

# Report 123

## **Treaties tabled on 13 October, 2, 22 and 24 November 2011**

Resolution MEPC.200(62): Amendments to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (Special Area Provisions and the Designation of the Baltic Sea as a Special Area under MARPOL Annex IV) Adopted at London on 15 July 2011

Agreement between the Government of Australia and the European Space Agency for a Co-operative Space Vehicle Tracking Program done at Cape Town on 5 October 2011

Revised MARPOL Annex V: Regulations for the Prevention of Pollution by Garbage from Ships (Resolution MEPC.201(62)) Adopted at London on 15 July 2011

Agreement between the Government of Australia and the Government of the Principality of Liechtenstein on the Exchange of Information on Taxes done at Vaduz on 21 June 2011

Agreement between the Government of Australia and the Government of the Macao Special Administrative Region of the People's Republic of China for the Exchange of Information Relating to Taxes signed in Macao on 12 July 2011

Agreement between the Government of Australia and the Government of Costa Rica on the Exchange of Information with Respect to Taxes, Mexico City 1 July 2011

Agreement between the Government of Australia and the Government of Liberia on the Exchange of Information with Respect to Taxes (Monrovia on 11 August 2011)

Agreement between Australia and the Republic of Latvia on Social Security (Riga 7 September 2011)

Exchange of Notes constituting an Agreement to extend the Agreement between the Government of Australia and the Government of the United States of America concerning the Conduct of Scientific Balloon Flights for Civil Research Purposes of 16 February 2006, as amended, Done at Canberra on [date to be confirmed]

Amendment to Annex I of the International Convention Against Doping in Sport done at Paris on 19 October 2005 (amendment adopted on 16 November 2011)

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## Membership of the Committee

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# Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
  - (i) either House of the Parliament, or
  - (ii) a Minister; and
- c) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.





## List of abbreviations

ACMA	Australian Communications and Media Authority
ATO	Australian Taxation Office
AUSTRAC	Australian Transaction Reports and Analysis Centre
CSIRO	Commonwealth Scientific and Industrial Research Organisation
ESA	European Space Agency
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
GST	Goods and Services Tax
IMO	International Maritime Organization
MARPOL	International Convention for the Prevention of Pollution from Ships
MEPC	Marine Environment Protection Committee
MOU	Memorandum of Understanding
NASA	National Aeronautics and Space Administration
NIA	National Interest Analysis
OECD	Organisation for Economic Cooperation and Development

RIS	Regulation Impact Statement
SIAD	Supersonic Inflatable Aerodynamic Decelerator
TIEAs	Tax Information Exchange Agreements
UNCLOS	United Nations Convention on the Law of the Sea
US	United States



## List of recommendations

- 2 Resolution MEPC.200(62): Amendments to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (Special Area Provisions and the Designation of the Baltic Sea as a Special Area under MARPOL Annex IV) Adopted at London on 15 July 2011**

### Recommendation 1

The Committee supports the *Resolution MEPC.200(62): Amendments to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (Special Area Provisions and the Designation of the Baltic Sea as a Special Area under MARPOL Annex IV) Adopted at London on 15 July 2011* and recommends that binding treaty action be taken.

- 3 Agreement between the Government of Australia and the European Space Agency for a Co-operative Space Vehicle Tracking Program Done at Cape Town on 5 October 2011**

### Recommendation 2

The Committee supports the *Agreement between the Government of Australia and the European Space Agency for a Co operative Space Vehicle Tracking Program done at Cape Town on 5 October 2011* and recommends that binding treaty action be taken.

**4 Revised MARPOL Annex V: Regulations for the Prevention of Pollution by Garbage from Ships (Resolution MEPC.201(62)) Adopted at London on 15 July 2011**

**Recommendation 3**

The Committee supports the *Revised MARPOL Annex V: Regulations for the Prevention of Pollution by Garbage from Ships (Resolution MEPC.201(62)) adopted at London on 15 July 2011* and recommends that binding treaty action be taken.

**5 Tax Information Exchange Agreements with:**

- the Government of the Principality of Liechtenstein;
- the Government of Costa Rica;
- the Government of the Macao Special Administrative Region of the People's Republic of China; and
- the Government of Liberia.

**Recommendation 4**

The Committee supports the *Agreement between the Government of Australia and the Government of the Principality of Liechtenstein on the Exchange of Information on Taxes done at Vaduz on 21 June 2011* and recommends that binding treaty action be taken.

**Recommendation 5**

The Committee supports the *Agreement between the Government of Australia and the Government of Costa Rica on the Exchange of Information with Respect to Taxes done at Mexico City on 1 July 2011* and recommends that binding treaty action be taken.

**Recommendation 6**

The Committee supports the *Agreement between the Government of Australia and the Government of the Macao Special Administrative Region of the People's Republic of China for the Exchange of Information Relating to Taxes done at Macao on 12 July 2011* and recommends that binding treaty action be taken.

**Recommendation 7**

The Committee supports the *Agreement between the Government of Australia and the Government of Liberia on the Exchange of Information with Respect to Taxes done at Monrovia on 11 August 2011* and recommends that binding treaty action be taken.

**6 Agreement between Australia and the Republic of Latvia on Social Security****Recommendation 8**

The Committee supports the *Agreement between Australia and the Republic of Latvia on Social Security done at Riga on 7 September 2011* and recommends that binding treaty action be taken.

**7 Exchange of Notes constituting an Agreement to extend the Agreement between the Government of Australia and the Government of the United States of America concerning the Conduct of Scientific Balloon Flights for Civil Research Purposes of 16 February 2006****Recommendation 9**

The Committee supports the *Exchange of Notes constituting an Agreement to extend the Agreement between the Government of Australia and the Government of the United States of America concerning the Conduct of Scientific Balloon Flights for Civil Research Purposes of 16 February 2006* and recommends that binding treaty action be taken.



## Introduction

### **Purpose of the report**

1.1 This report contains the Joint Standing Committee on Treaties' review of treaty actions tabled on 13 October 2011 and 2, 22 and 24 November 2011.

1.2 These treaty actions are proposed for ratification and are examined in the order of tabling:

■ **Tabled 13 October 2011**

⇒ *Resolution MEPC.200(62): Amendments to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (Special Area Provisions and the Designation of the Baltic Sea as a Special Area under MARPOL Annex IV) Adopted at London on 15 July 2011.*

■ **Tabled 2 November 2011**

⇒ *Agreement between the Government of Australia and the European Space Agency for a Co operative Space Vehicle Tracking Program done at Cape Town on 5 October 2011*

⇒ *Revised MARPOL Annex V: Regulations for the Prevention of Pollution by Garbage from Ships (Resolution MEPC.201(62)) adopted at London on 15 July 2011*

⇒ *Agreement between the Government of Australia and the Government of the Principality of Liechtenstein on the Exchange of Information on Taxes done at Vaduz on 21 June 2011;*

- ⇒ *Agreement between the Government of Australia and the Government of Costa Rica on the Exchange of Information with Respect to Taxes done at Mexico City on 1 July 2011;*
- ⇒ *Agreement between the Government of Australia and the Government of the Macao Special Administrative Region of the People's Republic of China for the Exchange of Information Relating to Taxes done at Macao on 12 July 2011; and*
- ⇒ *Agreement between the Government of Australia and the Government of Liberia on the Exchange of Information with Respect to Taxes done at Monrovia on 11 August 2011.*

■ **Tabled 22 November 2011**

- ⇒ *Agreement between Australia and the Republic of Latvia on Social Security done at Riga on 7 September 2011.*

■ **Tabled 24 November 2011**

- ⇒ *Exchange of Notes constituting an Agreement to extend the Agreement between the Government of Australia and the Government of the United States of America concerning the Conduct of Scientific Balloon Flights for Civil Research Purposes of 16 February 2006.*

- 1.3 The Committee's resolution of appointment empowers it to inquire into any treaty to which Australia has become signatory, on the treaty being tabled in Parliament.
- 1.4 The treaties, and matters arising from them, are evaluated to ensure that ratification is in the national interest, and that unintended or negative effects on Australians will not arise.
- 1.5 Prior to tabling, major treaty actions are subject to a *National Interest Analysis* (NIA), prepared by Government. This document considers arguments for and against the treaty, outlines the treaty obligations and any regulatory or financial implications, and reports the results of consultations undertaken with State and Territory Governments, Federal and State and Territory agencies, and with industry or non-government organisations.
- 1.6 A Regulation Impact Statement (RIS) may accompany the NIA. The RIS provides an account of the regulatory impact of the treaty action where adoption of the treaty will involve a change in the regulatory environment for Australian business. The treaties examined in this report do not require an RIS.



- 1.7 The Committee takes account of these documents in its examination of the treaty text, in addition to other evidence taken during the inquiry program.
- 1.8 Copies of each treaty and its associated documentation may be obtained from the Committee Secretariat or accessed through the Committee's website at:
- <[www.aph.gov.au/house/committee/jsct](http://www.aph.gov.au/house/committee/jsct)>

## Conduct of the Committee's review

- 1.9 The treaty actions reviewed in this report were advertised on the Committee's website from the date of tabling. Submissions for the treaties were requested by 11 November 2011 for the treaty tabled on 13 October 2011, 16 December 2011 for those treaties tabled 2 November 2011, and on 27 January 2012 for those treaties tabled on 22 and 24 November 2012 with extensions available on request.
- 1.10 Invitations were made to all State Premiers, Chief Ministers and to the Presiding Officers of each Parliament to lodge submissions. The Committee also invited submissions from individuals and organisations with an interest in the particular treaty under review.
- 1.11 Submissions received and their authors are listed at Appendix A.
- 1.12 The Committee examined the witnesses on each treaty at public hearings held in Canberra on 21 November 2011, and 6 February 2012.
- 1.13 Transcripts of evidence from the public hearings may be obtained from the Committee Secretariat or accessed through the Committee's website under the treaty's tabling date, being:
- **21 November 2011**
- <<http://www.aph.gov.au/house/committee/jsct/21november2011/hearings.htm>>
- **6 February 2012**
- <<http://www.aph.gov.au/house/committee/jsct/6february2012/hearings.htm>>
- 1.14 A list of witnesses who appeared at the public hearings is at Appendix B.

## Minor treaty action

- 1.15 Minor treaty actions are generally technical amendments to existing treaties, which do not impact significantly on the national interest.
- 1.16 The Joint Standing Committee on Treaties has the discretion to formally inquire into these treaty actions or indicate its acceptance of them without a formal inquiry and report.
- 1.17 One minor treaty action is considered in this Report: *International Convention Against Doping in Sport- Annex I – Prohibited List – International Standard* which was tabled in Parliament on 16 January 2012.
- 1.18 The Committee's views on this treaty action are contained at Appendix C.

## Resolution MEPC.200(62): Amendments to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (Special Area Provisions and the Designation of the Baltic Sea as a Special Area under MARPOL Annex IV) Adopted at London on 15 July 2011

### Introduction

- 2.1 On 13 October 2011, the *Resolution MEPC.200(62): Amendments to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (Special Area Provisions and the Designation of the Baltic Sea as a Special Area under MARPOL Annex IV) Adopted at London on 15 July 2011*, was tabled in the Commonwealth Parliament.
- 2.2 The proposed amendments provide greater protection for an area that is particularly vulnerable to pollution by sewage.<sup>1</sup> The amendments are expected to have no impact on Australia. It is highly unlikely that any Australian passenger ship will travel through the Baltic Sea area or that

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<sup>1</sup> Resolution MEPC.200(62): *Amendments to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (Special Area Provisions and the Designation of the Baltic Sea as a Special Area under MARPOL Annex IV) Adopted at London on 15 July 2011*, [2011] ATNIF 19 (Hereafter referred to as 'NIA'), paras 6-8.

any ship will travel through that special area as part of a voyage to or from Australia.<sup>2</sup> There are also no current plans to establish a special area off the Australian coast.<sup>3</sup>

## Background

- 2.3 The International Convention for the Prevention of Pollution from Ships (MARPOL) is one of the key international instruments addressing the problem of marine pollution from ships. MARPOL contains six technical annexes dealing with, respectively: oil; noxious liquid substances in bulk; harmful substances in packaged form; sewage; garbage; and air pollution.<sup>4</sup>
- 2.4 The proposed amendments to Annex IV of MARPOL will result in a reduction of the amount of sewage discharged into the Baltic Sea area. The discharge of large amounts of sewage into the sea and the resulting high concentration of nitrogen and phosphorus leads to blooms of blue-green algae. As the algae die and decompose, high levels of organic matter and the decomposing organisms deplete the water of available oxygen, causing the death of other organisms, such as fish.<sup>5</sup>

## Overview and national interest summary

- 2.5 On 15 July 2011, the Marine Environment Protection Committee of the International Maritime Organization (IMO) adopted Resolution MEPC.200(62) to amend Annex IV of MARPOL (2007) to provide for the declaration of 'special areas' for purposes of that Annex ('the proposed amendments'). 'Special areas' will be areas described in Annex IV where, for recognized technical reasons in relation to their oceanographical and ecological conditions and to the particular character of their traffic, the adoption of special mandatory methods for the prevention of pollution by sewage is required. The proposed amendments to Annex IV designate and describe one sea area, namely the Baltic Sea area, to be a special area for the prevention of pollution by sewage from passenger ships.<sup>6</sup>
- 2.6 In accordance with the amendment procedure set out in MARPOL, the proposed amendments shall be deemed to have been accepted on 1 July 2012 unless, prior to that date, not less than one-third of the Parties or the

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2 NIA, para 13.

3 Ms Poy Aye Tan, Section Head, Maritime Policy, Maritime Policy Reform Branch, Department of Infrastructure and Transport, *Committee Hansard*, 21 November 2011, p. 1.

4 NIA, para 1.

5 NIA, para 5.

6 NIA, paras 2-3.

Parties the combined fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have communicated to The IMO their objection to the amendments. Upon acceptance, the amendments will enter into force on 1 January 2013.<sup>7</sup>

## Reasons for Australia to take the proposed treaty action

2.7 Acceptance of the amendments is consistent with Australia's long-standing support for protection of the marine environment and also our active backing of, and participation in meetings of, the IMO. In addition, acceptance is in accordance with Australia's general obligations as a Party to the United Nations Convention on the Law of the Sea which provides for States to adopt generally accepted international rules and standards when implementing laws and regulations to prevent, reduce and control pollution of the marine environment from vessels.<sup>8</sup>

## Obligations

2.8 The requirements of Annex IV apply only to ships engaged in international voyages; to all such ships of 400 gross tons and over; and those ships with a gross tonnage of less than 400 which are certified to carry more than 15 persons (as crew or passengers). Ships to which Annex IV applies are required to be equipped with a sewage system, being either: a sewage treatment plant which complies with IMO standards; a sewage break-up and disinfecting system; or a holding tank for the retention of sewage. Discharge of sewage from ships at sea is prohibited unless:

- the ship has in operation an approved sewage treatment plant which has been certified to meet the IMO requirements by the administration of the State in which the ship is registered; or
- the discharge is carried out using a sewage break-up and disinfecting system so long as the ship is more than three nautical miles from the nearest land; or
- the discharge is carried out from a holding tank so long as the ship is more than 12 nautical miles from the nearest land, the ship is proceeding en route and the discharge is not instantaneous.

2.9 The amendments will apply in the Baltic Sea area and in any future special areas to new ships from 1 January 2016 and to existing ships from 1 January 2018, or from a later date determined by The IMO after the

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7 NIA, para 4.

8 NIA, paras 6-8.

requirements of paragraph 1 of new Article 12*bis* to provide adequate facilities for the reception of sewage in ports and terminals in the special area have been met. Australia will be required to ensure that ships which come under Australian jurisdiction and which are operating in a special area are equipped with approved sewage treatment and/or holding facilities. The amending legislation will also apply to passenger ships within any future special area established off the Australian coast and to Australian passenger ships in special areas beyond Australia's exclusive economic zone.<sup>9</sup> There are consequential amendments to the form of the International Sewage Pollution Prevention Certificate, which are set out in the Appendix to Annex IV.

- 2.10 The designation of the Baltic Sea area as a special area for purposes of Annex IV is aimed at the passenger ships which carry high numbers of passengers to and from the ports in countries that border the Baltic Sea area (Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Russian Federation and Sweden). Each State Party to Annex IV whose coastline borders a special area will be required to ensure that adequate facilities for the reception of sewage are provided in ports in that State which are used by passenger ships. This will impose obligations on Australia only if, at some time in the future, an area of the sea off the Australian coastline is declared to be a special area for purposes of Annex IV.
- 2.11 The Baltic Sea has been designated as a special area as it is one of the most intensively trafficked sea areas in the world. There has been a significant increase in passenger and cruise traffic, significantly adding to the amount of sewage created on board. Passenger ships operating in the Baltic Sea typically have 2,000-5,000 people on board. Annually, there are about 90 million international passenger movements through the major passenger ports in the Baltic Sea area.<sup>10</sup>

## Implementation

- 2.12 The proposed amendments to Annex IV of MARPOL will be implemented in Australia by amendments to the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*. However, as the proposed amendments are

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<sup>9</sup> Ms Poy Aye Tan, Section Head, Maritime Policy, Maritime Policy Reform Branch, Department of Infrastructure and Transport, *Committee Hansard*, 21 November 2011, p. 1.

<sup>10</sup> NIA, paras 9-14.

unlikely to have any effect on ships over which Australia has jurisdiction there will be few, if any, administrative or enforcement requirements.<sup>11</sup>

## Costs

- 2.13 The proposed amendments will not result in any increased costs or savings to the Australian Government or to the States and Territories.<sup>12</sup>

## Australian implications

- 2.14 Although the treaty is specific to the Baltic Sea, the Committee was interested in what implications there are for Australia and Australian waterways.

- 2.15 'Special Areas' for Australian waters can only be proposed by Australia in consultation with other neighbouring countries if the waters are close to those neighbouring countries. Further, no other country can apply for the listing of Australian territorial waters as 'Special Areas'.<sup>13</sup> The Australian Maritime Safety Authority explained:

Australia could propose any special areas anywhere in Australian waters. If those areas were close to a neighbouring state, say Papua New Guinea or Indonesia, we would have to involve those countries in the negotiations and put in a joint submission to the International Maritime Organisation. So, yes, probably Papua New Guinea, Indonesia and potentially New Zealand, but anywhere else in Australia if there were no impact or if the area we were proposing was not likely to impact on any of our neighbours then we could put in a submission on our own.<sup>14</sup>

- 2.16 The Australian Maritime Safety Authority also explained that the Great Barrier Reef effectively enjoys the same protections that a 'Special Area' would confer upon it:

At the moment the Great Barrier Reef, for example, already has an equivalent requirement for this because the whole of the Great Barrier Reef is considered to be 'nearest land' for the purposes of MARPOL. So, if a ship intends to dispose of sewage, say, 12 nautical miles from the nearest land they can only do that 12

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11 NIA, para 15.

12 NIA, para 16.

13 Mr Paul Nelson, Manager, Marine Environment Standards, Marine Environment Division, Australian Maritime Safety Authority, *Committee Hansard*, 21 November 2011, p. 2.

14 Mr Paul Nelson, Manager, Marine Environment Standards, Marine Environment Division, Australian Maritime Safety Authority, *Committee Hansard*, 21 November 2011, p. 2.

nautical miles from the outer edge of the reef. So the Great Barrier Reef, if you like, is already protected, and has been since the early 1980s, to an equivalent level of this.<sup>15</sup>

## Conclusion

- 2.17 The proposed amendments to Annex IV of MARPOL will result in a reduction of the amount of sewage discharged into the Baltic Sea area, and this is a positive outcome for the maritime environment. Although amendments are expected to have no impact on Australia, they set a positive precedent for continued improvements in the international management of the world's oceans.
- 2.18 The Committee notes the implications for Australia and Australian waterways and views them as generally positive – particularly with regard to Australia's right to declare parts of its own territorial waters to be 'Special Areas' as part of the MARPOL agreement. The Committee is also encouraged that the Great Barrier Reef is covered to the same level as a 'Special Area' under existing regulations.
- 2.19 The Committee supports the amendments and recommends that binding treaty action be taken.

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### Recommendation 1

**The Committee supports the *Resolution MEPC.200(62): Amendments to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (Special Area Provisions and the Designation of the Baltic Sea as a Special Area under MARPOL Annex IV) Adopted at London on 15 July 2011* and recommends that binding treaty action be taken.**

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15 Mr Paul Nelson, Manager, Marine Environment Standards, Marine Environment Division, Australian Maritime Safety Authority, *Committee Hansard*, 21 November 2011, p. 2.



# Agreement between the Government of Australia and the European Space Agency for a Co-operative Space Vehicle Tracking Program Done at Cape Town on 5 October 2011

## Introduction

- 3.1 The *Agreement between the Government of Australia and the European Space Agency for a Co-operative Space Vehicle Tracking Program* (the proposed Agreement) was negotiated as a replacement for the preceding treaty of the same name, which was negotiated in 1979.<sup>1</sup>
- 3.2 The National Interest Analysis (NIA) states that the parties to the proposed Agreement decided to replace the previous Agreement to enable the relocation of European Space Agency (ESA) space vehicle tracking facilities from one of its current locations, Gnangara in suburban Perth, to a location with less radiofrequency interference. While negotiating the proposed Agreement, the parties also took the opportunity to update the language of the Agreement, the rights and obligations of the parties, and the dispute settlement provisions.<sup>2</sup>

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1 *National Interest Analysis* [2011] ATNIA 30, *Agreement between the Government of Australia and the European Space Agency for a Co-operative Space Vehicle Tracking Program* [2011] ATNIF 23, (hereafter referred to as the NIA), para. 3.

2 NIA, para. 4.

## The European Space Agency

- 3.3 The ESA is an international organisation with nineteen European member states and is one of a suite of space related organisations that manage Europe's space activities. The ESA was formed to enable European nations to undertake scientific programs they could not individually afford. Each member state contributes an annual sum to the ESA based on that member's GDP.<sup>3</sup>
- 3.4 Because of the ESA's focus on scientific programs, space vehicle tracking is undertaken for the ESA by a subordinate organisation, the European Space Operations Centre (ESOC). ESOC operates the space vehicle tracking facilities that are the subject of the proposed Agreement.
- 3.5 ESOC defines mission operations as:
- ...the process involving operations planning, satellite monitoring and control, in-orbit navigation, and data processing and distribution, by which the satellite mission objectives are achieved, be they the collection of environmental or scientific data or the provision of a navigation service.<sup>4</sup>
- 3.6 In other words, ESOC's facilities in Western Australia are for the communication with and management of space vehicles. The facilities are only involved in the science of space exploration to the extent that they receive and transmit scientific data from space vehicles.
- 3.7 ESOC's focus on monitoring, control and navigation is reflected in Article 2 of the proposed Agreement, which limits the activities of the ESA facilities in Western Australia to the tracking and telecommand of ESA and other space vehicles used for civil space research, and the acquisition of data from these space vehicles.<sup>5</sup>
- 3.8 ESOC works closely with Arianespace, another of Europe's space related organisations. Arianespace provides launch facilities and space vehicles for the ESA's scientific programs. Arianespace was created in 1980 to relieve the ESA of the financial burden associated with the operation of launch facilities and the manufacture of launch vehicles.

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3 'About ESA,' European Space Agency, <[http://www.esa.int/SPECIALS/About\\_ESA/SEMW16ARR1F\\_0.html](http://www.esa.int/SPECIALS/About_ESA/SEMW16ARR1F_0.html)>, accessed 14 February 2012.

4 *ESOC - the European Space Operations Centre*, ESA, 2007, p. 6.

5 NIA, para. 7.

- 3.9 One of ESOC's core ground stations is collocated with the Arianespace launch facility in Kourou, French Guiana.<sup>6</sup>
- 3.10 Arianespace has become the world's largest commercial launch facility provider, launching, for example, eleven of the eighteen commercial satellites launched in 2010.<sup>7</sup>
- 3.11 ESOC's close association with Arianespace means a significant part of the work undertaken by ESOC is commercial in nature.<sup>8</sup>

## Space vehicle tracking in Australia

- 3.12 The proposed Agreement is the second space vehicle tracking agreement reported on by the Committee in as many reports.<sup>9</sup> In its examination of the *Exchange of Notes constituting an Agreement to amend the Agreement between the Government of the United States of America and the Government of Australia concerning Space Vehicle Tracking and Communication Facilities of 29 May 1980, as amended*, the Committee discussed the strategic location of NASA's Deep Space Network of space vehicle tracking stations at three locations around the globe, one of which is located at Tidbinbilla in the Australian Capital Territory.
- 3.13 ESOC has six space vehicle tracking stations, also in strategic locations:
- Kourou in French Guiana;
  - Mas Palomas in the Canary Islands;
  - Villafranca in Spain;
  - Kiruna in Sweden;
  - Redu in Belgium; and
  - New Norcia and Gnangara in Western Australia.<sup>10</sup>

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6 *Annual Report 2010*, Arianespace, 2011, p. 14.

7 'Service and Solutions,' Arianespace, <<http://www.arianespace.com/about-us/service-solutions.asp>>, accessed 16 February 2012.

8 'About ESA,' European Space Agency, <[http://www.esa.int/SPECIALS/About\\_ESA/SEMW16ARR1F\\_0.html](http://www.esa.int/SPECIALS/About_ESA/SEMW16ARR1F_0.html)>, accessed 14 February 2012.

9 The Committee reported on the *Exchange of Notes constituting an Agreement to amend the Agreement between the Government of the United States of America and the Government of Australia concerning Space Vehicle Tracking and Communication Facilities of 29 May 1980, as amended in Report 122*.

10 *ESOC – the European Space Operations Centre*, ESA, 2007, p. 14.

- 3.14 Australia is used by both NASA and the ESA because of its location below the equator between Europe and the Americas. According to Dr Michael Green of the Department of Industry, Innovation, Science, Research and Tertiary Education:

You will appreciate that once a satellite gets beyond the earth's orbit, you need to have sites around the world in order to track it because the earth turns around. Basically, you need to have one every third of the way around the world. Australia is about a third of the way around the world from both Europe and the United States, so there is a lot of interest in such facilities being in Australia.<sup>11</sup>

## Radiofrequency spectrum issues

- 3.15 As indicated above, encroaching radio frequency interference at the ESA's Gnangara site was the motivating factor for negotiating a new Agreement.
- 3.16 Dr Green advised the Committee that:
- The facilities that they have been operating at Gnangara in Perth have been subject to increasing radio spectrum availability concerns.<sup>12</sup>
- 3.17 Perth's expansion in recent years means that Gnangara is now part of suburban Perth. Consequently, radio frequency interference from nearby suburbs and the increase in use of mobile devices means that the range of frequencies available to the Gnangara ESA site is diminishing.<sup>13</sup>
- 3.18 Unlike the previous Agreement, the proposed Agreement does not specify the location of the ESA facilities. According to Dr Green, under the proposed Agreement, ESA facilities will be specified in a subordinate

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11 Dr Michael Green, General Manager, Innovation and Space Branch, Manufacturing Division, Department of Industry, Innovation, Science, Research and Tertiary Education, *Committee Hansard*, 6 February 2012, p. 8.

12 Dr Michael Green, General Manager, Innovation and Space Branch, Manufacturing Division, Department of Industry, Innovation, Science, Research and Tertiary Education, *Committee Hansard*, 6 February 2012, p. 7.

13 Dr Michael Green, General Manager, Innovation and Space Branch, Manufacturing Division, Department of Industry, Innovation, Science, Research and Tertiary Education, *Committee Hansard*, 6 February 2012, p. 7.

implementing arrangement, negating the need for treaty level negotiations when it becomes necessary to relocate ESA facilities.<sup>14</sup>

3.19 The proposed Agreement obliges the Australian Government to use its best endeavours to protect the ESA facilities from harmful radiofrequency interference.<sup>15</sup>

3.20 Dr Green stated that this provision was specifically intended to apply to the ESA's New Norcia site, and would provide some security out until about 2025.<sup>16</sup> However, Dr Green pointed out that:

...the spectrum is under pressure generally, particularly around metropolitan Australia. As you will have no doubt been aware, the last 10 to 15 years have seen an absolute explosion of mobile devices. They are all bandwidth hungry and other telecommunications applications have also been growing...<sup>17</sup>

## Conclusion

3.21 Hosting the ESA facilities has provided employment for Australians as well as providing Australian scientists access to technology they would not have otherwise had. The proposed Agreement will strengthen Australia's close working relationship with the ESA, which in turn will allow Australia to leverage the expertise and leadership of the ESA for the future benefit of Australia's space-dependent capabilities, science and research communities and emerging space sector.<sup>18</sup>

3.22 On this basis, the Committee supports the ratification of this treaty.

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14 Dr Michael Green, General Manager, Innovation and Space Branch, Manufacturing Division, Department of Industry, Innovation, Science, Research and Tertiary Education, *Committee Hansard*, 6 February 2012, p. 7.

15 NIA, para 14.

16 Dr Michael Green, General Manager, Innovation and Space Branch, Manufacturing Division, Department of Industry, Innovation, Science, Research and Tertiary Education, *Committee Hansard*, 6 February 2012, p. 8.

17 Dr Michael Green, General Manager, Innovation and Space Branch, Manufacturing Division, Department of Industry, Innovation, Science, Research and Tertiary Education, *Committee Hansard*, 6 February 2012, p. 9.

18 NIA, para 8.

**Recommendation 2**

**The Committee supports the *Agreement between the Government of Australia and the European Space Agency for a Co operative Space Vehicle Tracking Program done at Cape Town on 5 October 2011* and recommends that binding treaty action be taken.**

## Revised MARPOL Annex V: Regulations for the Prevention of Pollution by Garbage from Ships (Resolution MEPC.201(62)) Adopted at London on 15 July 2011

### Introduction

- 4.1 On 2 November 2011, the *Revised MARPOL Annex V: Regulations for the Prevention of Pollution by Garbage from Ships (Resolution MEPC.201(62)) adopted at London on 15 July 2011* was tabled in the Commonwealth Parliament.
- 4.2 The revised Annex V includes a new requirement specifying that discharge of all garbage into the sea is prohibited, except as expressly provided otherwise. The only discharges permitted in certain circumstances include food wastes, cargo residues, water used for washing deck and external surfaces containing cleaning agents or additives which are not harmful to the marine environment, and animal carcasses. The existing requirements for placards and garbage management plans are extended to fixed and floating platforms engaged in sea-bed exploration.<sup>1</sup>

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<sup>1</sup> National Interest Analysis [2011] ATNIA 33 with attachment on consultation, *Revised MARPOL Annex V: Regulations for the Prevention of Pollution by Garbage from Ships, (Resolution MEPC.201(62))*, Adopted at London on 15 July 2011, [2011] ATNIF 24, (hereafter referred to as 'NIA'), para 5.

## Background

- 4.3 Marine debris is one of the major threats to the marine environment, estimated to kill more than one million seabirds and 100,000 marine animals each year through ingestion and entanglement. Certain types of garbage also have the potential to cause damage to vessels and harm to human life.<sup>2</sup>
- 4.4 The *International Convention for the Prevention of Pollution from Ships* (MARPOL) is one of the key international instruments addressing the problem of marine pollution from ships. MARPOL contains six technical annexes dealing with, respectively: oil; noxious liquid substances in bulk; harmful substances in packaged form; sewage; garbage; and air pollution. It is administered by the International Maritime Organization (IMO)<sup>3</sup>
- 4.5 Australia is a Party to MARPOL and its six Annexes. The revised Annex V will upgrade current international regulations for the prevention of pollution by garbage from ships following a review undertaken by the IMO to place additional restrictions on the disposal of garbage from ships at sea.<sup>4</sup>
- 4.6 The proposed treaty action is tacit acceptance of a revised version of Annex V of MARPOL (1990), adopted by the IMO Marine Environment Protection Committee (MEPC) under cover of resolution MEPC.201(62) on 15 July 2011.<sup>5</sup>

## Reasons for Australia to take the proposed treaty action

- 4.7 The revised Annex V is in accordance with Australia's general obligations under the *United Nations Convention on the Law of the Sea* 1982 (UNCLOS). This provides for nations to adopt laws and regulations that at least have the same effect as that of generally accepted international rules and standards for the prevention, reduction and control of pollution of the marine environment from vessels.<sup>6</sup>
- 4.8 MARPOL's preamble includes a reference to the desire of the parties to achieve the complete elimination of intentional pollution of the marine environment. The review and resulting amendments is a major step towards achieving that goal.<sup>7</sup>

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2 NIA, para 6.

3 NIA, para 1.

4 NIA, para 4.

5 NIA, para 2.

6 NIA, para 10.

7 NIA, para 8.



4.9 Australian laws restricting the discharge of certain types of garbage, including the prohibition of plastics, have been in place since 1990. Australia's acceptance of the revised Annex V is consistent not only with Australia's long-standing support for protection of the marine environment, but also with Australia's active backing of, and participation in, the IMO.<sup>8</sup>

## Obligations

4.10 Australia is obliged to give effect in domestic law to the provisions of MARPOL and its Annexes.<sup>9</sup> The revised Annex V prohibits the discharge of all garbage into the sea except as provided otherwise. These exemptions comprise:

- the discharge of garbage from a ship necessary for the purpose of securing the safety of a ship and those on board or saving life at sea;
- the accidental loss of garbage resulting from damage to a ship or its equipment;
- the accidental loss of fishing gear from a ship;
- the discharge of fishing gear from a ship for the protection of the marine environment or for the safety of that ship or its crew.<sup>10</sup>

4.11 The discharges permitted in certain limited circumstances include:

- food wastes (3 nautical miles from the nearest land if treated, 12 nautical miles if not treated);
- cargo residues that are not harmful to the marine environment (12 nautical miles from the nearest land);
- water used for washing deck and external surfaces containing cleaning agents or additives which are not harmful to the marine environment; and
  - o animal carcasses providing the discharge is as far as possible from the nearest land, taking into account the guidelines developed by the IMO.<sup>11</sup>

4.12 Every ship of 12 metres or more in length, and fixed or floating platforms, would be required to display placards notifying passengers and crew of the discharge requirements. Ships of 100 gross tonnage and above or

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8 NIA, para 11.

9 NIA, para 12.

10 NIA, para 12.

11 NIA, para 13.

which are certified to carry 15 or more persons, as well as fixed and floating platforms, will be required to carry a garbage management plan setting out written procedures for the collection, storage, processing and disposal of garbage. Ships of 400 gross tonnage and above would be required to maintain a Garbage Record Book.<sup>12</sup>

*Port state obligations*

- 4.13 Australia would need to ensure adequate facilities are provided at its ports and terminals for the reception of garbage without causing undue delay to ships, and according to the needs of the ships using them, and notify the IMO of all cases where the facilities were alleged to be inadequate. Similar obligations exist in respect of ports where ships depart en route to, or arrive from, the Antarctic area and in relation to ports and terminals within special areas.<sup>13</sup>
- 4.14 Australia is obligated to ensure that the master or crew of a foreign flagged ship is familiar with essential shipboard procedures relating to the prevention of pollution by garbage, and that the ship is inspected when in an Australian port or offshore terminal.<sup>14</sup>
- 4.15 Australia would also need to ensure that any inspection of a ship's Garbage Record Book or ship's official log-book shall be performed as expeditiously as possible without causing the ship to be unduly delayed.<sup>15</sup>
- 4.16 The accidental loss or discharge of fishing gear which poses a significant threat to the marine environment or navigation is required to be reported to the ship's flag State, and, where the loss or discharge occurs within waters subject to the jurisdiction of a coastal State, also to that coastal State.<sup>16</sup>
- 4.17 Monitoring ships and possible breaches of the new and existing regulations remains difficult. In response to a Committee question on monitoring and the extent of marine pollution and garbage in the sea the Australian Maritime Safety Authority (AMSA) responded:

It is a difficult one. With garbage on the beach it is sometimes difficult to establish whether it has come from a ship at sea – which is obviously the area we are concerned about – or some other land based source. We have arrangements with a lot of organisations in Australia – nongovernment organisations and

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12 NIA, para 14.

13 NIA, para 15.

14 NIA, para 16.

15 NIA, para 17.

16 NIA, para 18.

government – so that whenever they do things like beach surveys and beach clean-up activities, they let us know and we try to give them advice on how to tell the difference between something that may have come from a ship at sea and something that may not have. For example, a package that might be in a foreign language or something that has some sort of barnacle or sea crustacean on it indicates that it has been at sea for a while.

It is a challenge in working out what is ship sourced and what is not but we have some data. We do not have a lot of data in Australia but there is a lot of international data that has indicated that the problem is getting worse. We do what we can in Australia but there are certain challenges to interpreting the data.<sup>17</sup>

## Implementation

4.18 AMSA explained that the process through which MARPOL agreements are implemented is essentially done through the member states as MARPOL itself does not have a framework or a structure for trying to measure and monitor the extent of marine pollution.

...the convention itself does not [have such a framework]. That is up to the member states working through the International Maritime Organisation. They have a committee called the Marine Environment Protection Committee. Any member states that have data on the marine debris problem that indicates that it is getting worse or getting better or which is relevant brings it to that committee meeting and the committee members determine whether any amendment might be necessary to the convention. So the convention does not have anything explicit in it in terms of monitoring and data. It is up to the member states, working through the International Maritime Organisation.<sup>18</sup>

4.19 From an Australian legislative perspective, amendments will be needed to the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cth) and Marine Orders - Part 95 (Marine Pollution Prevention - Garbage) to implement the proposed treaty action.<sup>19</sup>

4.20 AMSA explained the Australian mechanisms through which implementation is to occur:

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17 Mr Paul Nelson, Manager, Marine Environment Standards, Marine Environment Division, Australian Maritime Safety Authority, *Committee Hansard*, 6 February 2012, p. 12.

18 Mr Paul Nelson, Manager, Marine Environment Standards, Marine Environment Division, Australian Maritime Safety Authority, *Committee Hansard*, 6 February 2012, p. 12.

19 NIA, para 19.

There is an obligation on all parties to the convention to ensure that facilities are available in ports to receive garbage from ships. In Australia that issue tends to be up to the states and I am aware that Queensland and New South Wales have specific legislation that applies. Other states, for example, might have the requirement as part of the licensing requirements for ports. So states look after it in a different way, but there is an obligation on parties. From the perspective of the Australian Maritime Safety Authority, we have a program in place where we go and audit ports, not a lot but we aim to do two or three ports every year. We will go and look at the facilities that are available in the port and test them against the International Maritime Organisation guidelines. They have audit guidelines that we follow.<sup>20</sup>

## Costs

- 4.21 The revised Annex V is expected to have a minimal cost impact on Australia. Many Australian shipowners and operators already follow the revised Annex V provisions.<sup>21</sup> While the expansion of the requirements for placards and garbage management plans to fixed and floating platforms will have an administrative impact, this impact is expected to be negligible.<sup>22</sup>
- 4.22 Australia already has mandatory requirements for livestock management and shipment, including requirements for the disposal of animal carcasses. The disposal requirements Australia applies are currently more stringent than the revised Annex V. None of the vessels currently engaged in livestock export are Australian flagged, although they all comply with Australian requirements.<sup>23</sup>
- 4.23 It is expected the revised Annex V will result in an increased demand for waste reception facilities in ports. As waste removal services in Australian ports are almost exclusively provided by private waste removal contractors, it is anticipated that any increase in demand will be met through commercial arrangements.<sup>24</sup>

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20 Mr Paul Nelson, Manager, Marine Environment Standards, Marine Environment Division, Australian Maritime Safety Authority, *Committee Hansard*, 6 February 2012, p. 11.

21 NIA, para 20

22 NIA, para 21

23 NIA, para 22

24 NIA, para 23

## Conclusion

- 4.24 The Committee recognises the importance of the proposed amendments and supports their approval. Protection of the maritime environment will become increasingly important given the growth of ship traffic and as the importance of preserving fish stocks increases.
- 4.25 The amendments contribute to the protection of the maritime environment and are in accordance with Australia's general obligations under the *United Nations Convention on the Law of the Sea 1982 (UNCLOS)*.
- 4.26 Australia's acceptance of the revised Annex V is consistent not only with Australia's long-standing support for protection of the marine environment, but also with Australia's active backing of, and participation in, the IMO.
- 4.27 The Committee concludes that these amendments should be supported with binding treaty action.

### Recommendation 3

**The Committee supports the *Revised MARPOL Annex V: Regulations for the Prevention of Pollution by Garbage from Ships (Resolution MEPC.201(62)) adopted at London on 15 July 2011* and recommends that binding treaty action be taken.**



## Tax Information Exchange Agreements with:

- the Government of the Principality of Liechtenstein;
- the Government of Costa Rica;
- the Government of the Macao Special Administrative Region of the People's Republic of China; and
- the Government of Liberia.

### Introduction

5.1 This Chapter discusses the latest four Tax Information Exchange Agreements the Australian Government has entered into. The agreements are:

- the *Agreement between the Government of Australia and the Government of the Principality of Liechtenstein on the Exchange of Information on Taxes* done at Vaduz on 21 June 2011;
- the *Agreement between the Government of Australia and the Government of Costa Rica on the Exchange of Information with Respect to Taxes* done at Mexico City on 1 July 2011;
- the *Agreement between the Government of Australia and the Government of the Macao Special Administrative Region of the People's Republic of China for*

*the Exchange of Information Relating to Taxes* done at Macao on 12 July 2011; and

- *the Agreement between the Government of Australia and the Government of Liberia on the Exchange of Information with Respect to Taxes* done at Monrovia on 11 August 2011.

5.2 These agreements are being considered together because they are all part of Australia's implementation of the Organisation for Economic Development and Cooperation (OECD) standards on the elimination of harmful tax practices.

## **OECD Standards on the Elimination of Harmful Tax Practices**

5.3 Since 2000, the OECD has worked with non-OECD low tax countries to address harmful tax practices through the Global Forum on Transparency and Exchange of Information for Tax Purposes.<sup>1</sup> The OECD identifies the following as harmful tax practices:

- no or low taxation of income;
- a lack of transparency in relation to which persons or organisations are subject to the low tax regime and the amount of income concerned;
- little or no exchange of information with countries from which persons or organisations transfer income to the low tax economy; and
- a low or no tax regime that does not extend to persons or organisations within the low tax economy.<sup>2</sup>

5.4 The Global Forum established a set of standards on the elimination of harmful tax practices that provide the basis for the OECD's work with low tax countries. In summary, the standards require low tax countries which are members of the Global Forum to:

- refrain from adopting new measures that extend the scope of, or strengthen existing provisions that constitute harmful tax practices;

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1 Organisation for Economic Development and Cooperation (OECD), *Global Forum on Transparency and Exchange of Information for Tax Purposes Information Brief*, September 2011, <<http://www.oecd.org/dataoecd/32/45/43757434.pdf>>, viewed 18 September 2011.

2 OECD, *The OECD's Project on Harmful Tax Practices: 2006 Update on Progress in Member Countries*, 2006, p. 3.



- review their existing measures for the purpose of identifying and removing legislation or administrative practices that could constitute harmful tax practices;
  - remove features of their tax regime that have been identified by the OECD as harmful;
  - ask other members of the Forum to review their tax provisions that could constitute a harmful tax practice;
  - coordinate their national treaty responses to harmful tax practices adopted by other countries; and
  - encourage non members to associate themselves with these standards.<sup>3</sup>
- 5.5 More than 60 low tax countries have joined the Global Forum and committed to the implementation of OECD standards on the elimination of harmful tax practices. The OECD claims that every country identified as a low tax country when the Global Forum commenced its work in 2000 has now agreed to cooperate with the OECD to remove harmful tax practices.<sup>4</sup>

## Australian TIEAs

- 5.6 Australia has signed 33 TIEAs to date.<sup>5</sup> The Committee has previously reviewed Australian TIEAs in Reports 73, 87, 99, 102, 107, 112, 114 and 120.
- 5.7 According to the National Interest Analysis (NIA):

The proposed Agreements will help Australia protect its revenue base by allowing the Commissioner of Taxation to request and receive tax and income related information held in the Marshall Islands, Mauritius or Montserrat, and will discourage tax evasion by individuals and other entities in Australia.<sup>6</sup>

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3 OECD, *Harmful Tax Competition: An Emerging Global Issue*, 1998, p. 71.

4 OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes Information Brief*, September 2011, <<http://www.oecd.org/dataoecd/32/45/43757434.pdf>>, viewed 18 September 2011.

5 Mr Gregory Wood, Manager, International Tax Treaties Unit, International Tax and Treaties Division, Department of the Treasury, *Committee Hansard*, 6 February 2012, p. 24.

6 *National Interest Analysis* [2011] ATNIA 29, for the following Agreements:

- *the Agreement between the Government of Australia and the Government of the Principality of Liechtenstein on the Exchange of Information on Taxes* done at Vaduz on 21 June 2011 [2011] ATNIF 10;

- 5.8 In relation to the parties to the TIEA's being considered here, Australian Transaction Reports and Analysis Centre (AUSTRAC) data indicates that the flow of funds is relatively small between Australia, Liechtenstein, Costa Rica and Liberia. On the other hand, a significant flow of funds does occur between Australia and Macao.<sup>7</sup>
- 5.9 While most funds flowing to and from low tax countries are legitimate, the legal frameworks and systems that make low tax countries attractive may also be used to evade paying tax.<sup>8</sup>
- 5.10 Australia will fulfil its obligations under the proposed agreements using existing legislation, specifically, section 23 of the *International Tax Agreements Act 1953*. No further legislation or regulation is required in order to implement the proposed Agreements.<sup>9</sup>

## How the information is obtained

- 5.11 Parties to a TIEA must provide on request information relevant to the administration of the other party's tax laws.<sup>10</sup>
- 5.12 Where the requested information is not in possession of the party, it must use its information gathering powers to obtain the requested information. The information gathering powers must include the authority to obtain information held by financial institutions and any person acting in an agency or fiduciary capacity, as well as information concerning ownership of companies, partnerships, trusts, foundations, and other persons.<sup>11</sup>
- 5.13 The information must be provided as witnessed and authenticated copies of original records. Witnessed and authenticated copies will enable the

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- *the Agreement between the Government of Australia and the Government of Costa Rica on the Exchange of Information with Respect to Taxes* done at Mexico City on 1 July 2011 [2011] ATNIF 14;
  - *the Agreement between the Government of Australia and the Government of the Macao Special Administrative Region of the People's Republic of China for the Exchange of Information Relating to Taxes* done at Macao on 12 July 2011 [2011] ATNIF 11; and
  - *the Agreement between the Government of Australia and the Government of Liberia on the Exchange of Information with Respect to Taxes* done at Monrovia on 11 August 2011. [2011] ATNIF 15, para. 6.

7 NIA, para. 14.

8 NIA, para. 13.

9 NIA, para. 27.

10 NIA, para. 16.

11 NIA, para. 16.

requesting party to satisfy evidentiary requirements in domestic tax proceedings.<sup>12</sup>

- 5.14 In certain circumstances, the requesting party may be permitted to interview individuals and examine records in the jurisdiction of the party holding the information.<sup>13</sup>

## Privacy safeguards

- 5.15 The proposed agreements incorporate two mechanisms for protecting the private information of individuals or organisations subject to a request for information.
- 5.16 Firstly, a party may refuse a request if the request is not in conformity with the proposed agreement or if the requesting party would be unable to obtain the requested information under its own laws.<sup>14</sup>
- 5.17 Secondly, in instances where information is provided by one party to the other, the information provided is to be considered confidential. Confidential information may be disclosed only to persons or authorities concerned with the administration or enforcement of taxation covered by the proposed agreement, although this may include public court proceedings or in judicial decisions.<sup>15</sup>

## The effectiveness of Tax Information Exchange Agreements

- 5.18 As indicated above, the Committee has inquired into a significant number of TIEAs. The Committee was interested in examining whether the treaties of this sort that have been in place for some time are performing as intended.
- 5.19 Mr Goodwin, from the Australian Tax Office advised the Committee that:

In terms of the outcomes, we have had 41 specific requests to the TIEA partners in respect of the agreements which are in force. Eighteen of those specific requests have been finalised. We

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12 NIA, para. 18.

13 NIA, para. 18.

14 NIA, para. 22.

15 NIA, para. 23.

estimate in the vicinity of \$120 million in omitted income has resulted from tax adjustments if that exchange of information had not been available.<sup>16</sup>

- 5.20 The Committee was also advised that the Department of the Treasury believes that Australia now has TIEAs with more than half of the low tax jurisdictions with which Australia would like to reach agreement. Australia is currently negotiating TIEAs with four jurisdictions, and has identified a further 21 jurisdictions that are potential targets for negotiating a bilateral TIEA.<sup>17</sup>
- 5.21 The Department of the Treasury noted that of the 21 potential jurisdictions, a small number might not be willing to negotiate a TIEA. The Committee was advised that the question of sanctions against these jurisdictions would not be considered until TIEAs were in place with all the low tax jurisdictions that were willing to negotiate one.<sup>18</sup>
- 5.22 In the interim, the Committee continues to support the negotiation of TIEAs.

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#### **Recommendation 4**

**The Committee supports the *Agreement between the Government of Australia and the Government of the Principality of Liechtenstein on the Exchange of Information on Taxes done at Vaduz on 21 June 2011* and recommends that binding treaty action be taken.**

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#### **Recommendation 5**

**The Committee supports the *Agreement between the Government of Australia and the Government of Costa Rica on the Exchange of Information with Respect to Taxes done at Mexico City on 1 July 2011* and recommends that binding treaty action be taken.**

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16 Mr Grant Goodwin, Senior Director, Australian Taxation Office, *Committee Hansard*, 6 February 2012, p. 25.

17 Mr Gregory Wood, Manager, International Tax Treaties Unit, International Tax and Treaties Division, Department of the Treasury, *Committee Hansard*, 6 February 2012, p. 24.

18 Mr Gregory Wood, Manager, International Tax Treaties Unit, International Tax and Treaties Division, Department of the Treasury, *Committee Hansard*, 6 February 2012, p. 25.

**Recommendation 6**

**The Committee supports the *Agreement between the Government of Australia and the Government of the Macao Special Administrative Region of the People's Republic of China for the Exchange of Information Relating to Taxes done at Macao on 12 July 2011* and recommends that binding treaty action be taken.**

**Recommendation 7**

**The Committee supports the *Agreement between the Government of Australia and the Government of Liberia on the Exchange of Information with Respect to Taxes done at Monrovia on 11 August 2011* and recommends that binding treaty action be taken.**



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

## Introduction

- 6.1 On 22 November 2011, the *Agreement between Australia and the Republic of Latvia on Social Security done at Riga on 7 September 2011* was tabled in the Commonwealth Parliament.
- 6.2 Under the proposed Agreement, individuals may be eligible for benefits from both countries if they meet certain criteria and have lived and/or worked in both countries. Residents of Australia and Latvia will be able to move between these countries knowing that their rights to benefits are protected.<sup>1</sup>

## Background

- 6.3 Australia's social security agreements are bilateral treaties which close gaps in social security coverage for people who migrate between countries. The agreements do this by overcoming barriers to pension payment in the domestic legislation of each country, such as requirements on citizenship, minimum contributions or past residence history, and current country of residence.<sup>2</sup>
- 6.4 Australia's network of bilateral social security agreements improves access to income support for people whose adult lives are, or have been, split
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1 National Interest Analysis [2011] ATNIA 32 with attachment on consultation *Agreement between Australia and the Republic of Latvia on Social Security done at Riga on 7 September 2011* [2011] ATNIF 18, (Hereafter referred to as 'NIA'), para 9.

2 NIA, para 3.

between Australia and another country. Most beneficiaries are age pensioners.<sup>3</sup>

- 6.5 This Agreement incorporates the same principles as Australia's other social security agreements. A key element of this Agreement, as with other social security agreements, is the sharing of responsibility between both countries in providing adequate social security coverage for current and former residents.<sup>4</sup>
- 6.6 This treaty action follows on from a series of similar bilateral social security agreements. Recent agreements have centered on Eastern European countries, from which Australia accepted a significant number of refugees in the decades following the Second World War.<sup>5</sup> The countries have included:
- Hungary (examined by the Committee in *Report 120*);
  - Austria (see *Report 115*);
  - The Czech Republic (see *Report 112*);
  - the Former Yugoslav Republic of Macedonia (see *Report 112*);
  - Poland (see *Report 108* and *Report 110*); and
  - Slovakia (see *Report 117*).
- 6.7 The agreement is an important addition to this existing network of social security agreements. Currently Australia has 28 agreements and this would be the 29th agreement when implemented.<sup>6</sup> Currently, inside Australia there are about 145,000 people receiving a foreign pension entitlement through an agreement. Australian pays nearly 60,000 people overseas an agreement pension.<sup>7</sup>

## Overview and national interest summary

- 6.8 The proposed Agreement provides for improved access to Australian and Latvian retirement benefits and greater portability of these benefits
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3 NIA, para 7.

4 NIA, para 8.

5 Mr Peter Hutchinson, Section Manager, Agreements, International Branch, Department of Families, Housing, community Services and Indigenous Affairs, *Committee Hansard*, 12 September 2011, p. 6.

6 Mrs Michalina Stawyskyj, Branch Manager, Social Security Relationships and International Branch, Social Policy Group, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 6 February 2012, p. 21.

7 Mr Darrin Smith, Assistant Section Manager, Social Security Relationships and International Branch, Social Policy Group, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 6 February 2012, p. 21.



between the two countries. Improved access to benefits is an underlying principle of bilateral social security agreements where the responsibility for providing benefits is shared. Under this Agreement, residence in one Party's territory will not affect a person's entitlement to benefits under the legislation of the other Party. People who move between Australia and Latvia will be able to do so in the knowledge that their rights to benefits are recognised in both countries.<sup>8</sup>

- 6.9 The proposed Agreement will facilitate business by ensuring employers and employees do not have 'double liability' in respect of the same work of an employee. For example, when an employee from one Party is temporarily seconded to work in the other, the employee and/or their employer will not need to make compulsory pension or superannuation contributions in both countries. In the Australian context, the proposed Agreement will exempt employers and/or employees already making superannuation guarantee contributions in Australia, from making compulsory social security contributions in Latvia and vice-versa.<sup>9</sup>
- 6.10 The proposed Agreement will bring economic and social benefits to Australia and facilitate business links by reducing costs. It will help to maximise the foreign income of Australian residents and there will be flow-on effects within the Australian economy. The Agreement will serve to reinforce Australia's political, business and strategic interests. It will also further strengthen bilateral relations between Australia and Latvia and provide choices in retirement for individuals who migrate to Australia or Latvia during or after their working lives.<sup>10</sup>

## Reasons for Australia to take the proposed treaty action

- 6.11 The Agreement will provide substantial net pension flows into Australia. The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) estimates that, in the first year approximately 2,000 people in both countries will claim an Australian and/or Latvian pension. This is expected to increase ongoing Latvian pension flows into Australia by around \$4.3 million per year and increase ongoing Australian pension flows into Latvia by approximately \$0.2 million per year. This will result in Australian pension outlays decreasing by around \$1.1 million over the forward estimates period.<sup>11</sup>

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8 NIA, para 4.

9 NIA, para 5.

10 NIA, para 6.

11 NIA, para 10.

## Obligations

- 6.12 Part I sets out general provisions and defines the scope of the proposed Agreement. Parties are obliged to ensure equal treatment of people covered by the proposed Agreement, with respect to eligibility for and payment of benefits.<sup>12</sup>
- 6.13 Part II concerns provisions on applicable legislation, and includes provisions to avoid double liability.<sup>13</sup>
- 6.14 Part III applies to benefits payable by Australia and:
- a) obliges Australia to regard residents of Latvia, and Australian residents who are temporarily in Latvia, as Australian residents and as being present in Australia, for the purpose of claiming the Australian Age Pension, provided the person has been a resident of Australia at some time;
  - b) provides that insurance periods in Latvia (being periods of contributions used to acquire the right to a benefit under Latvian legislation, or periods deemed equivalent) will be regarded as periods of residence in Australia for the purpose of meeting any minimum qualifying period of residence for the Australian Age Pension and;
  - c) specifies how the rate of the Australian Age Pension will be calculated under the proposed Agreement and how this applies to a person who is living inside or outside Australia.<sup>14</sup>
- 6.15 Part IV applies to benefits payable by Latvia. Periods of Australian working-life residence and Australian residence will be taken into account in Latvia for the purpose of meeting minimum insurance periods under Latvian legislation, provided the periods do not overlap with the person's insurance period accumulated in Latvia. The rate of pension from Latvia will generally be based on a person's insurance period accumulated in Latvia<sup>15</sup>
- 6.16 Part V sets out various administrative obligations.<sup>16</sup>
- 6.17 Part VI concerns transitional and final provisions.<sup>17</sup>
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12 NIA, para 11.

13 NIA, para 12.

14 NIA, para 13.

15 NIA, para 14.

16 NIA, para 15.

17 NIA, para 16.

## Implementation

- 6.18 The *Social Security (International Agreements) Act 1999* gives effect in domestic law to relevant provisions of social security agreements that are scheduled to the Act. A new Schedule containing the Agreement's full text will be added to the *Social Security (International Agreements) Act 1999* pursuant to that Act's regulations.<sup>18</sup>
- 6.19 Provisions of social security agreements relating to double superannuation coverage are automatically given effect in domestic law once agreements are scheduled to the *Social Security (International Agreements) Act 1999*. This happens pursuant to section 27(1)(e) of the *Superannuation Guarantee (Administration) Act 1992* and regulation 7AC of the *Superannuation Guarantee (Administration) Regulations 1993*, which together provide that payment of salary or wages to an employee who has been sent temporarily to work in Australia will not give rise to a superannuation guarantee obligation for the overseas employer, provided that a relevant scheduled social security agreement is in place.<sup>19</sup>

## Costs

- 6.20 The proposed Agreement was funded in the 2009-10 Budget at a net cost of \$1.3 million over the forward estimates period. It is expected to reduce ongoing pension outlays by around \$1.1 million. Departmental costs incurred by FaHCSIA, the Department of Human Services (Centrelink) and the Australian Taxation Office (ATO) total \$2.4 million over the forward estimates period, and are primarily one-off set-up costs.<sup>20</sup> FaHCSIA explained:

The start-up costs involve FaHCSIA costs for negotiating the agreement for monitoring and going through the processes, Treasury costs for the double coverage area and of course the Department of Human Services through Centrelink for processing all of the claims and contacting people and also carrying out investigations into those claims.<sup>21</sup>

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18 NIA, para 17

19 NIA, para 18.

20 NIA, para 19.

21 Mrs Michalina Stawyskyj, Branch Manager, Social Security Relationships and International Branch, Social Policy Group, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 6 February 2012, p. 22.

- 6.21 FaHCSIA also noted that while agreements between Australia and different countries may be similar, the bureaucratic mechanisms are not, and this may result in different start up costs for different agreements.

There is additional staff depending on the size of the agreement and the number of people who were required to process the new claims. Obviously Centrelink would need to make adjustments to their IT infrastructure with each new agreement coming on-stream. There are different forms that are required and there are different issues because the systems are different. They are not the same system. It is not as though we are just plugging them into every European country. Every country has slightly different quirks to the system. It is not as easy as just saying, 'Here is another agreement; switch it on.'<sup>22</sup>

## Conclusion

- 6.22 The Committee supports the proposed social security agreement with Latvia. Bilateral agreements of this type provide reciprocal benefits to individuals with ties to both nations, whether gained through permanent migration or temporary secondment. The Agreement would optimise choice in retirement and increase retirement incomes and may also create opportunities for greater economic engagement between our two nations.

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### Recommendation 8

**The Committee supports the *Agreement between Australia and the Republic of Latvia on Social Security done at Riga on 7 September 2011* and recommends that binding treaty action be taken.**

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22 Mrs Michalina Stawyskyj, Branch Manager, Social Security Relationships and International Branch, Social Policy Group, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 6 February 2012, p. 22.

# Exchange of Notes constituting an Agreement to extend the Agreement between the Government of Australia and the Government of the United States of America concerning the Conduct of Scientific Balloon Flights for Civil Research Purposes of 16 February 2006

## Introduction

- 7.1 On 24 November 2011, the *Exchange of Notes constituting an Agreement to extend the Agreement between the Government of Australia and the Government of the United States of America concerning the Conduct of Scientific Balloon Flights for Civil Research Purposes of 16 February 2006* was tabled in the Commonwealth Parliament.
- 7.2 This treaty action extends the 2006 Agreement, which provides NASA the use of facilities and services for balloon launchings and recoveries in Australian territory, tracking and telemetering of information from each balloon, and the recording and sharing of information from these flights.<sup>1</sup>

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1 National Interest Analysis [2011] ATNIA 35 with attachment on consultation *Exchange of Notes constituting an Agreement to extend the Agreement between the Government of Australia and the Government of the United States of America concerning the Conduct of Scientific Balloon Flights for Civil Research Purposes of 16 February 2006* done at Canberra [2011] ATNIF 26, (Hereafter referred to as 'NIA'), para 4.

## Background

- 7.3 The 50<sup>th</sup> anniversary of treaty-level cooperation between the United States (US) and Australia in civil space vehicle tracking was celebrated in 2010. Operational-level cooperation with the US on space-related activities began in 1957 with the establishment of facilities at Woomera in South Australia, to track US satellites. This was broadened to include additional scientific facilities set up by the US National Aeronautics and Space Administration (NASA) in 1960.<sup>2</sup>
- 7.4 Since then, the civil space relationship between Australia and the US has been the subject of a succession of agreements and exchanges of notes between the two countries. Under these instruments, NASA has spent in excess of \$740 million on space-related activities in Australia since 1960.
- 7.5 The Agreement being considered here is the *Exchange of Notes constituting an Agreement to extend the Agreement between the Government of Australia and the Government of the United States of America concerning the Conduct of Scientific Balloon Flights for Civil Research Purposes of 16 February 2006* (the Exchange of Notes).
- 7.6 Australia first entered into an agreement with the Government of the United States regarding the conduct of scientific ballooning activities in Australia in 1984. In 1985, a further agreement was concluded that related to the launching of long duration balloon flights beyond Australia. In 1992 these two agreements were merged and renewed for a further ten years. Following the expiry of the 1992 Agreement in 2002, a new and updated agreement was concluded in 2006 at the request of the US Government (the '2006 Agreement').<sup>3</sup>

## Reasons for Australia to take the proposed treaty action

- 7.7 Australia has derived significant scientific and economic benefits from activities conducted under the 2006 Agreement, especially through encouraging collaboration between Australian and NASA scientists.
- 7.8 Extending the 2006 Agreement would allow NASA to conduct scientific balloon launchings and recoveries in Australia and to continue the productive fifty-four year cooperation in space-related activities between the two countries.<sup>4</sup>

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2 NIA, para 3.

3 NIA, para 8.

4 NIA, para 6.

7.9 Over the last three decades, NASA has conducted many ballooning operations from the Alice Springs Ballooning Facility, allowing Australian scientists to be involved in, and take advantage of, these flights. Individual ballooning operations have included the launch of up to six different scientific experimental payloads requiring six different scientific teams to base themselves in Alice Springs, sometimes for up to four months. The teams' experiments study matters as exotic as black holes and quasars, to more familiar atmospheric and environmental science.

7.10 Australia's geographical position offers a unique perspective to the galaxy and our contribution should not be underestimated.

The centre of our galaxy can be seen virtually overhead from the latitudes of Alice Springs, rather than from the Antarctic, and you cannot see it from the Northern Hemisphere. So, if you want to do high-energy astrophysics, which is looking at the physics of black holes, neutron stars and so on, this is the place to do it from, which is why there is such a great interest in Australia.<sup>5</sup>

7.11 The Australian scientific community is highly supportive of continued participation in NASA's balloon program.<sup>6</sup> Australian scientists have also flown their own experiments or have been collaborators with other scientists. Extending the Agreement would enable Australian scientists to continue this research and will further ensure that Australia remains entitled to receive data from these experiments.

7.12 Furthermore, new projects are being considered, and Australia is being approached to contribute.

Quite independent of the program from Alice Springs, NASA recently approached me to do a feasibility study on a project called the Supersonic Inflatable Aerodynamic Decelerator, or SIAD. This is a module that they are developing to carry probes to different planets in our solar system – not just Mars or Venus; this is a general unit that they are developing to land their interplanetary probes on different planets. They want to carry out these tests in Woomera or Maralinga about the end of next year.<sup>7</sup>

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5 Associate Professor Ravi Sood, Station Director, Balloon Launching Station, Alice Springs, School of Physical, Environmental and Mathematical Sciences, University of New South Wales, Australian Defence Force Academy, *Committee Hansard*, 6 February 2012, p. 6.

6 NIA, para 9.

7 Associate Professor Ravi Sood, Station Director, Balloon Launching Station, Alice Springs, School of Physical, Environmental and Mathematical Sciences, University of New South Wales, Australian Defence Force Academy, *Committee Hansard*, 6 February 2012, p. 6.

- 7.13 The scientists involved in each balloon campaign are supported by a NASA launch team, which in turn receives local support from the the University of New South Wales' Australian Defence Force Academy and the Commonwealth Scientific and Industrial Research Organisation (CSIRO), which is responsible for managing NASA's deep space tracking and scientific ballooning activities. The direct economic benefits to Australia of this activity are estimated by CSIRO to contribute \$5 million to the domestic economy for each balloon flight.<sup>8</sup> Some of this money flows through to local communities:

The last two balloon campaigns that we had in Alice Springs were NASA campaigns. They would have spent approximately \$5 million in Australia during those two campaigns. That is a direct benefit to Australia. A lot of that benefit is to the remote communities up in Central Australia...

As far as the remote communities outside Alice Springs are concerned, their involvement usually happens when we go and pick up an instrument. We have to get approval from the Central Land Council, or whoever is responsible for a particular community, so that we can actually enter that area to recover our payload. We have to go through a formal agreement with them. What we find is that every time we have to do that the support that we have from the remote communities is absolutely fantastic...

Obviously, we give them the money to dispose of the balloon and so on and pay for their services. But generally they are very happy to support what we are doing.<sup>9</sup>

- 7.14 In addition to the scientific and economic benefits gained from continued cooperation, the 2006 Agreement's extension would also confirm on a political level our strong commitment to research on space and scientific matters with the US.<sup>10</sup>

## The proposed extension

- 7.15 The proposed extension provides for the continuation of the 2006 Agreement until 12 June 2022. The proposed extension will continue Australia's long-standing relationship with NASA, and provides for

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8 NIA, para 10.

9 Associate Professor Ravi Sood, Station Director, Balloon Launching Station, Alice Springs, School of Physical, Environmental and Mathematical Sciences, University of New South Wales, Australian Defence Force Academy, *Committee Hansard*, 6 February 2012, p. 6.

10 NIA, para 11.



cooperation in scientific balloon flights for the next ten years, extending the period of cooperation well into its fourth decade.<sup>11</sup>

## Obligations

- 7.16 The proposed extension would allow the 2006 Agreement to run until 12 June 2022. Existing arrangements for the exchange of technical data, facilitation of the entry into and exit from Australia of US personnel, and the duty-free import of personal and household effects of US personnel will remain unchanged. The taxation of US personnel continues to be governed by the *Convention between the Government of Australia and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*.<sup>12</sup>
- 7.17 The 2006 Agreement explicitly provides for further (non-treaty) arrangements between NASA and CSIRO, as the cooperating agencies, in respect of the establishment and operation of scientific balloon activities (Article 1). These arrangements encompass funding procedures, liabilities, the provision of services for balloon launchings and recoveries in Australian territory, tracking and telemetering of information from each balloon and the recording and sharing of information.
- 7.18 NASA is currently entitled to an exemption from duties, taxes and like charges, including Goods and Services Tax (GST), which will also be extended.<sup>13</sup>

## Implementation

- 7.19 No changes are required to existing legislation to implement the proposed extension.<sup>14</sup>

## Costs

- 7.20 No additional costs are anticipated as a consequence of this treaty action. NASA funds the total cost of the establishment, operation and maintenance of the balloon launching facilities in Australia through its contractual arrangements with CSIRO.

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11 NIA, paras 12-13.

12 NIA, paras 14-15.

13 NIA, para 16.

14 NIA, para 17.

- 7.21 NASA is also responsible for remediation work in relation to its facilities. Any additional activities or the set-up of new facilities under the proposed extension would not impose any additional costs on the Australian Government or the respective State and Territory Governments.<sup>15</sup>

### The April 2010 balloon launch accident

- 7.22 In April 2010, a NASA balloon became involved in an accident at launch, and the Committee was very interested to hear what measures had been put in place to ensure such an incident wasn't repeated.
- 7.23 In summary, the balloon was set to carry a gamma-ray telescope designed to look for distant galaxies from high in Earth's upper atmosphere. The balloon broke free from the crane holding it during the launch. The balloon's payload was dragged by the balloon through the airport fence and into an unoccupied vehicle that was owned by a spectator. No-one was injured or killed but this appears to have been essentially the result of good fortune.
- 7.24 The NASA investigation of the incident<sup>16</sup> listed twenty-five causes, including insufficient risk analysis, government oversight and public safety shortfalls. In response to the Committee's inquiries at the public hearing, the following issues were identified:

There were three reasons why the launch failed. The first was the launch mechanism, which has now been redesigned. The second reason was the uneven surface of the launch area. The launch track automatically shut down the traction on three of the four axles. That is computer controlled. That has been addressed now. The uneven surface area at Alice Springs Airport is now earmarked to be developed and made more suitable for balloon launches. The third reason why the flight failed was low-level winds which suddenly came up. That is something we cannot do much about. In order to further improve public safety, when a launch takes place at Alice Springs the Northern Territory Police now put roadblocks onto the main approach route and there is no public traffic in the area at all.<sup>17</sup>

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15 NIA, para 18.

16 The NASA report can be found at:  
[http://www.nasa.gov/centers/goddard/business/foia/balloon\\_mishap.html](http://www.nasa.gov/centers/goddard/business/foia/balloon_mishap.html)

17 Associate Professor Ravi Sood, Station Director, Balloon Launching Station, Alice Springs, School of Physical, Environmental and Mathematical Sciences, University of New South Wales, Australian Defence Force Academy, *Committee Hansard*, 6 February 2012, p. 2.

7.25 It was also noted by the Committee that in the course of the investigation, NASA's Mishap Investigation Board concluded that there were surprisingly few documented procedures for balloon launches. The Committee was assured that:

Procedures have [now] been put in place and they are all documented. In addition to the documentation and the following of procedures, NASA send out two safety officers who oversee different aspects of their balloon flights.<sup>18</sup>

7.26 Finally, there was a question of government oversight of the balloon launches. In response to Committee questioning Australian officials assured the committee that Australian government agencies had acted properly.

[The Civil Aviation Safety Authority] CASA is not only consulted... but actually issues an instrument to permit those flights to take place. The flights only take place after CASA has issued its permit and Airservices Australia has also issued its permit. The flights take place with complete real time communication with air traffic control as well. So the flight cannot be launched without proper documented procedures being undertaken...

That might have been on the part of the United States government but certainly not on the part of our government. In fact, our agreement with NASA clearly stipulates that Australian interests will be represented by the presence of one of our representatives, who is in charge of the balloon flight. NASA is not in charge of the balloon flight.<sup>19</sup>

7.27 Subsequent evidence supplied to the Committee provided an overview of the thorough procedures followed by the University of New South Wales' Balloon Launching Station at Alice Springs.<sup>20</sup>

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18 Associate Professor Ravi Sood, Station Director, Balloon Launching Station, Alice Springs, School of Physical, Environmental and Mathematical Sciences, University of New South Wales, Australian Defence Force Academy, *Committee Hansard*, 6 February 2012, p. 2.

19 Associate Professor Ravi Sood, Station Director, Balloon Launching Station, Alice Springs, School of Physical, Environmental and Mathematical Sciences, University of New South Wales, Australian Defence Force Academy, *Committee Hansard*, 6 February 2012, p. 2.

20 Associate Professor Ravi Sood, *Submission No 1*.

## Conclusion

- 7.28 Notwithstanding the events of April 2010, the agreement facilitating scientific balloon launches by NASA in Australia is of positive benefit to Australia. The economic, scientific and political benefits certainly justify continuing this relationship.
- 7.29 The Committee is, of course, concerned about the April 2010 accident. Balloon launches are essentially a risky activity and are facilitated by this agreement. We need to be certain that the lessons of the 2010 incident have been learnt if the launches are to continue in the future. From the evidence presented it appears that appropriate corrective procedures have been put into place. Nonetheless, the agencies involved must remain vigilant against the complacency that was identified as one of the causes of the accident.
- 7.30 Given the longevity and overall success of the program – some 100 launches have been concluded successfully<sup>21</sup> – and the benefits it brings, the Committee believes the agreement should be renewed.

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### Recommendation 9

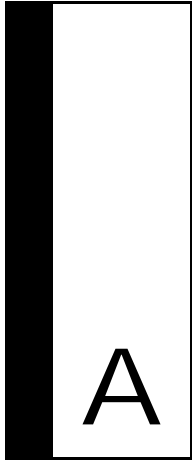
**The Committee supports the *Exchange of Notes constituting an Agreement to extend the Agreement between the Government of Australia and the Government of the United States of America concerning the Conduct of Scientific Balloon Flights for Civil Research Purposes of 16 February 2006* and recommends that binding treaty action be taken.**

Kelvin Thomson MP

Chair

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21 Associate Professor Ravi Sood, Station Director, Balloon Launching Station, Alice Springs, School of Physical, Environmental and Mathematical Sciences, University of New South Wales, Australian Defence Force Academy, *Committee Hansard*, 6 February 2012, pp. 4 – 5.



## Appendix A – Submissions

### Treaty tabled on 13 October 2011

- 1 Australian Patriot Movement

### Treaties tabled on 2 November 2011

- 1 Australian Patriot Movement
  - 1.1 Australian Patriot Movement
  - 1.2 Australian Patriot Movement
- 2 Department of Industry, Innovation, Science, Research and Tertiary Education

### Treaties tabled on 22 November 2011

- 1 Australian Patriot Movement
  - 1.1 Australian Patriot Movement
  - 1.2 Australian Patriot Movement
- 2 Department of Families, Housing, Community Services and Indigenous Affairs

### Treaty tabled on 24 November 2011

- 1 University of NSW at ADFA
- 2 Australian Patriot Movement





## Appendix B – Witnesses

**Monday, 21 November 2011 - Canberra**

**Australian Maritime Safety Authority**

Mr Paul Nelson, Manager, Environment Protection Standards

**Department of Foreign Affairs and Trade**

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

**Department of Infrastructure and Transport**

Ms Poh Aye Tan, Section Head, Maritime Safety, Environment and Liner  
Shipping

**Monday, 6 February 2012 - Canberra**

**Attorney-General's Department**

Mr Richard Glenn, Assistant Secretary, Information Law and Policy  
Branch, Strategy and Delivery Division

**Australian Customs and Border Protection Service**

Ms Janet Dorrington, National Director, Intelligence and Targeting  
Division

**Australian Maritime Safety Authority**

Mr Paul Nelson, Manager, Environment Protection Standards

**Australian Taxation Office**

Mr Grant Goodwin, Senior Director

**Department of Families, Housing, Community Services and Indigenous Affairs**

Mr Darrin Smith, Assistant Section Manager, Social Security Relationships and International Branch, Social Policy Group

Mrs Michalina Stawyskyj, Branch Manager, Social Security Relationships and International Branch, Social Policy Group

**Department of Foreign Affairs and Trade**

Mr Jeremy Kruse, Director, European Union Section, EU and West Europe Branch, Europe Division

Ms Elizabeth Toohey, Executive Officer, Treaties Secretariat, Legal Branch

**Department of Industry, Innovation, Science, Research and Tertiary Education**

Dr Michael Green, General Manager, Innovation and Space Branch, Manufacturing Division

**Department of Infrastructure and Transport**

Ms Poh Aye Tan, Section Head, Maritime Safety, Environment and Liner Shipping

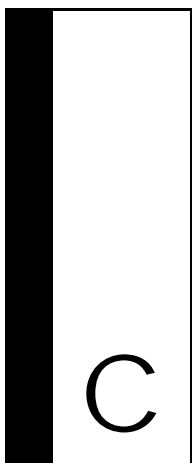
**Department of Treasury**

Mr Gregory Wood, Manager, International Tax Treaties Unit, International Tax & Treaties Division

**University of NSW at ADFA**

Associate Professor Ravi Sood, Station Director, Balloon Launching Station, Alice Springs, School of Physical Environmental & Mathematical Sciences





## Appendix C — Minor treaty actions

Minor treaty actions are generally technical amendments to existing treaties which do not impact significantly on the national interest.

Minor treaty actions are presented to the Joint Standing Committee on Treaties with a one-page explanatory statement. The Committee has the discretion to formally inquire into these treaty actions or indicate its acceptance of them without a formal inquiry and report. Minor treaty actions are listed on the Committee's website.

The minor treaty action under consideration here is the *International Convention Against Doping in Sport Annex I - Prohibited List - International Standard* (the Convention).

The Convention is administered by the United Nations Education, Scientific and Cultural Organisation (UNESCO). Annex I identifies the substances and methods of doping that are prohibited in sport.

The proposed amendment updates Annex I to include the 2012 Prohibited List adopted by the World Anti-Doping Agency (WADA) on 17 September 2011. WADA reviews its Prohibited List annually and consults widely on possible amendments. The Australian Government contributes to this consultation process.

The proposed amendment harmonises the regulation of prohibited substances and methods, in and out of competition, across certain sports globally. The proposed amendment will ensure that Australian athletes will be subject to the same list of banned substances as all other international athletes.

On 6 February 2012, the Committee determined not to hold a formal inquiry into this treaty action and agreed that binding treaty action may be taken.

