article 31 of the new Agreement. These Articles preserve the entitlements of those persons receiving benefits under the current Agreement.

Date of proposed binding treaty action

3. It is expected that the new Agreement will be signed in August/September 2001. The Portuguese Government has agreed to tabling the new Agreement prior to signature.
4. In accordance with Article 32(1), the Agreement shall enter into force on the first day of the second month following an exchange of notes by the Parties, through the diplomatic channel, notifying each other that all constitutional or legislative matters as are necessary to give effect to the Agreement have been finalised. It is proposed that the exchange of notes will take place in November 2001 to enable entry into force on 1 January 2002.

Date of tabling of the proposed treaty action

5. 21 August 2001.

Purpose of the proposed treaty action and why it is in the national interest

6. The new Agreement will bring economic and political benefits to Australia. Not only will it assist in maximising the foreign income of Australian residents, and the flow-on effect of these funds into the Australian economy, it will also serve to reinforce Australia's political, business and strategic interests. The Agreement will strengthen bilateral relations, facilitate further people-to-people contact and exchanges and provide choices in retirement for individuals who have migrated, or who will migrate, to Australia or Portugal during their working lives.
7. The new Agreement provides for enhanced access to certain Australian and Portuguese social security benefits and greater portability of these benefits between the countries. Portability of benefits allows for the payment of a benefit from one country into another country and is an underlying principle of Australia's bilateral agreements on social security where the responsibility for providing benefits is shared. Under the new Agreement, residents of Australia and Portugal will be able to move between Australia and Portugal with the knowledge that their right to benefits is recognised in both countries.

Reasons for Australia to take the proposed treaty action

8. Australia's network of bilateral social security agreements improves access to income support for people whose adult lives are split between Australia and the other country that is a party to the Agreement. Most people benefiting from these agreements are age pensioners. Such agreements also improve income support coverage for people with disabilities, widowed persons and some carers.

9. The new Agreement with Portugal incorporates the same general principles as a number of other agreements Australia has on social security, including with Austria, Canada, Cyprus, Denmark, Ireland, Italy, Malta, the Netherlands, and Spain. A key element in the new Agreement and these other social security agreements is the sharing of responsibility between the Parties in providing adequate social security coverage for former residents of their countries.

10. The Australian Government currently pays benefits under the existing Agreement to a total of 371 people. 359 of these people are in Portugal, 11 are in Australia and one is in a third country. The Portuguese Government is unable to provide figures on the total number of pensions it pays under the Agreement but has advised that it pays 502 pensions into Australia.

11. The current Agreement has been in force since 1 November 1992. It has worked well for the last nine years but substantial changes to both countries' social security systems have necessitated the updating of the Agreement. In Australia, for example, the invalidity pension is now known as the disability support pension and, following changes introduced in November 1991 in the *Social Security Act 1991*, is usually only paid overseas on a permanent basis (that is, for more than 26 weeks) to people who are considered to be severely disabled.

12. For Australia, the new Agreement will cover access to age pensions, disability support pensions (DSP) for people who are severely disabled, wife pensions, double orphan pensions, pensions payable to widows, bereavement allowances, additional child amounts and carer payments in respect of partners of persons who receive either DSP or age pensions. For Portugal, it will cover old age pensions, invalidity pensions, survivors' pensions and death grants, supplements for care, sickness and maternity benefits, unemployment benefits, funeral grants and family allowances for children of pensioners.

13. The new Agreement provides that both countries will share the financial responsibility for providing these benefits. Under the new Agreement an individual may be eligible for benefits from both countries if they meet certain eligibility criteria and they have lived and/or worked in both countries during their working life. Residents of Australia and Portugal will be able to continue to move between Australia and Portugal knowing that their right to benefits is recognised in both countries and that each country will contribute fairly to support those who have spent part of their working lives in both countries.

14. The new Agreement differs from the current Agreement in the following ways:

- DSP is restricted to people who are considered to be severely disabled, that is, people assessed as having no capacity to work or no prospects for rehabilitation within two years of being granted DSP or on leaving Australia to reside overseas. This change is in line with the general restriction on the payment of DSP to people overseas who are
- not severely disabled which was introduced in November 1991 in the Social Security Act 1991. This reflects the growing focus in Australia on rehabilitation, something that is not possible to administer overseas.
- Bereavement Allowance, which is currently payable only to widows is extended to widowed persons. This change reciprocates the coverage provided by Portugal to

surviving spouses and reflects Australian domestic policy. Bereavement allowance is a short term payment for widowed persons without dependant children;

- Unemployment and sickness allowances have been removed from the scope of the Agreement. Such benefits are payable only to Australian residents and are subject to a newly arrived resident's waiting period.
- Double orphan pension has been included to reciprocate the coverage provided by Portugal to surviving children.
- When a person comes to Australia on a temporary basis, their rate of benefit will remain the same for the first 26 weeks. Similarly, when a person departs Australia, on a temporary basis, their rate will remain the same for the first 26 weeks of the absence. This is consistent with changes introduced in September 2000 in the *Social Security Act 1991* to standardise the rules for portability of social security benefits.
- Double coverage provisions have been included to ensure that Australian and Portuguese employers do not have to make two superannuation contributions for an employee seconded to work in the other country. Under current arrangements, the employer would be required to make contributions under both Australian and Portuguese legislation. The new provisions will ensure the employer, and employee where compulsory employee contributions are required, have to contribute only to the relevant superannuation scheme in their home country.

15. The new Agreement with Portugal is one of five of Australia's existing bilateral social security agreements that have been revised. The others are the agreements with Austria, Canada, the Netherlands and Spain. These agreements are the subject of separate National Interest Analyses.

Obligations

16. The new Agreement places equivalent obligations on both Australia and Portugal. Article 1 defines terms used in the Agreement and in some cases limits Australia's obligations under it. For example, carer payment will only be paid to individuals who are caring for a partner (also in Portugal) who is in receipt of an Australian age pension or a disability support pension for the severely disabled. In the case of payments to widows, these will only be paid where the individual is either a *de jure* widow, or was a member of a couple for three years immediately before the death of her partner and was wholly or mainly supported by that partner. Article 2 sets out the scope of social security benefits covered by the new Agreement as described in paragraph 14 of this National Interest Analysis.

17. Article 3 describes the group of people to whom the Agreement applies. It provides that the Agreement shall apply to any person who is or has been an Australian resident or is or has been subject to the legislation of Portugal, and where applicable, to any spouse, dependant or survivor of such a person. Article 7 deals with the application of legislation and provides that the relevant Portuguese legislation applies to persons who are employed or resident in Portugal and the relevant Australian legislation applies to persons who are Australian residents.

18. Article 4 is a statement of principle, common to all bilateral social security agreements. It ensures that all persons to whom this Agreement applies shall be treated equally in regard to rights and obligations derived from relevant Australian or Portuguese legislation.

19. Article 6 deals with portability of benefits and provides for the payment of benefits made under the Agreement by Australia and Portugal to be paid into the other country.

20. The provisions of Part III of the Agreement (Articles 9 to 13) deal with the situation of employees who are sent from one country to the other to work. These Articles are generally aimed at avoiding double coverage of employees or liability of employers in, for example, the case of superannuation. Article 12 specifies that in certain circumstances only one country's legislation

relating to coverage will apply. The general rule is that only the legislation of the country in which the employee is working will apply. The main exception to this rule is where the employee has been seconded to work temporarily in that country (a four-year limit applies for non-Government employees). In such situations, only the relevant legislation of the employee's home country will apply. If the employee is working on a ship or aircraft in international traffic then only the relevant legislation of the country where the employee is resident will apply.

21. Article 14 deems a person in Portugal to be an Australian resident and in Australia for the purposes of lodging a claim for an Australian benefit. It also enables continuing qualification for carer payment for people in Portugal by deeming them to be in Australia.

22. Article 15 deals with partner related Australian benefits. Such benefits, for example wife pension, may be payable to persons whose partners receive certain Australian benefits. There have been no new grants of wife pension since 1995. However, where existing social security agreements provided for the payment of such a benefit, those in receipt of it (by virtue of these agreements) will continue to be entitled to it under the new agreements. This Article provides that where the partner of a person entitled to a partner related benefit receives a benefit under the Agreement, then the partner related benefit is deemed also to be received by virtue of the Agreement.

23. Article 16 establishes the circumstances in which periods of contributions in Portugal can be used to satisfy the minimum residence requirements for an Australian benefit stipulated in the *Social Security Act 1991*. Under this Article, the claimant is able to add these 'deemed' periods to actual periods of residence in Australia in order to qualify for an Australian benefit. Article 18 imposes a similar obligation on Portugal to treat the relevant periods of residence in Australia as periods of contribution in Portugal.

24. The method of calculating the rate of Australian benefits is set out in Article 17. This Article obliges Australia, when calculating a person's entitlement, to modify the method of calculation under the domestic social security law, both inside and outside Australia. Paragraph 1 specifies that certain Portuguese benefits paid to Australian pensioners outside Australia will attract concessional treatment under the Australian income test. This is consistent with concessions given in other agreements and with the principle of shared-responsibility. Paragraphs 3 and 7 specify that the rate paid will remain unchanged for the first 26 weeks of a temporary visit to or from Australia.

25. Article 24 deals with the lodgement of claims and enables the lodgement of social security claims, notices or appeals in either country in accordance with administrative arrangements to be put in place under Article 28.

26. Article 25 provides that, when determining the eligibility or entitlement of a person to a benefit under the Agreement, all events and periods that have a bearing on the entitlement are to be taken into account. Paragraph 2 ensures that benefits granted under the Agreement will not be paid in respect of any period prior to the date of implementation of the Agreement. The Article also provides a mechanism by which a Party may recover overpayment of a benefit resulting from the subsequent grant (with arrears) of an equivalent benefit from the other Party. Such a provision is particularly necessary for Australia's income tested social security system and is a standard provision in Australia's bilateral agreements on social security.

27. Article 26 ensures the portability of benefits under this Agreement and specifies that neither country will deduct administrative costs for the transfer of benefits.

28. Article 27 sets out the means, subject to relevant domestic laws, regulations and policies, through which the relevant authorities are to cooperate in order to implement the Agreement and ensure its effective operation. It also provides for the exchange of information so that the Agreement can be applied.

29. Article 29 provides for the resolution of any difficulties in the interpretation or application of the Agreement. In the first instance, all such disputes are to be resolved by the competent

authorities of the Parties. Where the competent authorities are not able to resolve a particular dispute, the Parties shall consult, at the request of either Party, in order to settle the matter.

30. Article 31 ensures that a person's qualification to receive a benefit under the current Agreement will not be affected by the terms of the new Agreement.

Implementation

31. A new Schedule containing the full text of the new Agreement will be added to the *Social Security (International Agreements) Act 1999*. The regulation making powers contained in Sections 8 and 25 of that Act will be used to implement the Agreement. A new regulation will also be made under the *Superannuation Guarantee (Administration) Act 1992* to give effect to the double coverage provisions. Article 28 specifies that the Agreement will be implemented in accordance with separate administrative arrangements. These administrative arrangements are currently under negotiation.

Costs

32. The new Agreement is not expected to result in any change in administered outlays in forward estimates period to 30 June 2005. Departmental costs of \$0.198m in the same period represent the costs of the implementation of the Agreement, including the costs of changes required to administrative processes, such as new forms and staff training.

33. There will also be costs (\$3.738 million) involved with system enhancements over the period to 30 June 2005 that will be spread across the five revised agreements (Portugal, Spain, the Netherlands, Canada and Austria) and a new Agreement with the United States of America.

Consultation

34. State and Territory Governments were advised of the proposed new Agreement through the Commonwealth-States-Territories Standing Committee on Treaties, and through separate explanatory information provided on 25 June 2001. Replies were received from the South Australian Department of the Premier and Cabinet and the ACT Chief Minister's Department but neither had any comments on the Agreement.

35. The views of 16 Portuguese community groups in Australia were sought but no comments were received. The views of major welfare and disability organisations in Australia were also sought but no comments were received. A list of these organisations is attached.

Future treaty action: amendments, protocols, annexes or other legally binding instruments

36. The Agreement does not specifically provide for the negotiation of any future legally binding instruments although Article 30 obliges the Parties to review the Agreement when requested to do so by either Party. While the Agreement does not specifically deal with amendments, it may be amended at any time by agreement between the Parties.

Withdrawal or denunciation

37. Article 33(1) provides that the Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other a note through the diplomatic channel indicating its intention to terminate the Agreement. In the event of termination, Article 33(2) preserves the rights of those people who are receiving benefits or who have lodged claims and would have been entitled to receive benefits under the Agreement.

Contact Details

International Agreements
International Branch
Department of Family and Community Services

ATTACHMENT

The Portuguese Community Organisations consulted were:

Portuguese Communities Council GREENFIELD PARK NSW	Permanent Council of the Madeira Communities in Australia ARNCLIFFE NSW
Portugal Madeira Club MARRICKVILLE NSW	Sydney Portugal Community Club
Portuguese Welfare Centre CAMPERDOWN NSW	South Coast Portuguese Association WARRAWONG NSW
The University of Wollongong Portuguese Society	Association of Portuguese Speaking Communities of Victoria Inc
Victoria Portuguese Association	Luso Australian Club GEELONG VIC
Centro Familiar Portugues FORTITUDE VALLEY QLD	Cultural and Recreational Portuguese Association WOODVILLE SA
Portuguese Community of SA Inc	Portuguese Association of the Northern Territory Inc
Portuguese and Timorese Social Club Inc CASUARINA NT	WA Portuguese Club Inc

The Welfare and Disability Organisations consulted were:

Western Australian Council of Social Service	Queensland Council of Social Service Inc
South Australian Council of Social Services	Victorian Council of Social Service
ACT Council of Social Service Inc	NSW Council of Social Service
National Welfare Rights Network, NSW	Welfare Rights Centre, Queensland
Welfare Rights Centre SA	Welfare Rights Centre, ACT
Welfare Rights Unit Inc, Vctoria	Australian Council of Social Services
Ethnic Communities Council of Tasmania	Federation of Ethnic Communities' Councils of Australia Inc
Multicultural Council of the Northern Territory	Brotherhood of St Laurence

Executive Director Carers Association of Australia	Executive Director Disability Council of NSW
Australian Pensioners and Superannuants Federation	Association of Superannuants Funds of Australia Ltd
Association for Competitive Employment National Network Seven Hills NSW	Combined Pensioners & Superannuants Association
Australian Council of Social Services	Northern Territory Council of Social Services
Tasmanian Council of Social Services	NSW Council of the Ageing
Deafness Forum Ltd BRADDON ACT	Head Injury Council of Australia MAWSON ACT
National Council on Intellectual Disability MAWSON ACT	National Ethnic Disability Alliance HARRIS PARK NSW
Blind Citizens Australia PRAHRAN VIC	Physical Disability Council of Australia NORTHGATE QLD
Women With Disabilities Australia DICKSON ACT	National Association of People Living with HIV/AIDS DARLINGHURST NSW
ACROD CURTIN ACT	

REGULATION IMPACT STATEMENT

Exemption from the Superannuation Guarantee to remove double coverage

Policy objective

The policy objective is to remove 'double coverage' obligations that can arise under superannuation legislation where an employee is sent to work temporarily in another country.

Background

The Government has decided to enter into international agreements with other countries to overcome the problem of double superannuation coverage. Double coverage can arise where an employee is sent to work temporarily in another country and the employer is required to make superannuation contributions under the legislation of both countries. Under these international agreements it is intended that only the home country's superannuation scheme will apply.

For example, a foreign employer who sends a foreign employee to work temporarily in Australia would be exempted from the Superannuation Guarantee in respect of salary or wages paid to the employee for their work in Australia but will remain subject to the superannuation scheme of their home country. Similarly, an Australian employer who sends an Australian employee to work temporarily in the other country will be exempted from the other country's superannuation scheme but will remain subject to the Superannuation Guarantee.

Implementation Options

Only one option is being considered. This involves amending the Superannuation Guarantee (Administration) Regulations to provide that payment of salary or wages to an employee will not give rise to a Superannuation Guarantee obligation where a international social security agreement provides that the employer is not subject to the Superannuation Guarantee legislation in respect of the work for which the payment was made (on the basis that their home country legislation continues to apply).

Assessment of impacts (costs and benefits)

Impact group identification

Employers

Employers from a country which has an appropriate agreement with Australia, and who send employees to work temporarily in Australia, will benefit from a reduction in labour costs due to no longer being required to pay the Superannuation Guarantee.

Reciprocal benefits for Australian employers will arise where the employer sends an Australian employee to work temporarily in another country with which an agreement is in place. In these cases the employer will only be required to make Superannuation Guarantee contributions, and not contributions under the other country's legislation.

While employers will be required to determine if they are eligible for the new exemption, this is a self assessment process and consistent with existing practices. There are no significant compliance costs expected for employers.

Employees

Employees will no longer have contributions made for them under the legislation of both countries, however they will remain appropriately covered under the legislation of their home country (where they are likely to retire).

Other Impacts

Where a foreign employer is exempted from Superannuation Guarantee under these regulations (and in accordance with an international agreement), this will result in less Superannuation Guarantee contributions being made than would otherwise have been the case. Accordingly the 15% tax normally levied on those contributions will also not be collected. The impact on Government revenue cannot be quantified (as it would depend on the particular countries that become party to the agreements) but is expected to be small.

The reduction in labour costs for these employers may have some impact in promoting investment in Australia, though this cannot be quantified.

Consultation

Groups representing employers and the superannuation industry have been consulted on the proposed agreements and have not expressed any concerns.

Conclusion

Provisions for avoiding double superannuation coverage are common practice amongst most industrialised countries.

Such provisions ensure that employers do not have to make two amounts of contributions for an employee's retirement in respect of the same work undertaken by the employee.

The proposed amendment to the regulations will achieve the objective of removing Superannuation Guarantee obligations from an overseas employer in respect of an employee sent to work temporarily in Australia (provided this is appropriately provided for in an international agreement). Consequently the amendment will remove the double coverage obligation on the employer.

Agreement on Social Security between Australia and the Federal Republic of Germany, and Concluding Protocol, done at Canberra on 13 December 2000

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. It is proposed that Australia enter into a Social Security Agreement and Concluding Protocol with the Federal Republic of Germany.

Date of proposed binding treaty action

2. The Agreement and the Concluding Protocol were signed on 13 December 2000.
3. In accordance with Article 21, the Agreement shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged. It is proposed that instruments of ratification be exchanged during the month of May 2002, to enable entry into force on 1 July 2002.

Date of tabling of the proposed treaty action

4. 21 August 2001.

Purpose of the proposed treaty action and why it is in the national interest

5. The Agreement will bring economic and political benefits to Australia. Not only will it assist in maximising the foreign income of Australian residents, and the flow-on effect of these funds into the Australian economy, it will also serve to reinforce Australia's political, business and strategic interests. The Agreement will further facilitate people-to-people contact and exchange between Australia and Germany, as well as strengthen bilateral relations and provide choices in retirement for individuals who have migrated or will migrate to Australia or Germany during their working lives.
6. The Agreement provides for enhanced access to certain Australian and German social security benefits and greater portability of these benefits between the countries. Portability of benefits allows for the payment of a benefit from one country into another country and is an underlying principle of Australia's bilateral agreements on social security where the responsibility for providing benefits is shared. Under the Agreement, residents of Australia and Germany will be able to move between Australia and Germany with the knowledge that their right to benefits is recognised in both countries.
7. The Concluding Protocol forms an integral part of the Agreement and clarifies how particular Articles of the Agreement are to be interpreted and implemented.

Reasons for Australia to take the proposed treaty action

8. Australia's network of bilateral social security agreements improves access to income support for people whose adult lives are split between Australia and the other country that is a Party to the Agreement. Most people benefiting from these agreements are age pensioners. Such agreements also improve income support coverage for people with disabilities, widowed and orphaned persons and some carers.
9. The Agreement with Germany incorporates the same general principles as a number of other agreements Australia has on social security, including with Austria, Canada, Cyprus, Denmark, Ireland, Italy, Malta, the Netherlands, Portugal and Spain. A key element in this Agreement and the other social security agreements is the sharing of responsibility between the Parties in providing adequate social security coverage for former residents of their countries.
10. The Australian Government currently pays pensions under domestic legislation (the Social Security Act 1991 (the Act)) to around 28,700 German-born pensioners, the vast majority of whom are resident in Australia. Under domestic portability provisions in the Act Australia pays pensions to approximately 250 people (not necessarily German-born people) residing in Germany.
11. German domestic legislation allows pensions to be paid anywhere in the world. However, the amount payable in Australia is generally reduced by around 30% if the beneficiary is not (or no longer) a German citizen. The proposed Agreement will overcome this restriction and will allow a person's full entitlement to be paid in Australia if the beneficiary is an Australian citizen.
12. The Department of Family and Community Services estimates that, through the Agreement, approximately 10,000 German-born people now residing in Australia will either get an increase in their existing German pension or receive a German pension for the first time. An estimated 3,500 former Australian residents now living in Germany are also expected to benefit from the Agreement. German employment practices over the last several decades have seen large numbers of people from Southern and Eastern Europe and the Middle East live and work (and build up commensurate insurance contribution records) in Germany. Significant numbers of these people have migrated to Australia and are likely to be able to claim an increased or new German pension when the Agreement enters into force.
13. For Australia, the Agreement will cover access to age pensions, disability support pensions (DSP) for people who are severely disabled, carer payments in respect of the partners (and wife pensions in respect of the wives) of persons who receive DSP or age pensions, pensions payable to widowed persons and double orphan pensions. For Germany, it will cover pensions payable under the Wage Earners' Pension Insurance, Salaried Employees' Pension Insurance, Miners' Pension Insurance, Steelworkers' Supplementary Insurance and Farmers' Old Age Security. The German legislation provides access to retirement pensions, early retirement pensions, reduced earning capacity pensions (covering disabled persons), child rearing pensions, widow's / widower's pensions and orphan pensions.
14. The Agreement provides that both countries will share the financial responsibility for providing these benefits. This means that individuals may be eligible for benefits from both countries if they meet certain eligibility criteria and they have lived and /or worked in both countries during their working lives. Residents of Australia and Germany will be able to move between Australia and Germany knowing that their right to benefits is recognised in both countries and that each country will contribute fairly to support those who have spent part of their working lives in both countries.
15. The Concluding Protocol provides clarification and /or imposes limitations with regard to the application and implementation of Articles 2, 4, 5, 6, 9, 15 and 16 of the Agreement. All of the provisions in the Protocol deal with Germany, except for Article 3(d) and Article 5 which limit

Australia's obligations by not allowing DSP to be granted overseas (for new claims), nor for it to be paid overseas for more than 26 weeks (for existing customers), in respect of individuals who are not severely disabled.

Obligations

16. The Agreement places equivalent obligations on both Australia and Germany. Article 1 defines terms used in the Agreement and in some cases limits Australia's obligations under it. For example, carer payment is limited to individuals in Germany who care for a partner (also in Germany) in receipt of an Australian (age or DSP) pension - in contrast, in Australia carer payment can be paid to individuals not related to the caree (the person being cared for) and the caree does not have to be in receipt of an Australian pension.

17. Article 2 sets out for both countries the scope of social security benefits covered by the Agreement as described in paragraph 13 of this National Interest Analysis. The provisions of this Article are modified, for Germany only, by Article 1 of the Concluding Protocol.

18. Article 3 describes the group of people to whom the Agreement applies. It provides that the Agreement shall apply, in the case of Australia, to any person who is or has been an Australian resident and, in the case of Germany, to nationals of either Party, refugees, stateless persons and third country nationals, and where applicable, in the case of both countries, to any partner, dependant or survivor of such a person.

19. Article 4 is a statement of principle, common to all bilateral social security agreements. It ensures that all persons to whom this Agreement applies shall be treated equally in regard to rights and obligations derived from relevant Australian or German legislation or under the Agreement. The provisions of this Article are modified, for Germany only, by Article 2 of the Concluding Protocol.

20. Article 5 deems a person in Germany to be an Australian resident and in Australia for the purpose of lodging a claim for an Australian benefit. Such a person must have been a resident of Australia at some time (except for someone claiming a double orphan pension). The provisions of this Article are modified, largely for Germany, by Article 3 of the Concluding Protocol. Article 3(d) of the Concluding Protocol limit Australia's obligations by providing that Article 5 does not apply to a person claiming a DSP if that person is not severely disabled.

21. Article 7 establishes the circumstances in which German periods of coverage can be used to satisfy the minimum residence requirements for an Australian benefit stipulated in the Act. Under this Article, claimants are able to add these 'deemed' German periods to actual periods of residence in Australia in order to qualify for an Australian benefit. However, their Australian payment will be based purely on their actual periods of Australian working life residence. Article 6 imposes a similar obligation on Germany to treat relevant periods of residence in Australia as German periods of coverage. This means that individuals who don't satisfy the minimum five year period required to receive a benefit from Germany, purely for eligibility purposes, can add to those German periods, their periods of Australian working life residence. The period of Australian working life residence is the period between age 16 and "age pension" age spent in Australia (Australian age pension age is 65 for men and currently 62 for women). However, their German payment, similar to Australia's, will be based solely on their German periods of coverage. The provisions of Article 6 are modified, for Germany only, by Article 4 of the Concluding Protocol.

22. The method of calculating the rate of Australian benefits is set out in Article 8. This Article obliges Australia, when calculating a person's entitlement, to modify the method of calculation under Australian social security law, both inside and outside Australia. Paragraph 2 specifies that

certain German benefits paid to Australian pensioners outside Australia will attract concessional treatment under the Australian income test. This is consistent with concessions given in other agreements and with the principle of shared responsibility. Paragraphs 5 and 7 specify that the rate paid will remain unchanged for the first 26 weeks of a temporary visit to or from Australia.

23. Article 9 deals with portability of benefits and provides for the payment of benefits made under the Agreement by Australia and Germany to be paid into the other country. The provisions of this Article are modified, for Australia only, by Article 5 of the Concluding Protocol. It limits Australia's obligations by restricting to 26 weeks the portability of disability support pensions (DSP) for persons who are not severely disabled. This is in line with changes being made to Australia's other agreements on social security and reflects the current emphasis in Australia on the rehabilitation of the disabled, something which would be impossible to administer outside Australia.

24. Article 10 provides for the relevant authorities to assist each other, subject to relevant domestic laws, regulations and policies, in the implementation of the Agreement. Such assistance may include the exchange of information to assist in processing claims and arranging relevant medical examinations.

25. Article 13 enables the lodgement of social security claims, notices or appeals in either country. This Article obliges Australia and Germany to accept any such documentation lodged with the other Party, to deem claims for benefits as claims for corresponding benefits from the other Party and to forward all such documents to the other Party without delay.

26. Article 14 provides a mechanism by which a Party may recover overpayment of a benefit resulting from the subsequent grant (with arrears) of an equivalent benefit from the other Party. This Article is particularly necessary for Australia's income tested social security system and is a standard provision in Australia's bilateral agreements on social security.

27. Article 15 provides for the protection of the privacy of information collected for social security purposes. Customer information exchanged between Germany and Australia cannot be used for any other purpose without the authority of the other Party. Paragraph 5 does provide for disclosure of information in cases that are mandatory under the laws of a country, for example in cases of criminal prosecution or for taxation purposes. The provisions of this Article are modified, for Germany only, by Article 6 of the Concluding Protocol.

28. Article 18 describes the means by which any dispute with regard to the interpretation or application of the terms of the Agreement is to be resolved. All differences are to be settled in the first instance by the competent authorities of both Parties, that is, on behalf of Australia, the Department of Family and Community Services and, on behalf of Germany, the Federal Ministry of Labour and Social Affairs. If the dispute is not able to be resolved through consultation, this Article provides for the establishment of an arbitral tribunal. The decision of the tribunal will be final.

29. Article 19 provides that the Agreement shall not establish any entitlement to benefits for any period prior to its entry into force. It also provides that, when determining eligibility to a benefit, all events and periods that have a bearing on a person's entitlement will be taken into account.

30. Article 20 provides that the Concluding Protocol forms an integral part of the Agreement. Thus the Articles referred to in the Concluding Protocol must be implemented in accordance with its terms.

31. Article 21 provides that the Agreement will be subject to ratification and shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged.

Implementation

32. A new Schedule containing the full text of the new Agreement will be added to the Social Security (International Agreements) Act 1999. The regulation making powers contained in Sections 8 and 25 of that Act will be used to implement the Agreement. Article 16 specifies that the Agreement will be implemented in accordance with a separate Administrative Arrangement. This Administrative Arrangement is an instrument of less than treaty status which was signed on 9 March 2001.

Costs

33. The Agreement is expected to result in a small increase in administered outlays of A\$0.175m over the forward estimates period to 30 June 2004. Departmental costs of A\$1.929m over the same period represent the costs of the implementation of the Agreement, including the costs of developing new computer systems, administrative processes, forms and staff training.

Consultation

34. State and Territory Governments were advised of the proposed Agreement through the Commonwealth-States-Territories Standing Committee on Treaties, and through separate explanatory information sent out on 25 June 2001 as part of the consultation process. Replies were received from the South Australian Department of the Premier and Cabinet and the ACT Chief Minister's Department but neither had comments on the Agreement.

35. The views of around 75 German community groups in Australia were sought and responses were received from two organisations, ie the Australian German Welfare Society (AGWS), Melbourne and the Australian-German Friendship & Welfare Society (AGFWS), Central Coast (NSW). The AGWS, Melbourne commented that it works closely with Centrelink International Services in assisting German born pensioners with their German pension claims processing and asked that it be kept informed of future implementation issues surrounding the Agreement. It argued that the recent social security amnesty had resulted in confusion about an amnesty from the Australian Taxation Office and that the period of the amnesty should have been longer. The AGFWS, Central Coast (NSW) raised issues not directly related to the Agreement, being disappointed that the existing Double Taxation Agreement (DTA) had still not been revised and that the social security amnesty should have been extended until a revised DTA had been concluded. A list of the German community groups whose views were sought is attached.

36. The views of major welfare organisations in Australia were also sought but no comments were received. A list of these organisations is attached.

Future treaty action: amendments, protocols, annexes or other legally binding instruments

37. The Agreement does not specifically provide for the negotiation of any future legally binding instruments. It may be amended at any time by agreement between the Contracting Parties.

Withdrawal or denunciation

38. Article 22(1) provides that the Agreement shall be concluded for an indefinite period of time and sets out the procedures and timing for its termination. It provides that the Agreement

may be terminated at the end of a calendar year by giving three months' notice, through diplomatic channels.

39. In the event of termination by denunciation, Article 22(2) preserves the rights of those people who are receiving benefits or who have lodged claims and would have been entitled to receive benefits under the Agreement.

Contact details

International Agreements
International Branch
Department of Family and Community Services

ATTACHMENT

The German Community Organisations consulted were:

German Australian Welfare Society Inc
(Strathfield, NSW)
German Australian Welfare Society Inc
(Bassendean, VIC)
Deutsche katholische Gemeinde
St Christophorus
(Croydon, NSW)
Deutsche Evang.-Luth. Johannesgemeinde
(Springvale, VIC)

Tempelgesellschaft Australien
(Bentleigh, VIC)

Allambie Lutheran Homes Inc.
Martin Luther Hostel
(Allambie Heights, NSW)
St. Raphael deutsches Altendorf
(Blacktown, NSW)
Goethe-Institut Sydney
(Woollahra, NSW)
Goethe Gesellschaft
(Canberra, ACT)
Goethe-Gesellschaft Südastralien
(North Adelaide, SA)

Blomekörfge Karnevalsclub
(Liverpool, NSW)

Cäcilien Chor
(Croydon, NSW)

Der Welttempelherren Orden
(Fairfield, NSW)
The Wagner Society
(Sydney, NSW)

Ferendorf Ltd, Holiday Village
(Kangaroo Valley, NSW)
German Choir Melody
(Canley Heights, NSW)
German-speaking Senior Citizens Inc.
(Winston Hills, NSW)
Illawarra Schützenclub
(Warilla, NSW)

Blue Mountains Australian German Friends
(Emu Heights, NSW)
Club Teutonia Inc.
(German Australian Club)
(Hampton Park, VIC)
Deutscher Karnevalsverein
(Geelong, VIC)

German Australian Welfare Society Inc
(South Melbourne, VIC)

Deutsche Evang-Luth. Kirche
(Sydney, NSW)

Deutsche katholische Gemeinde St Raphael
(Blacktown, NSW)

Deutsche katholische Christophorus Gemeinde
(Camberwell, VIC)

St Bonifacius deutsche katolische Gemeinde
(Collinswood, SA)

St. Christophorus Home for the Aged
Association

(Croydon, NSW)

Martin Luther Heim Seniorendorf
(Boronia, VIC)

Goethe-Institut Canberra
(Civic Square, ACT)

Goethe-Institut Melbourne
(Melbourne, VIC)

Australian Goethe Society
(Queensland Branch)
(Clear Mountain, QLD)

Die Brücke Inc.

c/o Concordia Club
(Stanmore, NSW)

Concordia Club Ltd,
deutscher Verein
(Stanmore, NSW)

Deutsches Sportabzeichen
(Cronulla, NSW)

Central Coast Australian-German Friendship
and Welfare Society Inc
(Phegans Bay, NSW)

Germania Club Newcastle Ltd
(Warners Bay, NSW)

German Male Choir Sanssouci
(Unanderra, NSW)

Hubertus Country Club Ltd
(Liverpool, NSW)

German Senior Community Inc.
Ruheständler Verein
(Seven Hills, NSW)

Club Astoria (German-Australian Society)
(Morwell, VIC)

Club Tivoli
(Deutscher Verein Melbourne Inc.)
(Windsor, VIC)

Deutscher Kulturkreis Melbourne
(Cheltenham, VIC)

German-speaking Society Yarra Valley Inc.
(Mt Evelyn, VIC)
Ost und West Preussen Gruppe
(Donvale, VIC)
Brisbane deutscher Turnverein
(East Brisbane, QLD)

Concordia Club of Mt Isa
(Mount Isa, QLD)
Deutsches Theater Down Under
(Albion, QLD)
German Club Sunshine Coast Inc.
(Caloundra, QLD)
Der Welttempelherren Orden
(Littlehampton, SA)
Süd Australischer Allgemeiner
Deutscher Verein e.V.
(Adelaide, SA)

Harmonie German Club Canberra Inc.
(Kingston, ACT)
Australian German-speaking Club
(West Launceston, TAS)

Association of German-speaking communities
(Melbourne, VIC)

Rhein-Donau-Hastings Verein Inc
(Port Macquarie, NSW)
Australian-German-Austrian Club
Germania Ltd.
(Berkeley, NSW)
German-Austrian Oktoberfest Society
(Melbourne, VIC)
German Austrian Club Townsville
(Townsville, QLD)
German-Australian Chamber of Industry and
Commerce
(Sydney Square, NSW)
Australian German Association
(Melbourne, VIC)

Euro-Media Pty Ltd
(Bankstown, NSW)

Liedertafer Arion (Deutscher Männerchor)
(Windsor, VIC)
Treue Husaren R.K.V. Melbourne Inc.
(Sunshine, VIC)
Central Queensland German-Australian Club
Inc.
(Rockhampton, QLD)
Der Welttempelherren Orden
(Banyo, QLD)
German Club Gold Coast
(Mermaid Beach, QLD)
German-Australian Club Townsville Ltd
(Aitkenvale, QLD)
German Australian Society, SA Inc.
(Port Augusta, SA)
German Cultural Club
(Mt Claremont, WA)

German Club Darwin
(Winnellie, NT)
German Australian Association of
Tasmania Inc.
(Glenorchy, TAS)
German-Austrian Society of Australia
(Cabramatta, NSW)

German Austrian Association Coffs Harbour
(Bayldon, NSW)
German-Austrian Club
(Wodonga, VIC)

German Austrian Swiss Association F.N.Q.
(Cairns, QLD)
Rhein-Donau Club
(Myaree, WA)
German-Australian Chamber of Industry and
Commerce
(Melbourne, VIC)
Western Australian German
Business Association
(East Perth, WA)

The major welfare organisations consulted were:

NSW Council on the Ageing
(Sydney, NSW)

Welfare Rights Centre Inc
(Stone's Corner, QLD)

Welfare Rights Centre
(Turner, ACT)

Australian Council of Social Service
(Strawberry Hills, NSW)

Federation of Ethnic Communities' Councils of
Australia
(Curtin, ACT)

Brotherhood of St Laurence
(Fitzroy, VIC)

Disability Council of NSW
(Sydney, NSW)

Association of Superannuation Funds of Australia
(Sydney, NSW)

Combined Pensioners & Superannuants
Association
(Surry Hills, NSW)

Northern Territory Council of Social Service
(Darwin, NT)

Queensland Council of Social Service
(Red Hill, QLD)

Victorian Council of Social Service
(Melbourne, VIC)

NSW Council of Social Service
(Surry Hills, NSW)

Deafness Forum Ltd
(Braddon, ACT)

National Council on Intellectual Disability
(Mawson, ACT)

Blind Citizens Australia
(Prahran, VIC)

Women With Disabilities Australia
(Dickson, ACT)

ACROD

(Curtin, ACT)

Australian Association of the Deaf
(Sydney, NSW)

National Welfare Rights Network
(Surry Hills, NSW)

Welfare Rights Centre
(Adelaide, SA)

Welfare Rights Unit Inc
(Collingwood, VIC)

Ethnic Communities' Council of Tasmania
(Hobart, TAS)

Multicultural Council of the
Northern Territory
(Darwin, NT)

Carers Association of Australia
(Deakin, ACT)

Australian Pensioners and Superannuants
Federation
(Canberra, ACT)

Australian Bankers' Association
(Melbourne, VIC)

Tasmanian Council of Social Service
(Battery Point, TAS)

Western Australian Council of Social Service
(Perth, WA)

South Australian Council of Social Service
(Adelaide, SA)

ACT Council of Social Service
(Canberra, ACT)

National Disability Advisory Council
(Canberra, ACT)

Head Injury Council of Australia
(Mawson, ACT)

National Ethnic Disability Alliance
(Harris Park, NSW)

Physical Disability Council of Australia
(Northgate, QLD)

National Association of People Living with
HIV / AIDS
(Darlinghurst, NSW)

Association for Competitive Employment
(Seven Hills, NSW)

Amendments, done at Washington on 17 November 2000, to the Agreement and Operating Agreement Relating to the International Telecommunications Satellite Organization “INTELSAT” of 20 August 1971

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. It is proposed that Australia accept the amendments, done at Washington on 17 November 2000, to the Agreement (the Agreement) and the Operating Agreement (the Operating Agreement) Relating to the International Telecommunications Satellite Organization “INTELSAT” of 20 August 1971.

Date of proposed binding treaty action

2. It is proposed that Australia’s acceptance be deposited as soon as practicable after 21 September 2001.
3. Amendments to both the Agreement and the Operating Agreement would enter into force 90 days after the depositary has issued notification of receipt of the requisite number of approvals, acceptances or ratifications. Amendments to the Agreement require acceptance, approval or ratification of two-thirds of the Parties (Article XV). Amendments to the Operating Agreement require acceptance by two-thirds of the Signatories provided that such two-thirds include Signatories which held at least two-thirds of the total investment shares, or a number of Signatories equal to or exceeding 85 percent of the total number of signatories (Article 22).

Date of tabling of the proposed treaty action

4. 21 August 2001.

Purpose of the proposed treaty action and why it is in the national interest

5. The proposed treaty action will formalise Australia’s acceptance of amendments to the foundation instruments of INTELSAT resulting from a decision of the Twenty Second Assembly of Parties (comprising member states) on 1 April 1998 to restructure INTELSAT. From 18 July 2001, a new private corporation, Intelsat Ltd, will provide global telecommunications services on a fully commercial basis with a structure more able to participate in a competitive global market environment. A small intergovernmental organisation called International Telecommunications Satellite Organisation (ITSO) will supervise Intelsat Ltd's adherence to its public service obligations. The Australian Government agrees with the proposed privatisation of INTELSAT and its position reflects an extended process of consultation with the State and Territory Governments and other key stakeholders. The effective and efficient operation of Intelsat Ltd is of great importance to Australia because it remains an integral part of the national telecommunications system. The privatisation of INTELSAT is also in accord with the Government’s competition policy.

Reasons for Australia to take the proposed treaty action

Background

6. The International Telecommunications Satellite Organization (INTELSAT) began operations in 1964 and was formally established as an international organisation on 20 August 1971 to ensure the provision of the satellite capacity necessary to make international telecommunications services publicly available. At that time, the costs and risks of such a venture were too high for normal commercial development.
7. INTELSAT's operations were formalised by an Agreement, to which countries are party, and an Operating Agreement, to which the telecommunications operators designated by each Party to the Agreement are signatories. The Agreement required that the necessary satellite capacity be globally available and provided on a commercial and non-discriminatory basis. The Operating Agreement sets out the commercial basis upon which INTELSAT services are to be delivered and regulates the day-to-day delivery of these services.
8. 146 countries, including Australia, are party to the Agreement. Approximately 5 per cent of Australia's international telecommunications traffic is carried via the INTELSAT system and some 50 international destinations can only be reached via INTELSAT. As INTELSAT is an integral part of the national telecommunications system, its effective and efficient operation is of great importance to Australia.
9. On 1 April 1998, the Twenty Second Assembly of Parties (comprising member states) unanimously decided to restructure INTELSAT into a more market responsive organisation.

Privatisation of INTELSAT

10. The privatisation of INTELSAT will minimise government involvement in the provision of INTELSAT services and promote a fair and open competitive environment for all players in the international telecommunications market. Allowing INTELSAT to compete on a more commercially viable basis will provide for expanded growth, increasing economies of scale and reduced costs for life-line users. Such an approach is in line with Australian Government policy regarding privatisation and competition. Accordingly, the Australian Government supports the privatisation of INTELSAT. In reaching its position the Government engaged in extensive consultations with the State and Territory Governments and other key stakeholders (Telstra and Optus) each of which is supportive of the privatisation initiative.
11. INTELSAT's primary role is to act as a wholesaler of satellite capacity. The Parties to the Agreement are principally responsible for its policy direction, while the Signatories to the Operating Agreement finance its operations and utilise services. A Board of Governors (similar to a corporation's board of directors) represents the Signatories and is responsible for INTELSAT's commercial operation and governance.
12. INTELSAT's ability to respond quickly and efficiently to market developments and customer needs is constrained by the current terms of the Agreement and the Operating Agreement. Decision-making processes within INTELSAT are slow and often require decisions to be made by the Assembly of the Parties to the Agreement which ordinarily meets every two years. Further, the requirement under the Operating Agreement for Signatories to finance and bear full liability for new INTELSAT services leads to a conservative and slow approach to commercial proposals. The services INTELSAT can offer (without the consensus of all Parties) do not completely reflect changes in market demand or technology since the Agreement entered into force.
13. Under the Operating Agreement, a commercial funding base for INTELSAT was established initially through the allocation of Investment Shares that each Designated Signatory was required to

purchase in order to obtain access to the INTELSAT satellite system. Charging for the use of the INTELSAT space segment for the provision of specialised telecommunications services generates additional revenue.

14. As at 1 March 2001, Australia held a 2.64 per cent investment share, valued at approximately US\$53.4 million (approximately A\$104 million). Of this investment share, Telstra invests 1.71 per cent, and Cable and Wireless Optus invests 0.67 per cent. Up to 15 June 2001, Telstra was the Australian designated Signatory to the Operating Agreement. A new Signatory, Reach Networks Australia Pty Ltd (RNAPL), has now been designated to hold the beneficial interest in what was formerly Telstra's investment share in INTELSAT, and operate utilisation rights on behalf of Telstra. RNAPL is the subsidiary of the 50/50 joint venture company, Reach Ltd, established as a result of a strategic commercial alliance between Telstra and the Hong Kong based Pacific Century Cyber Works.

15. In recent years, INTELSAT's competitive position has been threatened by increased market liberalisation and changes to the international and domestic regulatory environment of member states which have led to a significant rise in the number of competitors (for example, Panamsat, Astrolink, Skybridge and Teledisc) free of the operating constraints inherent in an intergovernmental organisation. Reform and restructure of INTELSAT were considered vital in order to ensure its ongoing ability to compete in the medium to long term and to deliver its public service obligations.

16. Given the importance of INTELSAT to Australia, it was important that reforms be achieved which met the long term needs of Australian consumers, the Australian telecommunications industry (for example, carriers, Internet and other service providers), existing users of INTELSAT's services (for example, carriers, broadcasters, the Department of Defence etc) and INTELSAT's Australian investors (Telstra and Optus). Australia's objectives in the reform process were to: minimise government involvement in the provision of INTELSAT services; maintain delivery of public service obligations to user countries and destinations where there is no cost effective alternative to INTELSAT; provide a fair and open competitive environment for all players; and support the elimination of unnecessary privileges and immunities currently enjoyed by INTELSAT.

The establishment of ITSO and Intelsat Ltd

17. Following extensive canvassing of options by the INTELSAT Board of Governors and consultation among member states it was agreed, at the Twenty-Fifth (Extraordinary) Meeting of the Assembly of Parties held in Washington from 13 to 17 November 2000, that all steps necessary to achieve full privatisation of INTELSAT by 18 July 2001 should be taken.

18. In order to facilitate the privatisation of INTELSAT, the Agreement was amended to delete all references to INTELSAT and to the Operating Agreement and provide for the establishment of ITSO. ITSO will consist of an Assembly of Parties (of which all Parties to the Agreement are members) and an executive organ to be headed by a Director General who is responsible to the Assembly of Parties. As in the case of INTELSAT, the Assembly of Parties will be the principal organ of ITSO. The powers and functions of the Assembly of Parties are detailed in Article IX of the Agreement. While the Assembly of Parties retains oversight of general policy and long-term objectives it no longer has a role in making decisions on the detail of the provision of services.

19. Under the amended Agreement, a new private entity, Intelsat Ltd, will provide the global telecommunications services currently provided by INTELSAT. Although operating on a fully commercial basis, Intelsat Ltd will retain INTELSAT's public service obligations (reflected in the Core Principles of the Agreement (Article III) to maintain global connectivity and coverage, serve lifeline connectivity customers, and provide non-discriminatory access to its satellite systems.

20. ITSO's principle function is to oversee the delivery by Intelsat Ltd (referred to in the Agreement as "the Company") of international public telecommunications services in accordance with the Core Principles. In supervising the delivery of services by Intelsat Ltd, ITSO will take all appropriate action, including through the conclusion of a "Public Services Agreement" with Intelsat Ltd.

21. Upon privatisation, the Operating Agreement is effectively made redundant and will be subsumed in a range of corporate transactions and documents reflecting the corporate nature of Intelsat Ltd. The entry into force provision of the Operating Agreement (Article 23) has been amended to provide that the Operating Agreement shall terminate either when the Agreement ceases to be in force or when amendments to the Agreement deleting references to the Operating Agreement enter into force, whichever is the earlier. This effectively means that once the required number of Parties to the Agreement accept the amendments to the Agreement (which include the deletion of references to the Operating Agreement), the Operating Agreement will terminate.

22. Rapid implementation of the privatisation process was considered necessary to ensure the ongoing competitiveness of INTELSAT's commercial services and continuity in the delivery of its public service obligations. In this context, Parties have been urged to complete their domestic processes to enable them to accept the amendments to the Agreement and the Operating Agreement as expeditiously as possible. At a meeting of the Board of Governors on 18 July 2001 it was determined that all the conditions for privatisation had been fulfilled and Intelsat Ltd commenced operations on that date.

23. Intelsat Ltd will continue to operate 20 geo-stationary satellites, with an additional nine satellites to be launched in the next two years. Its services will include the provision of wholesale Internet, broadcast, telephony and corporate network solutions to over 200 countries and territories – services which earned revenues of over US\$ 1 billion in 2000. In the Australian domestic context, the privatisation of INTELSAT will have a positive impact in respect of satellite access and only a minor impact on relevant instruments (see paragraph 30 below).

Obligations

Agreement

24. Under Article VI, ITSO is to enjoy the full capacity necessary for the exercise of its functions and achievement of its purposes. All Parties to the Agreement are obliged to take all action necessary within their jurisdictions to ensure that ITSO will have the legal personality to, amongst other things, "conclude agreements with States or international organisations; contract; acquire and dispose of property; and be a party to a legal proceedings."

25. Article XI provides that the Parties shall exercise their rights and meet their obligations under the Agreement in a manner fully consistent with and in furtherance of the principles stated in the Preamble, the Core Principles in Article III and other provisions of the Agreement. Under this Article, all Parties have the right to attend and participate in conferences and meetings at which they are entitled to be represented under the terms of the Agreement. In order to facilitate the delivery of services by Intelsat Ltd in accordance with the Core Principles, all Parties are obliged to take any action required "in a transparent, non-discriminatory, and competitively neutral manner, under applicable domestic procedure and pertinent international agreements to which they are party".

26. Article XII refers to frequency assignments. It provides that the Parties of ITSO shall retain the orbital locations and frequency assignments used in the process of coordination or registered on behalf of the Parties with the International Telecommunications Union (ITU) until such time as the selected Notifying Administration(s) has provided its notification to the Depositary that it has approved, accepted or ratified the Agreement. The Article then provides for the selection of a Party to represent ITSO's members with the ITU during the period in which the Parties of ITSO retain such assignments. The Article goes on to outline the obligations of such a Party as well as a Party selected to act as the Company's Notifying Administration.

27. Article XIII provides for the establishment of ITSO's headquarters and accords the organisation relevant privileges and immunities. Paragraph (a) provides that ITSO's headquarters shall be in Washington unless otherwise determined by the Assembly of Parties. Paragraph (b) provides that within the scope of activities authorised by the Agreement, all Parties shall exempt ITSO and its property from all national income and direct national property taxation. Further, each Party

undertakes to "use its best endeavours to bring about, in accordance with the applicable domestic procedure, such further exemption of ITSO and its property from income and direct property taxation, and customs duties, as is desirable, bearing in mind the particular nature of ITSO". Paragraph (c) provides that each Party (other than the Party in whose territory the headquarters of ITSO are located) must conclude, as soon as possible, a Protocol with ITSO to cover the privileges, exemptions and immunities to be granted to the organisation, its officers, specified employees of ITSO and to Parties and representatives of Parties.

28. Article XVI describes the means by which any legal dispute, arising either in connection with rights and obligations under the Agreement or in connection with separate agreements between ITSO and any Party, is to be resolved. All disputes are to be settled "in a reasonable time" and if such settlement is not possible they are to be submitted to arbitration in accordance with the provisions of Annex C to the Agreement. The decision of the arbitral tribunal shall be binding on all parties to the dispute.

Operating Agreement

29. The acceptance of the amendment to the Operating Agreement will not impose any legal obligations on Australia. The Operating Agreement imposes obligations only on the Signatories to the Operating Agreement which, from the date of privatisation (that is, 18 July 2001), will engage with Intelsat Ltd on a purely commercial basis.

Implementation

30. Prior to privatisation, the Australian Government was required under Article II (b) of the Operating Agreement to designate a Signatory (that is, a telecommunications entity, public or private), to sign the Operating Agreement. Once designated, the Signatory is able to negotiate or enter directly into traffic agreements with INTELSAT with respect to their use of channels of telecommunications provided under the Agreement and the Operating Agreement. The current Australian signatory to the Operating Agreement is RNAPL (see paragraph 14 above). Section 365 (1)(b)(ii) of the *Telecommunications Act 1977* gives the Minister for Communications, Information Technology and the Arts the power to direct the Signatory to the Operating Agreement in the performance of its functions as Signatory. Following privatisation, the Operating Agreement will effectively become redundant and all Signatories (including RNAPL) will be able to engage with Intelsat Ltd on a purely commercial footing rather than through the formal procedures required under the current arrangements. Section 365 (1)(b)(ii) of the *Telecommunications Act* will also become redundant and need to be repealed.

31. The Telecommunications (Government Policies) Notification No.1 of 1994 and the Telecommunications (Implementation of Government Policies) Direction No.1 of 1994 made pursuant to Section 74 of the *Telecommunications Act 1991*, currently notify and direct Telstra that it is the Australian Signatory to the Operating Agreement. With the privatisation of INTELSAT it is not necessary to maintain this Notification and Direction. A formal revocation of the Notification and Direction will be required before the repeal of section 365(1)(b)(ii) of the *Telecommunications Act 1997* can take place.

32. Article XIII of the amended Agreement obliges Parties to provide privileges and immunities to ITSO, its officers and specified employees. In accordance with the provisions of Article XV of the original Agreement, the Australian Government granted INTELSAT a range of privileges and immunities under the *International Organisations (Privileges and Immunities) Act 1963* and the *Intelsat (Privileges and Immunities) Regulations*. These privileges and immunities include those specified in paragraphs 6 and 7 of the First Schedule of the *International Organisations (Privileges and Immunities) Act* (for example, immunity from suit or other legal processes, inviolability of property and assets, inviolability of archives and exemption from duties on the importation or exportation of goods imported or exported for official use). Once a Protocol has been concluded with ITSO, as required by Article XIII, new Regulations will need to be made under the *International Organisations (Privileges and*

Immunities) Act 1963 in order to implement the Protocol and replace the references to INTELSAT with references to ITSO.

Costs

33. INTELSAT's operations are funded by the investments of Signatories, and Parties to the Agreement are not currently required to contribute directly to its costs. Privatisation will see a retention of the share issue to investing corporations by Intelsat Ltd which, when coupled with revenue generated by its other corporate operations, will provide sufficient resources for both retention of existing services and planned future expansion. Article XXI of the amended Agreement provides that it will be in effect for at least twelve years from the date of transfer of ITSO's space segment to Intelsat Ltd. Article VII of the Agreement provides that ITSO will be funded for this twelve-year period through the "retention of certain financial assets at the time of transfer of ITSO's space segment to the Company". In the event ITSO continues beyond this twelve-year period, ITSO shall obtain funding through the Public Services Agreement to be concluded with Intelsat Ltd.

34. It is not expected that the grant of privileges and immunities to ITSO will entail any significant direct costs to the Australian Government. ITSO will not have a regional office located in Australia and the office established by Intelsat Ltd in Sydney has been agreed to on the basis that no privileges and immunities will apply in view of its international corporate status.

35. The Australian Government (through the Department of Communications, Information Technology and the Arts) incurs only minimal costs in attending meetings of the Assembly of Parties. It is expected such costs will reduce in view of the more limited role of ITSO under the amended Agreement with regard to the functioning of Intelsat Ltd. The cost of the Investment Share to RNAPL would be considered a normal business transaction cost which is recouped through revenue gained by the sale of services utilising relevant space capacity.

Consultation

36. Prior to the decision to privatise INTELSAT, taken at the extraordinary meeting of the Assembly of Parties held in November 2000, the Australian Government engaged in extensive consultation with the State and Territory Governments and other key stakeholders (Telstra and Optus) regarding the proposed restructuring. The consultations were initiated during the lead up period to the decision to privatise and the consensus view was that privatisation was in Australia's best interest. The proposed amendments to the Agreement and Operating Agreement were notified in the Commonwealth-States-Territories Standing Committee on Treaties Schedule. Each of the State and Territory Governments and principal stakeholders was consulted directly in relation to the privatisation of INTELSAT and the consensus view was that the restructure should proceed as proposed.

Future treaty action: amendments, protocols, annexes or other legally binding instruments

37. Article V of the Agreement provides that in fulfilling its supervisory function, ITSO shall take all appropriate actions to supervise the implementation by Intelsat Ltd of the Agreement's Core Principles, including entering into a legally binding Public Services Agreement with Intelsat Ltd. It is not expected that ITSO member states will be involved directly in the negotiation of the Public Services Agreement.

38. Article XIII obliges Australia to conclude a Protocol with ITSO as soon as possible covering the privileges, exemptions and immunities that will be accorded to ITSO, ITSO's Officers, specified employees and to other Parties and their representative.

39. Amendments to the Agreement may be made by virtue of Article XV subject to the approval of the Parties. Article XXI of the Agreement provides that ITSO shall be in effect for at least twelve years from the date of transfer of ITSO's space system (orbital locations and frequency assignments) to

Intelsat Ltd. The Assembly of Parties may, by a vote of the Parties, terminate this Agreement effective upon the twelfth anniversary of the date of transfer of ITSO's space system to Intelsat Ltd.

40. The Operating Agreement does not specifically provide for the negotiation of any future legally binding instruments. Amendments to the Operating Agreement may be made by virtue of Article 22 subject to the approval of the Meeting of the Signatories. Article 23 of the Operating Agreement provides that it shall terminate either when the Agreement ceases to be in force or when amendments to the Agreement deleting references to the Operating Agreement enter into force, whichever is the earlier.

Withdrawal or denunciation

41. Article XIV of the Agreement provides that any Party may withdraw voluntarily from the Agreement and from ITSO. A Party is required to give written notice to the Depositary (the Department of State of the United States of America) and withdrawal becomes effective three months after receipt of the notification by the Depositary. Once Intelsat Ltd becomes fully operational the Operating Agreement will effectively cease to be in force.

Contact details

Radiocommunications and Satellite Policy
Enterprise and Radiocommunications Branch
Department of Communications, Information technology and the Arts

Final Protocol and Partial Revision of the 1998 Radio Regulations, as incorporated in the Final Acts of the World Radiocommunication Conference (WRC-2000), done at Istanbul on 2 June 2000.

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. It is proposed that Australia consent to be bound by the Partial Revision of the Radio Regulations and Final Protocol as incorporated in the Final Acts of the World Radiocommunication Conference of the International Telecommunication Union (ITU), done at Istanbul on 2 June 2000 (WRC-2000). Australia signed the Final Acts on the same date and a declaration was lodged.
2. Under Article 54 of the ITU Constitution, a revision to the Radio Regulations applies provisionally to all Members who did not oppose it at the time of signature. The bulk of WRC-2000 revisions will apply provisionally from 1 January 2002, with the remaining provisions to apply from the special dates of application indicated in Article S59 of the revised Radio Regulations.
3. As Australia has signed the WRC-2000, it will be subject to the provisional application of the revised Radio Regulations, which would continue until Australia notifies the Secretary-General of the ITU of its decision concerning its consent to be bound by the WRC-2000 revisions. In the absence of such notification, a Member who has signed the WRC-2000 shall be deemed to have consented to be bound thirty-six months from the date of commencement of provisional application of the revision.
4. At the time of signature, Australia made one declaration (No. 91) that will be maintained. The declaration concerns claims by equatorial countries to exercise sovereign rights over segments of the geostationary satellite orbit. It reflects Australia's position that the geographical situation of particular countries does not support claims to any preferential rights to the geostationary orbit.

Date of proposed binding treaty action

5. As soon as practicable after 28 September 2001.

Date of tabling of the proposed treaty action

6. 21 August 2001.

Purpose of the proposed treaty action and why it is in the national interest

7. It is proposed that Australia consent to be bound by the WRC-2000 revisions of the ITU Radio Regulations and that the declaration lodged by Australia at the time of signature be maintained.
8. The proposed treaty action would place Australia in line with the rest of the world in its regulation of the radio-frequency spectrum. Australia would retain its sovereign right to control

transmissions within and into its territory and to protect Australian users from interference from foreign systems. This makes possible the introduction of new communication technologies and greater access to mobile telephone and broad-band data services. It would also continue Australia's good standing in the ITU and enable Australia to maintain its position that the geographical situation of particular countries does not enable them to claim any preferential rights to the geostationary satellite orbit.

Reasons for Australia to take the proposed Treaty action

9. The ITU is a specialised United Nations agency with 189 Members. It is concerned with international cooperation in the use of telecommunications and the radio-frequency spectrum. To this end, it establishes treaties and recommends world standards for telecommunication and radiocommunication services, including satellite services. Australia has been a Member of the ITU and its predecessors since the 19th Century.

10. The basic instruments of the ITU are the Constitution and the Convention, which set out the rights and obligations of the Members of the ITU. They are complemented by the International Telecommunication Regulations and the Radio Regulations, which together constitute the Administrative Regulations of the ITU. The provisions of the Administrative Regulations have treaty status and are binding on Members.

11. The purpose of the Radio Regulations is to ensure the rational, efficient and equitable use of the radio-frequency spectrum. In this respect, the Radio Regulations contain allocations to over 40 radiocommunication services and provide technical, operational and regulatory conditions for the use of the radio-frequency spectrum and satellite orbits.

12. To ensure that the Radio Regulations facilitate the introduction of new technical advances, they are periodically reviewed (and may be revised) by a World Radiocommunication Conference. Such a Conference (WRC-2000) was held in Istanbul in May-June 2000, and resulted in the revision under consideration.

Benefits to Australia

13. The WRC-2000 revision provides for the release of an additional spectrum for third-generation international mobile telecommunications networks and services; establishes operating conditions for a new-wave of non-geostationary satellites; adopts a new broadcasting-satellite plan for the Asia-Pacific, Europe and Africa; and, makes additional allocations for the radionavigation-satellite service which will be used to support satellite positioning systems.

14. Amongst other things, these changes will provide the basis for the increased availability of mobile telephone and broadband data services (ie. Internet and multimedia applications) throughout Australia. The increased availability of spectrum for satellite services would in particular benefit business and other users in rural areas of Australia.

15. Additional benefits of the WRC-2000 revision to Australia include:

- The provision of additional spectrum for third-generation International Mobile Telecommunications (IMT-2000). Third-generation mobile telephony incorporates additional functionality such as mobile data services, mobile e-commerce, wireless Internet access and mobile video based services. This revision therefore effectively gives the green light to the mobile industry worldwide to confidently deploy third-generation terrestrial and satellite networks and services. The extra spectrum was also provided on the basis of the increasing number of users (estimated 2 billion mobile phone users worldwide by 2010), and the need to secure common spectrum worldwide for global roaming and cheaper handsets.

- Increased telecommunication competition and greater choice for consumers. The revision sets out the operating conditions for a new wave of non-geostationary (non-GSO) satellites, which will allow sharing between geostationary (GSO) and non-GSO satellites. The new non-GSO systems promise to deliver new broadband services with the potential to provide Internet and multimedia applications to homes and businesses anywhere in the world. Ultimately the conditions that the new satellites will operate under will allow for increased telecommunication competition and therefore provide consumers with more service choices.
- A new broadcasting-satellite plan for Europe, Africa and the Asia-Pacific. This allows the potential to deliver direct satellite TV broadcasting signals to a growing customer base. The new Plan accords generally one orbital position per country in Europe and Africa, from which an equivalent of 10 analogue channels can be delivered. Australia has two orbital positions in this Plan. For Asia and Australasia, 12 analogue channels are available per country's orbital position. The provision of extra channels will ensure that industry has a stronger capacity to service the region. For example, there is potential for increased TV broadcasting access for the Australian mainland and offshore territories.
- Improved global positioning systems. As businesses and consumers become more dependent on global positioning, new allocations have been established to ensure that the provision of satellite systems will be accessible. The revision provides additional spectrum allocations for the radio navigation-satellite service that will be used to support the existing systems, Russia's GLONASS (Global Navigation Satellite System) and the US Global Positioning System (GPS), and a new satellite positioning system — Europe's Galileo.
- Spectrum allocations for high-density fixed services (HDFS). HDFS can accommodate more users in a given area and allows for wireless technologies that can support services such as Internet, video distribution and datacasting. HDFS can also potentially accommodate new telecommunications operators aiming to gain market access in competitive environments, by providing alternative technologies to existing telephone infrastructure or greater access and service choice for data and multimedia services.

Maintenance of Australia's Position on the Geostationary Orbit

16. Australia made one declaration at the time of signature that reflects Australia's position that the geographical situation of particular countries does not support claims to any preferential rights to the geostationary orbit.

Effects on Australia's standing in the ITU

17. If Australia takes no action, the WRC-2000 revision will automatically enter into force at the end of the 36-month provisional application period. However, inaction by Australia may have a negative effect on Australia's standing within the ITU and on Australia's negotiating position at future reviews of the Radio Regulations.

18. In contrast, notification to the ITU Secretary-General of Australia's consent to be bound by the WRC-2000 revision would maintain Australia's good standing in the ITU and would place Australia's administration of the radio-frequency spectrum in line with the rest of the world.

Obligations

19. Australia as a member of the ITU is bound by the Constitution, the Convention and the Administrative Regulations (which include the Radio Regulations). The WRC-2000 revisions do

not substantively alter Australia's basic obligations relating to the use of radio-frequency spectrum, whereby members are required to ensure that the radio spectrum is used in a manner that will prevent harmful interference to services, and which will allow distress calls and messages to be freely conveyed (Articles 45 and 46, ITU Constitution).

20. The WRC-2000 revisions make a number of technical changes to the Radio Regulations to provide for the following changes in the use of the radio-frequency spectrum:

- additional spectrum was provided for third-generation International Mobile Telecommunications (IMT-2000) (Resolutions 223 and 224, Article S5, Provisions S5.384A, S5.388 and S5.317A).
- operating conditions for new non-geostationary (non-GSO) satellites were established (Resolutions 58, 59, 76, 78 and 135, Articles S9 and S22).
- a new broadcasting-satellite plan for Europe, Africa and the Asia-Pacific was established (Resolutions 53, 533, 540, 541 and 542, Articles S9, S11, Appendices S30 and S30A).
- additional spectrum was allocated for the radio navigation-satellite service, which will be used to support global positioning systems (Resolutions 603, 604, 605, 606 and 607, Article S5, Provisions S5.328A, S5.331, S5.443A, S5.443B, S5.444, S5.444B, S5.444C, Appendix S4).
- spectrum was allocated for high-density fixed services (HDFS) (Resolutions 75, 79 and 84, Provisions S5.547, S21.16.11, and S21.16.12).

21. Australia will be required to administer its use of the radio-frequency spectrum in accordance with the majority of the WRC-2000 revisions from the provisional application date of 1 January 2002. Other effective dates of provisional application are stipulated in Article S59 of the revised Radio Regulations.

22. Australia made one declaration (No. 91) at the time of signature that reflects Australia's position that the geographical situation of particular countries does not support claims to any preferential rights to the geostationary orbit. The text of the declaration provides as follows:

'The delegations of the above-mentioned countries [Australia included] referring to the Declaration made by the Republic of Colombia (No. 63), inasmuch as this statement refers to the Bogota Declaration of 3 December 1976 by equatorial countries and to the claims of those countries to exercise sovereign rights over segments of the geostationary-satellite orbit, and any similar statements, consider the claims in question cannot be recognised by this Conference. Further, the above-mentioned delegations wish to affirm the declarations made on behalf of a number of the above-mentioned administrations in this regard when signing the Final Acts of the previous conferences of the International Telecommunications Union as if these declarations were here repeated in full.

The above-mentioned delegations also wish to state that reference in Article 44 of the Constitution to the "geographical situation of particular countries" does not imply recognition of claim to any preferential rights to the geostationary-satellite orbit'.

Implementation

23. Australia's obligations under the Radio Regulations are implemented through the Australian Radiofrequency Spectrum Plan prepared by the Australian Communications Authority in accordance with sections 30 and 34 of the *Radiocommunications Act 1992*.

24. It will be necessary to update the existing Australian Radiofrequency Spectrum Plan to accord with the WRC-2000 revision prior to the 1 January 2002 provisional application date or Australia

taking the proposed treaty action, whichever comes first.

Costs

25. There are no foreseeable direct costs to Commonwealth, State or Territory Governments arising from the proposed treaty action.

Consultation

26. Australian industry and government representatives were invited to participate in the preparation of the Australian brief for attendance at WRC-2000. Those who contributed included Ansett Australia, the Australian Broadcasting Corporation, the Federation of Australian Commercial Television Stations, the Australian Maritime Safety Authority, the Department of Transport and Regional Services, the Department of Communications, Information Technology and the Arts, Telstra, Cable and Wireless Optus, the Department of Defence, the Commonwealth Scientific and Industrial Research Organisation (CSIRO), Bureau of Meteorology, Air Services Australia, the Australian Electrical and Electronic Manufacturers' Association (AEEMA), Motorola Australia, Queensland Rail, QANTAS Airways Ltd, Teledesic Australia, Vodafone Pty Ltd and the Wireless Institute of Australia.

27. Most of the above-mentioned groups were represented at the Conference and briefed daily on the need for any strategic changes. Upon return from the Conference, a debriefing session on Conference outcomes was held with these industry and government representatives during June 2000.

28. There is general support for the proposed treaty action from relevant stakeholders, including all state and territory governments, and acknowledgment of the benefits of the WRC-2000 revision to Australia.

Future treaty action: amendments, protocols, annexes or other legally binding instruments

29. Under Article 13 of the ITU Constitution, a world radiocommunication conference may partially or completely revise the Radio Regulations. The next World Radiocommunication Conference will be held in Caracas from 9 June to 4 July 2003. It is probable that further changes to the Radio Regulations will be considered at that meeting.

Withdrawal or denunciation

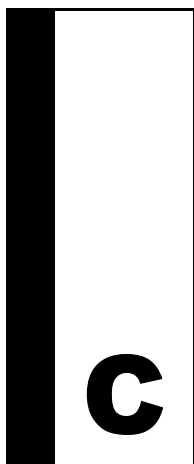
30. In order to withdraw from the Radio Regulations, it would be necessary for Australia to denounce the ITU Constitution and Convention by notification to the Secretary-General of the ITU.

31. Under Article 57 of the ITU Constitution, such denunciation would take effect at the expiration of one year from the date of receipt of its notification by the Secretary-General of the ITU and would have to be done as a single instrument, denouncing the Constitution and the Convention simultaneously.

Contact Details

International Branch

National Office of the Information Economy



Appendix C - Submissions

Treaties tabled 7 August 2001

Agreement on Social Security with: Canada

Submission No.	Organisation / Individual
1.	ACT Government
2.	Southern Cross Group
3.	Queensland Government

Agreement on Social Security with the Netherlands

Submission No.	Organisation / Individual
1.	Commonwealth Department of Health and Family Services
2.	ACT Government
3.	Southern Cross Group
4.	Queensland Government
5.	Western Australian Government

Agreement on Social Security with Spain

Submission No.	Organisation / Individual
1.	ACT Government
2.	Southern Cross Group
3.	Queensland Government
4.	Western Australian Government

Protocols to an Agreement on Social Security with Austria

Submission No.	Organisation / Individual
1.	ACT Government
2.	Southern Cross Group
3.	Queensland Government
4.	Western Australian Government

Amendment to an Agreement with United States on Cooperation in Defence Logistic Support

Submission No.	Organisation / Individual
1.	ACT Legislative Assembly
2.	Queensland Government
3.	Western Australian Government

Amendments to the Conservation of Nature in the South Pacific (Apia Convention).

Submission No.	Organisation / Individual
1.	ACT Legislative Assembly

Treaties tabled 21 August 2001

Agreement with Thailand on Transfer of Prisoners

Submission No.	Organisation / Individual
1.	Mrs Lyn Garnett JP
2.	Australian Relief and Mercy Services Ltd
3.	Mr Troy Doniger
4.	Ms Anne Firkin
5.	Ms Debbie Sutton
6.	Ms Ruth Blakely
7.	Ms Lynette Ovens JP
8.	New South Wales Council of Civil Liberties
9.	Mrs Joyce McKerral
10.	Mr & Mrs Neuendorf
11.	Mrs Dianne Spinner
12.	John Ryan
13.	Debbie Singh
14.	St Vincent de Paul
15.	Anita Bird
16.	Western Australian Government

Agreement on Social Security with Portugal

Submission No.	Organisation / Individual
1.	ACT Government
2.	Southern Cross Group
3.	Queensland Government
4.	Western Australian Government

Agreement on Social Security with Germany

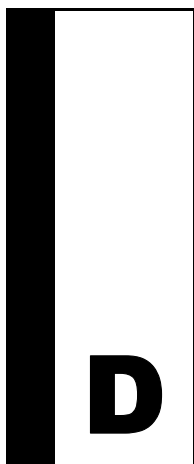
Submission No.	Organisation / Individual
1.	ACT Government
2.	Southern Cross Group
3.	Queensland Government
4.	Western Australian Government

Amendment to INTELSAT Convention and Operating Agreement

Submission No.	Organisation / Individual
1.	Donald McLeod
2.	Queensland Government

WRC-2000 Ratification of Final Acts.

Submission No.	Organisation / Individual
1.	Donald McLeod
2.	Queensland Government
3.	Department of Communications Information Technology and the Arts



Appendix D – Witnesses at hearings

Monday 20 August 2001

Attorney-General's Department

Mark Jennings, Senior Adviser

Department of Foreign Affairs and Trade

Tony von Brandenstein, Executive Officer, Treaties Secretariat, Legal Branch

Amanda Gorely, Director, International Law Section

Agreements on Social Security with Canada, Spain; The Netherlands and a Protocol to a Social Security Agreement with Austria

Department of Family and Community Services

Roger Barson, Assistant Secretary, International Branch

Peter Hutchinson, Director, International Agreements

Dennis Roche, Assistant Director, International Agreements

Australian Tax Office

Nigel Murray Director, Superannuation

Amendment to an Agreement with United States on Cooperation in Defence Logistic Support

Department of Defence

Kenneth Heldon Head of Defence Logistics, Joint Logistics Command

David Lloyd, Legal Officer, Directorate of Agreements, Defence Legal Office

Nicola Mizen Director United States Section, Strategic & International Policy Division

Kenneth Thomson Director Americas, Defence Materiel Organisation,

Leut. David Swanson, Legal Officer, Defence Legal Office

Amendments to the Conservation of Nature in the South Pacific (Apia Convention).

Environment Australia

Mark Hyman Assistant Secretary, International Intergovernmental Branch

Thomas Lee, Director, Environment Australia

Monday 27 August 2001

Agreements on Nuclear Safeguards with Argentina, Hungary, the Czech Republic and the United States on Nuclear Transfers to Taiwan

Attorney-General's Department

Mr Stephen Bouwhuis, Principal Legal Officer

Australian Nuclear Science and Technology Organisation

Mr Steven McIntosh, Government and Public Affairs Division

Mr John Rolland, Director, Government and Public Affairs

Australian Radiation Protection and Nuclear Safety Agency

Mr Daniel Westall, Manager, Policy and Communications

Australian Safeguards and Non-Proliferation Office

Mr John Carlson, Director-General

Australian Safeguards and Non-Proliferation Office

Mr Andrew Leask, Assistant Secretary

Department of Foreign Affairs and Trade

Mr Bill Paterson, First Assistant Secretary, ISD

Ms Shennia Spillane, Executive Officer, International Law

Mr Tony von Brandenstein, Executive Officer, Treaties Secretariat

Department of Industry, Science and Resources

Mr Robin Bryant, General Manager, Energy Minerals Branch

Mr Stephen Irwin, General Manager,, Science and Technology Policy Branch

Greenpeace Australia**Sutherland Shire Council**

Dr Gary Smith, Principal Environmental Scientist

Councillor Ken McDonell

Tim Robertson, Consultant

Friends of the Earth

Mr Stephen Baker, Co-ordinator, National Campaign Reference Group

Sydney People against a New Nuclear Reactor

Ms Leah Mason

Australian Conservation Foundation

Mr David Sweeney

Monday 17 September 2001

Attorney-General's Department

Ms Libby Bunyan, Acting Principal Legal Officer

Mr Mark Jennings, Senior Advisor

Department of Foreign Affairs and Trade

Mr Tony von Brandenstein, Executive Officer, Treaties Secretariat

Ms Shennia Spillane, Executive Officer, International Law

Council of Europe Convention on the Transfer of Prisoners

Attorney-General's Department

Ms Joanne Blackburn, First Assistant Secretary, Criminal Justice Division

Mr Christopher Hodges, Principal Legal Officer, International Branch,
Criminal Law Division

Ms Ruth Treyde, Principal Legal Officer, Criminal Law Branch, Criminal
Justice Division

Ms Annette Willing, Acting Assistant Secretary, International Branch,
Criminal Justice Division

Russian Space Agreement

Department of Industry, Science and Resources

Ms Karen Kuschert, Space & Aerospace Policy Branch, Services and
Emerging Industries Section

Mr Peter Morris, General Manager, Space and Aerospace Branch

Agreements on Social Security with Portugal and Germany

Department of Family and Community Services

Mr Roger Barson, Assistant Secretary, International Branch

Mr Peter Hutchinson, Director, International Agreements

Ms Peta Murray, Acting Director, International Agreements

Mr Gerry Van Dooren, Assistant Director, International Branch

Australian Tax Office

Mr Nigel Murray, Director, Superannuation

Amendment to INTELSAT Convention and Operating Agreement**Department of Communications, Information Technology and the Arts**

Mr Michael Carrick, Enterprise & Radiocommunications Branch

Mr Stephen Campbell, Team Leader, Nuclear Campaign

Mr Tad Jarzynski, Manager, Radio Communications & Satellite Policy

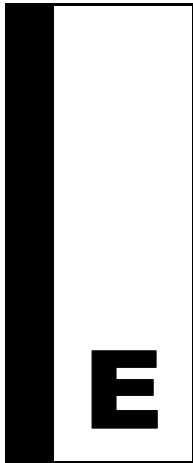
Mr Brenton Thomas, General Manager, Enterprise & Radiocommunications Branch

Reach Networks Australia Pty Limited

Mr Rafiq Abbasi, Manager, Satellite Development

Cable & Wireless Optus

Mr Richard Smith, Government Affairs Manager



Appendix E - Extract from Resolution of Appointment

The Resolution of Appointment for 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 presented or deemed to be presented to the Parliament;
- (b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and
- (c) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.

