Report 170

*Social Security Agreement - New Zealand; Nuclear Research Cooperation Agreement; Loan Agreement - International Monetary Fund; Harmonization of Wheeled Vehicles - Revision*

Joint Standing Committee on Treaties
Executive Summary

This Report contains the Joint Standing Committee on Treaties’ review of four treaty actions.

*Agreement on Social Security between the Government of Australia and the Government of New Zealand (Wellington, 8 December 2016)*

Australia and New Zealand have had bilateral social security arrangements since 1944. The Agreement provides for a joint responsibility for the payment of social security benefits for people who have lived between Australia and New Zealand. The Agreement helps to overcome barriers to social security payments in the domestic legislation of each country, including citizenship and residence requirements. The Agreement only covers specific pensions, which, in Australia, are the age pension, disability support pension and carer payment. The Agreement aligns these payments with the requirements of domestic legislation.

The Committee supports the proposed Agreement and recommends that binding treaty action be taken.

*Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (Ulaanbaatar, 18 May 2016)*

The Regional Co-operative Agreement facilitates Australian technical and political cooperation with 21 regional countries on nuclear research, technology and medical physics. Australian experts are currently involved in thirteen projects which are operating under the auspices of the existing (1987) Agreement. Unlike the 1987 Agreement, the proposed Agreement is of unlimited duration.

The Committee supports the proposed Agreement and recommends that binding treaty action be taken.
Loan Agreement between Australia and the International Monetary Fund  
(Canberra, 19 December 2016)

Recent global instability has seen a need for the International Monetary Fund to create extra avenues for borrowing in extraordinary circumstances. The Agreement is for a temporary loan of up to approximately $8.3 billion that Australia would be obliged to provide in certain circumstances.

The proposed Agreement improves the IMF’s accountability by including a two-step activation process. Activation now requires the agreement of countries representing 85 per cent of the total amount of the total bilateral loan agreements.

The Committee supports the proposed Agreement and recommends that binding treaty action be taken.

Agreement concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these United Nations Regulations (Transmitted to Parties on 14 December 2016)

United Nations’ wheeled vehicle regulations aim to increase safety and reduce barriers to international motor vehicle trade. They create recognised standards that countries can choose to adopt. Australia has adopted 40 of 138 such regulations which allows Australia to recognise other countries’ approvals as meeting the Australian standard.

The treaty action also provides for parties to mutually recognise vehicle approvals. The Agreement does not affect the application of Australian standards on vehicles imported from countries not party to the Agreement.

The Committee supports the proposed Agreement and recommends that binding treaty action be taken.
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Terms of Reference

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

- 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;

- any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
  - either House of the Parliament, or
  - a Minister; and
  - such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.
Abbreviations

ACF         Australian Conservation Foundation
ADR         Australian Design Rules
ANSTO       Australian Nuclear Science and Technology Organisation
DIRD        Department of Infrastructure and Regional Development
DSP         Disability Support Pension
DSS         Department of Social Services
IAEA        International Atomic Energy Agency
IMF         International Monetary Fund
IWVTA       International Whole Vehicle Type Approval
Mahrous     Department of Families, Housing, Community and Indigenous Affairs v Mahrous ([2013] FCAFC 75)
NAB         New Arrangements to Borrow
NDIS        National Disability Insurance Scheme
NIA         National Interest Analysis
NPT         Treaty on the Non-Proliferation of Nuclear Weapons
RCA         Regional Co-operative Agreement
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List of Recommendations

Recommendation 1

2.47 The Committee supports the Agreement on Social Security between the Government of Australia and the Government of New Zealand and recommends that binding treaty action be taken.

Recommendation 2

3.36 The Committee supports the Regional Co-operation Agreement for Research, Development and Training Related to Nuclear Science and Technology and recommends that binding treaty action be taken.

Recommendation 3

4.42 The Committee supports the Loan Agreement between Australia and the International Monetary Fund and recommends that binding treaty action be taken.

Recommendation 4

5.42 The Committee supports the Agreement concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis on these United Nations Regulations and recommends that binding treaty action be taken.
1. Introduction

Purpose of the report

1.1 This report contains the Joint Standing Committee on Treaties’ review of the following treaty actions:

- The Agreement on Social Security between the Government of Australia and the Government of New Zealand (Wellington, 8 December 2016), which was tabled in Parliament on 7 February 2017;

- The Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (Ulaanbaatar, 18 May 2016), which was tabled in Parliament on 8 February 2017;

- The Loan Agreement between Australia and the International Monetary Fund (Canberra, 19 December 2016), which was tabled in Parliament on 7 February 2017; and

- The Agreement concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these United Nations Regulations (Transmitted to Parties on 14 December 2016), which was tabled in Parliament on 7 February 2017.

1.2 The Committee’s resolution of appointment empowers it to inquire into any treaty to which Australia has become a signatory, on the treaty being tabled in Parliament.

1.3 The treaties, and matters arising from them, are evaluated to ensure that ratification is in the national interest, and that unintended or negative effects on Australia will not arise.
1.4 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 and outlines the treaty obligations and any regulatory or financial implications. The NIA reports the results of consultations undertaken with State and Territory Governments, Federal and State and Territory agencies, and with industry and non-government organisations.

1.5 A *Regulation Impact Statement* (RIS) may accompany the NIA. The RIS provides an account of the regulatory impact of the treaty action where adoption of the treaty will involve a change in the regulatory environment Australian business. The treaties examined in this report did not require a RIS.

1.6 Copies of the treaties considered in this report and their associated documentation may be obtained from the Committee Secretariat or accessed through the Committee’s website at:


**Conduct of the Committee’s review**

1.7 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 3 March 2017. The Committee received 11 submissions in total. Submissions by individuals and non-government agencies were received only in relation to the *Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology*.

1.8 The Committee held public hearings into the treaty actions in Canberra on 27 February 2017 and 27 March 2017.

1.9 The transcript of evidence from the public hearings may be obtained from the Committee Secretariat or accessed through the Committee’s website.
1.10 A list of submissions received is listed at Appendix A.

1.11 A list of witnesses who appeared at public hearings is at Appendix B.
2. Social Security Agreement - New Zealand

Agreement on Social Security between the Government of Australia and the Government of New Zealand - Signed 8 December 2016, Wellington

2.1 This chapter reviews the Agreement on Social Security between the Government of Australia and the Government of New Zealand (the proposed Agreement) which was signed in Wellington on 8 December 2016 and tabled in the Parliament on 7 February 2017.

2.2 The proposed Agreement replaces the Agreement on Social Security between the Government of Australia and the Government of New Zealand signed on 28 March 2001, as amended by an Exchange of Notes completed on 21 February 2002 (the existing Agreement). The proposed Agreement will enter into force on 1 July 2017.

2.3 This chapter will first provide an overview of Australia’s bilateral social security agreements and the specific social security agreements between Australia and New Zealand. The chapter will then examine the changes incorporated into the proposed Agreement in detail, before presenting the Committee’s conclusions and recommendation.

Background
2.4 Australia’s network of 30 bilateral social security agreements closes gaps in social security coverage for people who migrate between countries. For example, Australian legislation generally requires a person to have a minimum of 10 years Australian residence before they can claim an age pension or disability support pension.\(^1\) These agreements overcome such barriers to social security payments in the domestic legislation of each country, including requirements on citizenship, minimum contributions, past residence history and current country of residence.\(^2\)

2.5 The agreements also provide that responsibility for the payment of social security benefits is shared between the country of residence and the former country of residence. The former country of residence pays a proportion based on the period of former residence. The current country of residence tops up the payment to the maximum level of payment to which the claimant is entitled in that country.\(^3\) This may mean that a person may be eligible for social security payments from both countries if they meet relevant eligibility criteria.\(^4\) The main beneficiaries of these agreements are age pensioners.\(^5\)

**Overview of social security arrangements between Australia and New Zealand**

2.6 Australia has a long history of social security agreements with New Zealand starting in 1944. Revised agreements have been implemented in 1949, 1987, 1989, 1995 and 2001.\(^6\) The existing Agreement between Australia and New Zealand, signed in 2001, is one of Australia’s most significant social security agreements.  

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3. NIA, para 26.

4. NIA, para 14.

5. NIA, para 9.

agreements. The Department of Social Services (DSS) outlined how the proposed Agreement sits within the relationship between the two countries:

Australia and New Zealand continue to have a very positive and constructive bilateral relationship. We are two countries with shared interests and shared values with strong people to people links. The revised agreement will continue to provide an appropriate basis for both countries to share responsibilities for the specified income support payments for people who have spent their lives between Australia and New Zealand.8

2.7 On an annual basis, the existing Agreement provides for $263 million worth of pension flows to Australia, and pays $71.5 million to New Zealand. The NIA states that Australia also provides a further $101 million per year in support payments to New Zealand citizens residing in Australia.9

2.8 Importantly, the existing Agreement differs from Australia’s other social security bilateral agreements in recognition of the countries close geographic and historical ties.10 At June 2013, an estimated 640 770 New Zealand citizens were present in Australia,11 and approximately 62 712 people born in Australia were counted as usual residents of New Zealand as of March 2013.12 The existing Agreement also acknowledges that both countries have non-contributory residence-based benefit systems.13

2.9 DSS advised that 25 050 people are currently being paid under the existing Agreement. DSS highlighted that numbers of beneficiaries were increasing by approximately 10 per cent per year. DSS identified the increase was due

7 NIA, para 8.  
8 Ms Anita Davis, Acting Branch Manager, International Means Test Policy Branch, Department of Social Services (DSS), Proof Committee Hansard, Canberra, 27 February 2017, p. 2.  
9 NIA, para 8.  
10 NIA, para 5.  
13 NIA, para 5.
to external factors, such as an increase in the ageing population, as opposed to changes in the Agreement.\textsuperscript{14}

2.10 According to DSS statistics, 11,296 people are currently being paid under the existing Agreement within Australia, and 13,754 are being paid in New Zealand. This shows a change in immigration flow from 2008, where 6349 customers were being paid inside Australia, and 3530 were being paid in New Zealand.\textsuperscript{15} A further 1476 customers in New Zealand are being paid Australian pensions outside of the existing Agreement.\textsuperscript{16}

2.11 The proposed Agreement will continue to cover access to the same social security payments as the existing Agreement. In Australia, these include:

- age pension;
- disability support pension (if they are severely disabled); and
- carer payment. \textsuperscript{17}

2.12 In New Zealand, the proposed Agreement covers:

- superannuation;
- veteran’s pension; and
- supported living payment. \textsuperscript{18}

2.13 However, the proposed Agreement incorporates amendments to both eligibility requirements and defined terms, to reflect changes in both countries welfare systems since 2002.\textsuperscript{19}

**The Agreement**

**Changes**

2.14 The proposed Agreement incorporates four central amendments to the existing Agreement:

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\textsuperscript{14} Department of Social Services (DSS), *Submission 1*, p. 2.
\textsuperscript{15} DSS, *Submission 1*, p. 2.
\textsuperscript{16} DSS, *Submission 1*, p. 2.
\textsuperscript{17} The proposed Agreement, Article 2.
\textsuperscript{18} The proposed Agreement, Article 2.
\textsuperscript{19} NIA, para 13.
- access to the Australian disability support pension has been restricted to people who have 10 years of Working Age Residence (ages 20-65) in either country;
- the qualifying age for the Australian pension and the equivalent in New Zealand have been re-defined to reflect domestic increases in both countries;
- the definition of Australian residency has been broadened to include New Zealand residents in Australia on Special Category Visas; and
- the length of portability of payments has been reduced to mirror Australian domestic law.

**Disability support qualification**

2.15 Under the existing Agreement, Australian social security payments in New Zealand are generally based on the proportion of the person’s Working Age Residence in Australia, and vice versa. Working Age Residence is defined as residence from age 20 until pension age.\(^{20}\) To qualify for the disability support pension (DSP) (or the New Zealand equivalent, the supported living payment) under the existing Agreement, a person must be:

- ‘severely disabled’,\(^{21}\) and
- a resident of either Australia or New Zealand when they became disabled, and
- prior to the date of severe disablement, was residing in the other country for a year or more at any time.\(^{22}\)

2.16 The Committee queried the reasoning behind limiting the qualification of disability support payments to severely disabled people. DSS explained that

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\(^{20}\) NIA, para 14.

\(^{21}\) The proposed Agreement (Article 1(1)(m)) defines “severely disabled” as a person who has a physical impairment, a psychiatric impairment, an intellectual impairment, or two or all of such impairments, which makes the person, without taking into account any other factor, totally unable:

ii to work for at least the next two years; and

iii unable to benefit within the next two years from participation in a program of assistance or a rehabilitation program;

iv is permanently blind.

\(^{22}\) The proposed Agreement, Article 2.
limiting the qualification of DSP reduces the obligations on New Zealand and Australia, as well as assisting people who could not qualify for a support pension outside the Agreement to meet the qualifying requirements of DSP.23

2.17 DSS also informed the Committee that the National Disability Insurance Scheme (NDIS) would not affect the agreement, as customers covered by the Agreement are not eligible for the NDIS.24 DSS confirmed that the only capacity for New Zealand citizens to access Australian social security payments with respect to disability is through the disability support pension outlined in the Agreement.25

2.18 The proposed Agreement clarifies that only New Zealand Working Age Residence can be used to meet the 10 year qualifying residence requirement for DSP. It does so by removing Article 12(4) from the existing Agreement.26

2.19 In 2013, the Full Federal Court of Australia found that, under the existing Agreement, any residence in New Zealand, including before the age of 20, could be used to qualify a person for the DSP. DSS informed the Committee that this widened access beyond what was originally intended:

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26 NIA, para 25.

The case of the *Department of Families, Housing, Community and Indigenous Affairs v Mahrous* ([2013] FCAFC 75) (*Mahrous*) was based solely on whether or not the respondent has met the residency requirements and qualifying period of residence to qualify for the disability support pension. It had already been accepted that the respondent qualified as severely disabled. The family of the respondent had emigrated to New Zealand in 1998 when Mahrous was three years old, at age 4 he developed a severe disability, and in 2003 (aged 8) the family moved to Australia. The Secretary held that he would not qualify for the pension until 2013, when he had lived in Australia for 10 years and as such met the 10 years qualifying residence. The court found that under Article 12 (4) of the existing agreement, which provides that in order to receive a disability support pension, a person has “accumulated an aggregate of more than 10 years residence in Australian and/or New Zealand,” the respondent had met the residence requirement in order to receive a disability support pension.
Both Australia and New Zealand agree that the revised agreement reflects the original intention of both parties – that is, that only New Zealand working-age residence can be used to meet the 10-year qualifying residence requirement.27

2.20 DSS explained how the 2013 ruling impacted the interpretation of the existing Agreement and the assessment of eligibility criteria for DSP:

Previously, up until Mahrous, the intent of the agreement and the way that it was interpreted was that people had to have totalised their 10 years of residence in New Zealand and Australia from the age of 20 up until, I think, 64. Then Mahrous said ‘any residence’, so you could have your 10 years totalised from ages one to 10. But that was not the original intention. People have now become eligible for disability support pension under that broader interpretation of what ‘residence’ means post-Mahrous. This agreement tightens that back to the original intention.28

2.21 When questioned about the impact this would have on beneficiaries of the payment, DSS stated that current recipients would not be affected:

Anyone who has qualified for DSP under the Mahrous decision and the broader interpretation of residence qualification will be grandfathered under the agreement and will continue to be paid.29

2.22 DSS confirmed that up until the implementation of the proposed Agreement on 1 July 2017, applications for the DSP will be assessed under the broadened criteria.30

Pension age

2.23 Article I of the proposed Agreement inserts a new definition of ‘pension age’. The definition provides that to claim the Australian age pension or the New Zealand equivalent, a person must have reached whichever pension qualifying age is higher at the time they claim.31

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28 Ms Davis, DSS, Proof Committee Hansard, Canberra, 27 February 2017, pp. 3-4.
30 Ms O’Brien, DSS, Proof Committee Hansard, Canberra, 27 February 2017, p. 4.
31 NIA, para 19.
2.24 DSS advised the Committee that the main driver for this amendment was the incoming changes to Australia’s pension age:

The revised agreement also takes account of the increase in age pension age in Australia, which becomes 65 ½ in July 2017 and continues to increase by six months every two years until it reaches 67 in July 2023. The revised agreement provides that, to claim age pension or New Zealand Superannuation, a person must have reached whichever pension age is higher at the time they claim.32

2.25 DSS highlighted that the amendment is required to ensure that the cost-sharing basis of the proposed Agreement is not undermined:

Without such an amendment, the cost sharing basis of the Agreement may be impacted, as New Zealand would be required to pay New Zealand Superannuation (the equivalent of the Australian age pension), in Australia even though the person could not qualify for age pension under Australian domestic legislation.33

Extension of access to residents on Special Category Visas

2.26 Under the Trans-Tasman Travel Arrangement (TTTA), New Zealand citizens are able to enter and remain in Australia on a Special Category Visa; a temporary visa automatically issued to New Zealand citizens on arrival in Australia.34 Since 2001 however, access to income support payments have been made available only to New Zealand residents who formally migrate to Australia. New Zealand residents in Australia on Special Category Visas have not had access to the social security payments covered by previous agreements.35

2.27 Article 5 has been amended to define New Zealand residents in Australia on Special Category Visas as Australian residents, allowing them to claim the benefits covered by the Agreement.36

Portability of payments

33 Ms Davis, DSS, Proof Committee Hansard, Canberra, 27 February 2017, p. 2.
34 NIA, para 11.
35 NIA, paras 11-12.
36 NIA, para 22.
2.28 The existing Agreement specifies that a social security payment covered by the Agreement is payable to a third country for 26 weeks. This differs from the current arrangements under domestic social security law in Australia. A carer payment is payable outside Australia for six weeks, and a disability support payment is ‘generally payable’ outside Australia for four weeks in any 12 month period.

2.29 The proposed Agreement (Article 14) amends the existing Agreement to remove the specified period of 26 weeks portability, and ties the portability provisions to Australia’s domestic social security law.

Effect of changes and cost savings

2.30 Revision of the existing Agreement was announced as a measure of the 2016–17 Budget. According to the NIA, the proposed Agreement is expected to result in savings of $16.1 million during the first four years.

2.31 In response to questions from the Committee, DSS advised:

The savings come from preventing the use of any residence and restoring the original intent back to using Working-Age Residence, so there is the ongoing effect of the those customers no longer being eligible.

2.32 The Committee queried what impact this would have on the number of people receiving payments under the proposed Agreement, DSS stated:

There is nothing in the Agreement itself, we do not think, that would particularly advantage or disadvantage potential recipients compared with the previous Agreement.

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37 NIA, para 17.
38 NIA, para 17.
39 NIA, para 28.
40 NIA, para 37.
41 Ms O’Brien, DSS, Proof Committee Hansard, Canberra, 27 February 2017, p. 4.
42 Ms Davis, DSS, Proof Committee Hansard, Canberra, 27 February 2017, p. 3.
2.33 However, DSS also estimated that in response to eligibility changes for DSP, 80 people per year would no longer be eligible to qualify to receive the DSP.\textsuperscript{43}

2.34 DSS did not confirm how other changes incorporated in the proposed Agreement would contribute to total savings, or how many people would be affected.

**Reasons for taking the proposed treaty action**

2.35 The NIA asserts that the proposed Agreement reflects changes in both countries’ welfare systems since 2002 and brings it in line with domestic legislation.\textsuperscript{44} DSS advised that future changes to domestic legislation would no longer render the proposed Agreement obsolete:

   The Agreement now references domestic legislation in a way that it did not before. That was hardcoded into the Agreement before, and so, if domestic legislation changed, the Agreement would be out of sync with domestic legislation.\textsuperscript{45}

2.36 According to the NIA, the proposed Agreement reaffirms the very important role that freedom of movement and labour between Australia and New Zealand play in the development of closer economic relations between the two countries.\textsuperscript{46}

**Implementation**

2.37 Australia’s bilateral social security agreements are given effect in domestic law through the *Social Security (International Agreements) Act 1999*.\textsuperscript{47} The full text of the proposed Agreement will be inserted as a new Schedule 3 to that Act, replacing the text of the existing Agreement. The NIA states that this


\textsuperscript{44} NIA, para 17.


\textsuperscript{46} NIA, para 6.

\textsuperscript{47} NIA, para 34.
amendment to the Schedule will be done as a legislative instrument pursuant to regulations under sections 8 and 25.\textsuperscript{48}

2.38 Pursuant to Article 27, the Agreement shall enter into force on 1 July 2017.

2.39 On 15 February 2017, the Minister for Social Services, The Hon Christian Porter MP, wrote to the Chair advising that he intended to table regulations to incorporate the Agreement into the \textit{Social Security (International Agreements) Act 1999} prior to the tabling of the Committee’s report.

2.40 While the Minister acknowledged that this action would usually be taken after the Committee tabled its report, he advised that this action was necessary in order to meet the implementation date of 1 July 2017.

2.41 The Minister highlighted that the Committee’s report would be tabled prior to the expiry of the disallowance period, allowing the Government to take note of the Committee’s recommendations.

\textbf{Committee comment}

2.42 The Committee acknowledges the historical ties and geographical closeness of Australia and New Zealand. The Committee supports the proposed Agreement and recognises that it is an important mechanism for people who choose to split their lives between Australia and New Zealand, particularly in retirement.

2.43 However, the Committee notes the conflicting evidence provided by DSS. At a public hearing, DSS stated that that the proposed Agreement will not ‘advantage or disadvantage potential recipients compared with the previous Agreement’.\textsuperscript{49} Yet the proposed Agreement was announced as a cost-saving measure in the 2016–17 Budget, resulting in savings of $16.1 million over the forward estimates.\textsuperscript{50} Further, DSS confirmed that 80 people per year will no longer be eligible for the DSP under the proposed Agreement.\textsuperscript{51}

2.44 DSS’ contention that no potential recipients will be disadvantaged appears to reflect comparisons made between the two agreements at the point of

\textsuperscript{48} NIA, para 35.

\textsuperscript{49} Ms Davis, DSS, \textit{Proof Committee Hansard}, Canberra, 27 February 2017, p. 3.

\textsuperscript{50} NIA, para 37.

signature. However comparing the existing Agreement – with expanded DSP eligibility criteria after the Full Federal Court’s decision in Mahrous – to the proposed Agreement, it is clear that there are approximately 80 potential recipients per year who will no longer be able to access DSP under the new Agreement.

2.45 Nonetheless, it is reasonable that the proposed Agreement reflects the original intent of the Australian and New Zealand Governments, and the domestic eligibility criteria for payments. The Committee also notes that no community concerns were expressed to the Committee and that no submissions from affected individuals or organisations were received.

2.46 The Committee therefore supports the proposed Agreement and recommends that binding treaty action be taken.

**Recommendation 1**

2.47 The Committee supports the Agreement on Social Security between the Government of Australia and the Government of New Zealand and recommends that binding treaty action be taken.
3. Nuclear Research Co-operation Agreement

Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology - Signed 18 May 2016, Ulaanbaatar

3.1 The Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (the proposed Agreement) was signed on 18 May 2016 in Ulaanbaatar and tabled in the Parliament on 8 February 2017.

3.2 The proposed Agreement is a replacement for the 1987 Agreement of the same name (the 1987 Agreement) which will expire in June 2017. Australia is an original signatory to the 1987 Agreement.¹

3.3 The 1987 Agreement is an intergovernmental agreement for the Asia and Pacific region, under the auspices of the International Atomic Energy Agency (IAEA). The Agreement facilitates cooperation between parties in

research, development and training projects in nuclear science and technology through their appropriate national institutions.²

3.4 The proposed Agreement has the same intent and purpose as the 1987 Agreement. However, unlike the 1987 Agreement, the proposed Agreement is of unlimited duration.³

3.5 This chapter will first provide an overview of the projects of the 1987 Agreement and consider Australia’s contribution to nuclear research cooperation in the region. The chapter will then examine the changes incorporated into the proposed Agreement in detail, before presenting the committee’s conclusions and recommendation.

Background

3.6 Regional Co-operative Agreements (RCAs) are implemented under the umbrella of the IAEA Technical Co-operation Programme. Australia is a designated member of the IAEA Board of Governors. Australia is the only board member without a civil nuclear power program.⁴

3.7 The 1987 Agreement is administered by an office in South Korea.⁵ Annual meetings of the parties identify a program of projects for the following year.⁶ Administration of the program involves collecting contributions from the Parties to the Agreement and distributing these funds to the annual program of projects.⁷

3.8 The other Parties to the 1987 Agreement are: Bangladesh, Cambodia, China, Fiji, India, Laos, Indonesia, Japan, Republic of Korea, Malaysia, Mongolia, Myanmar, Nepal, New Zealand, Pakistan, Palau, Philippines, Singapore, Sri Lanka, Thailand and Vietnam.⁸

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³ NIA, para 3.
⁴ NIA, para 7.
⁵ Regional Co-operation Agreement, Annual Report 2015, p 5.
⁷ Regional Co-operation Agreement, Annual Report 2015, p 5.
⁸ NIA, para 7.
Overview

Regional cooperation under the 1987 Agreement

3.9 The 1987 Agreement facilitates Australian technical and political cooperation with 21 regional countries on nuclear science and technology matters.9

3.10 The 2015 Annual Report of the 1987 Agreement identifies the following cooperative projects undertaken in the 2015 calendar year:

- 15 regional training courses with 360 participants;
- 13 expert missions to provide technical assistance to participating countries;
- 19 ‘home based’ projects;
- a meeting of national representatives; and
- an Annual General Meeting.10

3.11 Projects undertaken under the 1987 Agreement have had both a medical and environmental focus. The Australian Nuclear Science and Technology Organisation (ANSTO) provided the Committee with examples of recent projects:

Projects over the last 45 years have included solving problems relating to declining soil and water quality caused by inappropriate land use—this project particularly assisted developing countries in improving their agricultural production—and online distance education training for medical practitioners to improve nuclear medicine, radiation oncology and medical physics services.11

3.12 In their submissions to the Committee, individual experts explained various projects in which they had been involved. For example, Professor Chengdao Li from Murdoch University’s Western Barely Genetics Alliance had been involved in three projects:

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9 NIA, para 5.
11 Mr Steven McIntosh, Senior Manager, Government and International Affairs, Australian Nuclear Science and Technology Organisation (ANSTO), Proof Committee Hansard, Canberra, 27 February 2017, p. 5.
• pyramiding of mutated genes contributing to crop quality and resistance to stress affecting quality;
• supporting mutation breeding approaches to develop new crop varieties adaptable to climate change; and
• promotion of the application of mutation techniques and related biotechnologies for the development of green crop varieties (current).\textsuperscript{12}

3.13 Other projects facilitated under the auspices of the 1985 Agreement have focussed on areas of radiotherapy and medical physics. Dr Hegi-Johnson highlighted Australia’s role in assisting our neighbours to implement Stereotactic Body Radiation Therapy (SBRT) for cancer treatment:

Australia is also a designated regional training hub... and is committed to providing training and support for the safe and effective implementation of SBRT in the Asia Pacific region. As part of the commitment, Australia provides a network for research, training and collaboration between the regional training hubs and other international centres.\textsuperscript{13}

3.14 Dr Donald McLean outlined Australia’s leadership in providing distance learning courses for medical physics. Dr McLean highlighted how this cooperation has improved medical physics training in the region:

RCA regional projects have been involved in the strengthening of post graduate education courses in a number of government parties, including Indonesia, Malaysia, Philippines, Pakistan and Sri Lanka, a number including direct review or advice from Australian academic in their field. A good example of impact can be found with Indonesia where that standard and growth of [Master of Science] medical physics training has improved remarkably in the last 12 years.\textsuperscript{14}

3.15 According to ANSTO, Australia participates in 13 of the 14 current projects under the 1987 Agreement.\textsuperscript{15}

The Agreement

\textsuperscript{12} Prof. Chengdao Li, Submission 5, p. 1-2.
\textsuperscript{13} Dr Fiona Hegi-Johnson, Submission 9, p. 1.
\textsuperscript{14} Dr Donald McLean, Submission 3, p. 1.
\textsuperscript{15} Mr McIntosh, ANSTO, Proof Committee Hansard, Canberra, 27 February 2017, p. 5.
3.16 Australia’s obligations under the proposed Agreement are largely unchanged from the 1987 Agreement. The proposed Agreement provides for continued participation in international collaborative projects and the extension of Australia’s capacity in nuclear technologies.

3.17 However, there are two central changes incorporated into the proposed Agreement. First, unlike the 1987 RCA, the proposed Agreement has no date of termination or review. Parties have the opportunity to opt out at any point. This is in contrast to the 1987 Agreement which had to be reviewed and extended every five years.

3.18 In their submission to the Committee, the Australian Conservation Foundation (ACF) highlighted their concern over the indefinite duration of the proposed Agreement:

ACF believes this blank check approach is not consistent with the practice of periodic review and continual improvement. Accordingly, any nuclear cooperation agreement should have a defined duration and include regulation, formal and transparent reviews.

3.19 Secondly, the membership process under the proposed Agreement differs from the 1987 Agreement. Countries not previously party to the existing Agreement or its extension agreements may become party to the proposed Agreement only with the agreement of all current parties to the proposed Agreement.

Contributions

3.20 Articles V(3) and VIII(1) of the proposed Agreement will permit Australia the option of contributing financially or ‘in-kind’ to cooperative projects.
3.21 The NIA states that Australia’s financial contributions to current projects are assessed on a case–by–case basis and provided for through normal budgetary processes.\footnote{NIA, para 18.}

3.22 Australia’s contributions ‘in-kind’ are given through:

- the placement of fellowship recipients and scientific visitors in Australia for study and training;
- the provision of courses and experts to provide assistance to the IAEA or to individual parties; and
- the hosting of meetings sponsored by the IAEA.\footnote{NIA, para 19.}

3.23 These costs are met by relevant agencies from their existing resources.\footnote{NIA, para 19.}

3.24 ANSTO highlighted that funding for the existing Agreement came from payments made to the IAEA and in–kind contributions. They further outlined Australia contribution to the projects:

The money for RCA projects comes from the IAEA... Technical Co-operation Fund. Australia contributes to that, and then a small amount of that goes into the RCA. In terms of the RCA directly, we contribute in kind ... but we do not make a cash contribution.\footnote{Mr McIntosh, ANSTO, \textit{Proof Committee Hansard}, Canberra, 27 February 2017, p. 7.}

**Reasons for taking proposed treaty action**

3.25 The NIA asserts that the proposed Agreement will allow Australia to continue to participate in international collaborative projects, and maintain and extend Australia’s capacity in nuclear technologies.\footnote{NIA, para 5.}

3.26 At a public hearing, ANSTO stated the cooperation has had a positive effect on Australia’s relationships in the region, with significant political benefits for Australia:

We have, as a result of RCA, fairly strong links with our Indonesian counterpart agency, our Malaysian counterpart agency, our Vietnamese
counterpart agency and our Japanese counterpart agency, and they all feed into strengthening the bilateral relationship.\footnote{Mr McIntosh, ANSTO, \textit{Committee Hansard}, Canberra, 27 February 2017, p. 7.}

3.27 However, in response to questions from the Committee on whether Australia was a net contributor or beneficiary of the existing Agreement, ANSTO highlighted Australia’s contributor status:

I think we are probably a net contributor. Certainly, some of our medical people go to RCA courses for training—because we are not a developing country, we are not eligible to receive assistance from the IAEA.\footnote{Mr McIntosh, ANSTO, \textit{Committee Hansard}, Canberra, 27 February 2017, p. 7.}

3.28 Nonetheless, Australia’s established role and research facilities has allowed it to be an attractive option for experts that would in the past have moved overseas. ANSTO provided an example:

We recently had an Australia post-doc who was overseas for six years. She came back to our laboratory to work with us because she sees that we play a massive role in the region. That is not only the South-East Asian region, it is the Pacific and it is the Southern Ocean. She was quite happy to come back to Australia.\footnote{Professor Hendrik Heijnis, Leader, Environmental Research, ANSTO, \textit{Committee Hansard}, Canberra, 27 February 2017.}

3.29 The proposed Agreement also provides an avenue for Australia to fulfil the technical requirements of the \textit{Treaty on the Non-Proliferation of Nuclear Weapons} (NPT). According to the NIA, Australia’s participation has helped the immediate region remain nuclear weapon free for over 40 years.\footnote{NIA, para 5.}

3.30 Specifically, Article IV of the NPT requires Parties to ‘...facilitate... the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy.’\footnote{NIA, para 5.}

3.31 The NIA asserts that non-acceptance of the proposed Agreement would inhibit Australia’s standing in international nuclear arms control fora at a
time where significant expansion of nuclear power is underway or being considered in the region.\textsuperscript{32}

**Implementation**

3.32 No new legislation is required to implement the proposed Agreement. Activities of the proposed Agreement are part of the existing functions of ANSTO, as outlined in section 5 of the *Australian Nuclear Science and Technology Act 1987*.\textsuperscript{33}

**Committee comment**

3.33 The Committee’s inquiry attracted a number of submissions from individuals and organisations. Most of the submissions provided examples of involvement with previous or current RCA projects, and did not provide specific comment on the changes of the proposed Agreement.

3.34 The Committee notes the involvement of Australian experts in RCA projects which have contributed to the environmental and medical development of partners in our region.

3.35 The Committee supports the proposed Agreement and recommends that binding treaty action be taken.

**Recommendation 2**

3.36 The Committee supports the *Regional Co-operation Agreement for Research, Development and Training Related to Nuclear Science and Technology* and recommends that binding treaty action be taken.

\textsuperscript{32} NIA, para 11.

\textsuperscript{33} NIA, para 15.
4. Loan Agreement - International Monetary Fund

Loan Agreement between Australia and the International Monetary Fund - Signed 19 December 2016, Canberra

4.1 This chapter reviews the Loan Agreement between Australia and the International Monetary Fund (the proposed Agreement) which was signed in Canberra on 19 December 2016 and in Washington DC on 4 January 2017, and was tabled in the Parliament on 7 February 2017.

4.2 The proposed Agreement will terminate the existing loan agreement between Australia and the International Monetary Fund (IMF) signed on 13 October 2012 (the existing Agreement). The existing Agreement will expire on 17 July 2017.

4.3 This chapter will first provide an overview of the IMF, followed by the particulars of the proposed Agreement. The chapter will then examine the changes incorporated into the proposed Agreement in detail, before presenting the Committee’s conclusions and recommendations.

Background

4.4 The IMF is a global financial institution that works to:
foster global monetary cooperation;

- promote financial stability, international trade and sustainable economic growth; and

- reduce global poverty.

4.5 The IMF has 189 member countries.¹

4.6 The IMF makes loans from its permanent resource base. This base comes from quota contributions from members and temporary borrowing arrangements with a subset of member countries and institutions.² These temporary borrowing arrangements include bilateral loan agreements and the multilateral New Arrangements to Borrow (NAB). Temporary borrowing arrangements currently comprise approximately half of the IMF’s total USD $1 trillion³ lending capacity.⁴

4.7 Australia became a member of the IMF in 1947, formalised by the implementation of the *International Monetary Agreements Act 1947*.

4.8 According to the NIA, global economic instability has created a need to have improved confidence in the IMF; especially in its ability to have financial resources available prior to a crisis like the Global Financial Crisis, rather than attempting to procure it after the fact.⁵ The Treasury advised:

These particular loans were set up in the wake of the Global Financial Crisis and the particular issues in Europe, where there was a big draw-down on the IMF’s funds. Example programs include Ireland, Portugal and Greece … It was seen in the wake of that crisis the IMF needed an additional backstop of financial resources for [these] major events.⁶


⁴ NIA, para 7.

⁵ NIA, para 9.

⁶ Mr Grant Ferres, Manager, International Monetary System Unit, International Policy and Engagement Division, Treasury, *Proof Committee Hansard*, Canberra, 27 March 2017, p. 3.
4.9 Following the Global Financial Crisis, the IMF has begun a series of reforms in recent years to enhance the organisation’s effectiveness including:

- a substantial permanent increase in the IMF’s resources;
- a realignment of the quota and voting shares among IMF members;
- enhancement of the IMF’s lending instruments;
- strengthened IMF surveillance of member country economies; and
- institutional governance reform.7

4.10 As part of its reform agenda, the IMF is undertaking a process to renew bilateral loan agreements with up to 35 member countries, including Australia.8

4.11 In correspondence to the Treasurer, the Hon Scott Morrison MP, Managing Director of the IMF, Mrs Christine Lagarde noted in September 2016 that:

Global economic growth continues to face significant headwinds and risks. As we collectively seek stronger, more inclusive and resilient growth... we must ensure an adequate global financial safety net. In this context, I was heartened by the support... to maintain access to bilateral borrowing agreements, in line with the objective of preserving the IMF’s current lending capacity.9

4.12 Despite the Managing Director’s forecast, the Treasury advised the Committee that there is a ‘low probability’ of the proposed Agreement being activated.10

4.13 According to the Treasury, 16 countries have renewed their existing loan agreements signed in 2012, and three new countries (Brazil, Canada and Chile) have also finalised loan agreements for the first time.11 Out of the 31 loan agreements currently in effect (including 2012 Agreements that are still in force), Australia’s contribution under the existing Agreement is ranked as the 16th largest.12 Japan, Germany and China have the highest bilateral

7 NIA, para 10.
8 NIA, para 8.
9 The Treasury, Submission 1 – Attachment 1, p. 1.
11 The Treasury, Submission 1, p. 2.
12 The Treasury, Submission 1, p. 2.
borrowing agreements with the IMF, collectively committing to Special Drawing Rights\textsuperscript{13} (SDR) 144.5 billion.\textsuperscript{14}

The Agreement

Overview

4.14 The proposed Agreement requires Australia to lend the IMF up to SDR 4.61 billion (approximately A$8.3 billion) under specified conditions.\textsuperscript{15} This loan amount is the same as the amount Australia is currently obliged to loan the IMF under the existing Agreement. The Treasury confirmed this at a public hearing:

In terms of the amount that Australia currently has committed to the IMF, there will be no change, in that we already have a loan agreement in place, plus new arrangements to borrow, plus our quota. The $8.3 billion was in addition to our quota resources, which is our capital and the [NAB].\textsuperscript{16}

4.15 In correspondence made available to the Committee, Mrs Lagarde also stated that ‘bilateral borrowing would remain a third line of defense after quotas and the NAB’.\textsuperscript{17} The Treasury confirmed that members’ quotas and the NAB would ‘largely have had to have been drawn down’, before the proposed Agreement could be activated.\textsuperscript{18}

4.16 The Treasury also confirmed that the IMF will be required to draw against Australia’s loan agreement on a proportionally ‘equitable basis with other countries holding bilateral loan agreements with the IMF’.\textsuperscript{19} Further,

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\textsuperscript{13} The SDR is an international reserve asset, created by the IMF in 1969 to supplement its member countries’ official reserves. The value of the SDR is based on a basket of five major currencies—the U.S. dollar (41.73%), euro (30.93%), the Chinese RMB (10.92%), the Japanese yen (8.33%), and pound sterling (8.09)—as of October 1, 2016.


\textsuperscript{14} The Treasury, Submission 1 – Attachment 2, p. 1.

\textsuperscript{15} NIA, para 11.

\textsuperscript{16} Mr Ferres, Treasury, Proof Committee Hansard, Canberra, 27 March 2017, p. 3.

\textsuperscript{17} The Treasury, Submission 1 – Attachment 1, p. 1.

\textsuperscript{18} Mr Ferres, Treasury, Proof Committee Hansard, Canberra, 27 March 2017, p. 3.

\textsuperscript{19} Mr Ferres, Treasury, Proof Committee Hansard, Canberra, 27 March 2017, p. 2.
Australia will ‘not be directly exposed’ to the compliance of on-lending countries, as the IMF will on-lend any borrowed funds from Australia through a separate process in which the IMF holds the repayment risk.\(^{20}\)

4.17 The amount provided in the proposed Agreement will be included in the budget papers as a quantifiable liability.\(^{21}\) The Treasury highlighted that ‘until it is drawn down, there is no effect on the budget’.\(^{22}\)

4.18 The proposed Agreement will expire on 31 December 2019, with the option of a one year extension by the IMF with the consent of Australia.\(^{23}\) This reflects the terms of the existing Agreement.

**Two-step activation process**

4.19 Reflecting the IMF’s reform agenda, the proposed Agreement introduces a two-step process for activating the loan obligation. This is a new procedural requirement and is the central change between the existing and proposed Agreements.

4.20 If, and when, these funds are required, the IMF will seek to ‘activate’ the proposed Agreement through a two-step process. First, the IMF’s capacity to lend to member countries from quotas and the NAB must fall below SDR 100 billion (A$180 billion as at 19 January 2017).

4.21 Second, the IMF must obtain agreement from creditor countries representing 85 per cent of the value of all bilateral loan agreements held by the IMF.\(^{24}\) Of the 16 renewed bilateral loan agreements that are currently in effect, the nine largest creditor countries comprise 87.5 per cent of the total credit amount.\(^{25}\) These nine countries include (in order of highest voting percentage): Japan,

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\(^{21}\) NIA, para 21.


\(^{23}\) *Loan Agreement between Australia and the International Monetary Fund* [2017] ATNIF 6 (hereafter referred to as the proposed Agreement), paragraph 2(a).

\(^{24}\) NIA, para 11.

\(^{25}\) The Treasury, *Submission 1*, p. 2.
Germany, China, France, Spain, Korea, Saudi Arabia, United Kingdom and Canada.\textsuperscript{26}

4.22 The Treasury provided an explanation of the reason behind the extra safeguard:

Within the IMF’s Executive Board… there was an assessment made that the Fund, in terms of activating these Agreements, should have greater accountability to the countries who are providing the funds. That is the primary reason behind the addition of the new clauses.\textsuperscript{27}

4.23 However, the NIA also states that the IMF may seek to activate the proposed Agreement even though its available resourcing is above the SDR 100 billion threshold, ‘if extraordinary circumstances warrant it in order to forestall or cope with an impairment of the international monetary system’.\textsuperscript{28} The Treasury clarified how this would occur in practice:

The IMF has advised that the provision is an acknowledgement that the IMF Managing Director may still approach and consult with creditors to find a solution to forestall or cope with an ‘extraordinary circumstance’ that creates the risk of impairment to the international monetary system.\textsuperscript{29}

4.24 The Treasury further advised that the IMF has confirmed that it would undertake ‘extensive consultations’ with creditors before taking any action.\textsuperscript{30} To the extent that creditors were willing to assist the IMF in such circumstances, ‘the concerned parties would then need to determine how, and under what circumstances, such support could be provided despite the agreed activation threshold not being met’.\textsuperscript{31}

\textbf{Interest and repayment}

4.25 The amounts lent will be repaid in full with interest in accordance with the IMF’s SDR interest rate.\textsuperscript{32} The SDR interest rate is determined weekly, based
on a weighted average of the short term money market interest rates of the representative SDR currencies.\textsuperscript{33}

\textbf{4.26} The Treasury advised that as of 24 March 2017, the SDR interest rate was 0.37 per cent, while the current average borrowing rate the Australian Government has access to is 2.7 per cent.\textsuperscript{34}

\textbf{4.27} At a public hearing, the Committee asked questions about the terms of repayment. The Treasury was not able to answer at the hearing, however provided the following answer on notice, referring to the text of the proposed Agreement:

The terms and conditions for the repayment of funds borrowed by the IMF under the loan agreement are outlined in paragraphs 5, 6 and 8 of the agreement.

- Each drawdown of funds by the IMF under the agreement will have an initial maturity date of three months (paragraph 5(a)).

- The IMF will have sole discretion to extend the maturity date of a drawing by an additional period of three months, up to the tenth anniversary of the date of the drawing,
  - Such an extension will automatically be deemed to have occurred, unless the IMF provides a notification that it does not intend to extend the maturity date of the loan (paragraph 5(a)).

- The maximum maturity date of the drawing may also be extended by up to an additional five years if:
  - the IMF Executive Board has determined that exceptional circumstances exist as a result of a shortage of Fund resources in relation to Fund obligations falling due; and
  - Australia has agreed to the extension (paragraph 5(a)).

- The IMF may choose to repay a drawdown of funds prior to its maturity date, following consultation with Australia (paragraph 5(c)).

- At Australia’s request, the IMF will provide an early repayment of outstanding drawings if:
  - Australia represents that its balance of payments and reserve position justifies an early repayment; and
  - the IMF agrees with this representation (paragraph 8).

\textsuperscript{33} NIA, para 14.

\textsuperscript{34} Mr Ferres, Treasury, \textit{Proof Committee Hansard}, Canberra, 27 March 2017, p. 5.
4.28 The IMF’s ability to seek drawings under the Agreement will also be determined by Australia’s current and prospective balance of payments and reserve position.\(^{36}\)

4.29 The IMF will repay amounts drawn within three months of the drawing date, extendable at the IMF’s discretion in three month increments to a maximum of ten years. The Agreement also allows that, in exceptional circumstances as a result of a shortage of IMF resources, the IMF may extend the maximum maturity of drawings by up to a further five years. This can only occur with Australia’s consent.\(^{37}\)

4.30 The Treasury agreed that, under the terms of the proposed Agreement, Australia would currently borrow funds at 2.7 per cent, but the interest that is payable on the principle lent to the IMF will be at a much lower rate of 0.37 per cent. The Treasury confirmed that the IMF can hold the total money borrowed for a total of 15 years at these reduced rates.\(^{38}\)

4.31 The NIA notes that if the proposed Agreement were activated by the IMF, there would be an ‘indirect impact on the underlying cash balance’. This would materialise if Australia’s own borrowing requirement had to be increased as a result of the IMF activating the proposed Agreement, and where the interest payable on any money borrowed by Australia to be able to meet the IMF drawing requirement, exceeds the interest paid by the IMF.\(^{39}\)

4.32 The Committee expressed concern regarding the imbalance between the IMF interest repayment rate, and Australia’s average borrowing rate. The Treasury advised that these terms were standard across the 35 bilateral loan agreements, and the repayment timeframe replicate the terms of Australia’s existing Agreement.\(^{40}\)

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35 The Treasury, Submission 1, p. 1.
36 NIA, para 13.
37 NIA, para 14.
38 Ms Ward, Treasury, Proof Committee Hansard, Canberra, 27 March 2017, p. 5.
39 NIA, para 22.
40 Ms Ward, Treasury, Proof Committee Hansard, Canberra, 27 March 2017, p. 5.
4.33 The Treasury provided advice on how the loans are secured:

The IMF will on-lend any borrowed funds from Australia through a separate process in which the IMF holds the repayment risk. The IMF’s debt to Australia will be backed by the funds full balance sheet and ultimately the resources of its member countries, ensuring that the probability of Australia not being repaid our loan is extremely low.\(^{41}\)

**Reasons for taking proposed treaty actions**

4.34 The NIA asserts that the proposed Agreement supports Australia’s interests by advancing international economic stability, and ensuring that the IMF is equipped to respond to a crisis.\(^{42}\)

4.35 The NIA notes that any default risk to Australia ‘will be minimal’ as the IMF borrows from its creditor members ‘with the backing of its full balance sheet and ultimately the resources of its global membership’.\(^{43}\)

**Implementation**

4.36 The proposed Agreement will enter into force on the date the IMF acknowledges receipt of written communication from Australia confirming that Australia has met all its domestic requirements for implementation. This includes the Committee’s review, and the passage of implementing legislation.

4.37 Amendments to the *International Monetary Agreements Act 1947* must be made to allow the Government to make payments to the IMF under the proposed Agreement.\(^{44}\)

**Committee comment**

4.38 The Committee strongly supports Australian involvement in the IMF and notes the bipartisan support of successive governments to ensuring the IMF’s stability and ability to respond to global financial volatility. In

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\(^{42}\) NIA, para 6.

\(^{43}\) NIA, para 15.

\(^{44}\) NIA, para 19.
particular, the Committee welcomes amendments in the proposed Agreement that strengthen the accountability of the IMF to its member countries.

4.39 The Committee therefore supports the proposed Agreement and recommends that binding treaty action be taken.

4.40 In undertaking its work, the Committee is reliant on the quality of information it receives from government departments, which is usually of a very high standard. However in this circumstance, the Committee was not satisfied with the quality of evidence provided at the public hearing.

4.41 In stating this, the Committee notes the timeliness and improved quality of the Treasury’s answers to questions on notice. If this evidence had been provided at the public hearing, the Committee would have been better informed and equipped to have a more comprehensive discussion about the proposed Agreement with government officials.

Recommendation 3

4.42 The Committee supports the Loan Agreement between Australia and the International Monetary Fund and recommends that binding treaty action be taken.
5. Harmonization of Wheeled Vehicles - Revision

Agreement Concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions

5.1 This chapter reviews the Agreement concerning the Adoption of Harmonized Technical United National Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these United Nations Regulations (the proposed Agreement), which was transmitted to Parties on 14 December 2016 and tabled in the Parliament on 7 February 2017.

5.2 The proposed Agreement will supersede the Agreement Concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions, signed in Geneva in 1958, amended in November 1967 (Revision 1) and again in October 1995 (Revision 2) (the existing Agreement).
5.3 According to the terms of the existing Agreement, the proposed Agreement will be deemed accepted by the Parties on 14 June 2017 if no country objects. If no objection is lodged, the proposed Agreement will enter into force three months from the end of the objection period, on 14 September 2017.¹

5.4 This chapter will first provide an overview of the Agreement, the operation of United Nations (UN) regulations and the multilateral fora which coexist alongside the Agreement. The chapter will then examine the changes incorporated into the proposed Agreement in detail, before presenting the Committee’s conclusions and recommendation.

Background

5.5 The existing Agreement was developed to reduce barriers to international trade in the motor vehicle industry by harmonising national and international standards. It provides for the development of UN regulations to standardise technical prescriptions relating to safety, anti-theft, emissions and energy for new wheeled vehicles, their equipment and parts.²

5.6 Under the existing Agreement, UN regulations are adopted by a vote of two-thirds majority among the Parties to the existing Agreement in the UN World Forum for Harmonisation of Vehicle Regulations (WP.29).³ As of July 2016, the WP.29 has adopted 138 UN Regulations.

5.7 Any Party to the existing Agreement has authority to assess and approve any manufacturer’s design of a regulated product against the relevant UN regulation, regardless of the country in which that component was produced. Once a Party has determined that the product complies with the UN regulation, every other Party to the existing Agreement is obliged to accept that approval and regard that vehicle or component as legal for

¹ National Interest Analysis [2017] ATNIA 3, Agreement concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these United Nations Regulations [2017] ANTIF 3 (hereafter referred to as the NIA), para 3.

² NIA, para 6.

³ NIA, para 6.
import, sale and use. Parties issuing an approval to a UN regulation are also obliged to meet technical and administrative requirements.\(^4\)

5.8 In July 2016, there were 50 signatory countries to the existing Agreement, including all major European countries and key Asian manufacturing nations such as Japan, the Republic of Korea, Malaysia and Thailand.\(^5\)

5.9 Australia acceded to the existing Agreement on 25 February 2000,\(^6\) declaring a reservation under Article 11 that it would not be bound by Article 1.\(^7\) This reservation created an opt-in option for Australia to accept UN regulations adopted by WP.29.

5.10 Australia has since accepted 40 out of 138 UN regulations as domestic implementation regulations—the Australian Design Rules (ADRs)—have gradually aligned with the UN regulations.\(^8\) The Department of Infrastructure and Regional Development (DIRD) explained why Australia has only accepted 40 UN regulations:

> There is a whole smorgasbord of UN regulations available. If you look at US regulations, there are about 65. The ADR has about 65. UN regulations have a lot of extra to be picked up, and they also have some old ones that are not used anymore.\(^9\)

5.11 The ADR and the UN Regulations adopted by Australia are both acceptable Australian standards for the import of vehicles. Forty-seven ADRs have been harmonised with the corresponding UN regulations and mirrors their content. A further seven are partially harmonised, meaning that extra requirements are needed on top of the UN Regulation to meet Australian standards required for import.

5.12 The National Interest Analysis (NIA) states that ‘it has been a long-term Government policy’ to harmonise the ADRs with UN regulations as

\(^{4}\) NIA, para 8.
\(^{5}\) NIA, para 9.
\(^{6}\) NIA, para 9.
\(^{7}\) NIA, para 13.
\(^{8}\) NIA, para 12.
\(^{9}\) Mr Steven Hoy, Section Head, Standards Development and International, Vehicle Safety Standards Branch, Department of Infrastructure and Regional Development (DIRD), *Proof Committee Hansard*, Canberra, 27 February 2017, p. 10.
'harmonisation avoids unique national standards, minimising the impediments to international trade'.\textsuperscript{10} Harmonisation with UN regulations also 'ensures Australian consumers may access vehicles conforming to the highest standards at the lowest possible cost'.\textsuperscript{11}

5.13 Australia does not issue vehicle compliance approvals under UN regulations as it is able to do under the existing Agreement, as vehicle manufacturers and importers in Australia have ‘cost effective access to overseas testing and approval arrangements’.\textsuperscript{12}

5.14 In the Committee’s report on the existing Agreement, tabled in 1999, the Committee accepted that each action to adopt a UN regulation should be considered as implementation action within the overall framework of the treaty, rather than an individual and separate treaty action in its own right. In that report, the Committee accepted the then Minister for Transport and Regional Services, the Hon John Anderson MP’s offer to advise the Committee on each occasion that regulatory action was taken.\textsuperscript{13}

**The Agreement**

5.15 In response to Committee concern, DIRD assured the Committee that the Agreement will not compromise Australian standards:

> We have in place our own Australian Design Rules under the *Motor Vehicle Standards Act*. All vehicles that are to be supplied to the Australian market will need approval under that act. By signing up to the international Agreement, we can accept approvals against the applied UN regulations as an alternative to meeting the Australian rules. The Australian rules apply no matter what to those vehicles that come from countries that are not party to the Agreement.\textsuperscript{14}

**Changes**

5.16 The proposed Agreement incorporates a number of revisions to the existing Agreement along two themes:

\textsuperscript{10} NIA, para 12.
\textsuperscript{11} NIA, para 12.
\textsuperscript{12} NIA, para 14.
\textsuperscript{13} Joint Standing Committee on Treaties, *Report 25*, paras 7.27-7.28.
\textsuperscript{14} Mrs Sharon Nyakuengama, General Manager, Vehicle Safety Standards Branch, DIRD, *Committee Hansard*, Canberra, 27 February 2017, p. 10.
the process of adoption and approval of UN regulations; and
establishing a whole-vehicle approval process.

**Adoption and approval of UN regulations**

5.17 The proposed Agreement makes a number of changes relating to the adoption and approval of UN regulations, including:

- allowing Parties flexibility to issue and accept approvals pursuant to earlier versions of UN regulations;\(^{15}\)
- allowing Parties to vote in favour of new UN regulations without being obliged to apply them immediately;\(^{16}\)
- changing the voting requirements for the adoption of new and amended UN regulations from two-thirds majority to four-fifths, overcoming the potential of influence of regional voting blocks, such as the European Union, and thereby increasing the influence of individual Parties;\(^{17}\)
- clarifying existing procedures and guidance material for the implementation of UN regulations including harmonising procedures for issuing and numbering UN approvals, procedures for Parties to issue exemption approvals for new technologies and general conditions for virtual testing methods;\(^{18}\) and
- setting timeframes for Parties to rectify a non-conforming vehicle and, in certain circumstances, obliging all Parties to inform each other of non-conformity immediately.\(^{19}\)

5.18 The NIA states that these revisions seek to strengthen the approval and compliance regimes as well as improving the quality and reliability of the harmonised regulation system.

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\(^{15}\) NIA, para 20.
\(^{16}\) NIA, para 20.
\(^{17}\) NIA, para 20.
\(^{18}\) NIA, para 22.
\(^{19}\) NIA, para 23.
Further, DIRD asserts that these revisions will make the proposed Agreement more attractive to new Parties, ‘particularly countries with developing automotive markets and regulatory systems’.\textsuperscript{20} DIRD clarified:

It is about encouraging more Contracting Parties to participate and changing the voting arrangements so they are not influenced as much by large block of countries voting. That now requires a four-fifths majority instead of a two thirds majority for new technical regulation to be mandated.\textsuperscript{21}

In response to the Committee’s question on how the proposed Agreement addresses the issues that arose out of the Volkswagen emissions scandal, DIRD highlighted how the changes to the compliance regime would facilitate better communication about problems:

Initially, one improvement in this revised agreement is an obligation to quickly notify of non-conformance of product, to do that electronically to all other contracting parties and to share information about a noncompliance or non-conformance with initial type. In a [Volkswagen] type example, there would have been a much faster response.\textsuperscript{22}

**Whole vehicle approvals**

The proposed Agreement will enable the implementation of a new UN regulation, UN Regulation No. 0, creating the International Whole Vehicle Type Approval (IWVTA).\textsuperscript{23}

The current approval process involves multiple separate approvals issued for components and systems, with Parties responsible for approving the whole vehicle on a national basis. If adopted, the IWVTA will streamline this process by allowing Parties to the proposed Agreement to issue mutually recognised approvals for whole vehicles, thereby eliminating the duplicated national processes.\textsuperscript{24}

\textsuperscript{20} NIA, para 20.

\textsuperscript{21} Mrs Nyakuengama, DIRD, *Proof Committee Hansard*, Canberra, 27 February 2017, p. 11.

\textsuperscript{22} Mrs Nyakuengama, DIRD, *Proof Committee Hansard*, Canberra, 27 February 2017, p. 10.

\textsuperscript{23} Agreement concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these United Nations Regulations [2017] ANTIF 3 (hereafter referred to as the proposed Agreement), Article 1(2), NIA, para 15.

\textsuperscript{24} NIA, para 15.
5.23 The NIA clarifies that, under the whole-vehicle approval system, only one Party need approve the whole vehicle in accordance with proposed UN Regulation No. 0. The whole vehicle’s approval is subsequently recognised by all other Parties that apply UN Regulation No. 0.

5.24 The adoption of the IWVTA in UN Regulation No. 0 will be subject to a separate decision in the WP.29 forum.\(^{25}\)

5.25 The NIA explains that if Australia chooses to apply UN Regulation No. 0, the reform will ‘streamline the approval of vehicles for the Australian market and so reduce the costs for business and the Australian Government’.\(^{26}\) DIRD explained the savings:

> The projected savings—and it is work that is being done elsewhere to do with Reg. 0 when it comes in—are around $80 million per year available to further harmonise the Australian Design Rules. I would only be estimating at this stage, but the IWVTA also reduces the audit requirement and there might be half as much again in that.\(^{27}\)

5.26 The NIA also clarifies that the IWVTA process will not increase Australia’s obligations under the proposed Agreement, rather, ‘vehicles being supplied into the Australian market will have conformed to a more robust approval process’.\(^{28}\) DIRD explained how the implementation of the IWVTA standards would ensure vehicle safety:

> The implementation of new vehicle standards is not a fast process. It is only ever implemented after many years of testing and assurance that the standards will deliver a safe product. Standards are not introduced, or new regulations, before technology and sufficient testing give the level of assurance that they will deliver a safer product.\(^{29}\)

5.27 In response to the Committee’s query on the current status of UN Regulation 0, DIRD informed the Committee that:

> It has mostly been drafted and Australia was involved with that. The revision to the Agreement has to go through to then pick up UNR0. If it goes through,

\(^{25}\) NIA, para 16.

\(^{26}\) NIA, para 15.

\(^{27}\) Mr Hoy, DIRD, *Committee Hansard*, Canberra, 27 February 2017, p. 11.

\(^{28}\) NIA, para 16.

then UNR0 will come through in about November and be available for use mid–2018.\textsuperscript{30}

**Opt-in provisions maintained**

5.28 Despite these changes, the proposed Agreement maintains the opt-in measure for accepting UN regulations in Australia’s domestic environment.\textsuperscript{31} It will not mandate any UN regulations domestically, impose mandatory restriction on business or increase regulatory intervention.\textsuperscript{32} Rather, the proposed Agreement only obliges Australia to accept a product into the domestic market where it is approved to a UN regulation that Australia has chosen to apply.\textsuperscript{33}

**Economic benefit**

5.29 According to the NIA, the proposed Agreement is consistent with existing industry practices, and as such, is not expected to pose any additional cost on governments, manufacturers or consumers.\textsuperscript{34}

5.30 DIRD stated that the savings to consumers, in money terms, would be about $80 million per year, or about $100 per vehicle.\textsuperscript{35}

5.31 The Committee also queried how the proposed Agreement would provide savings to government. DIRD highlighted that the introduction of the IWVTA would provide those savings:

That will be on the audit side. If the IWVTA is taken to its conclusion, we will not need to go and audit factories around the world. We will accept the product on face value, with the right approval documents.\textsuperscript{36}

5.32 The Committee queried whether raising Australia’s vehicle emissions standards up to that of the United States or Europe, would increase vehicle

\textsuperscript{30} Mrs Nyakuengama, DIRD, *Committee Hansard*, Canberra, 27 February 2017.

\textsuperscript{31} The proposed Agreement, Article 1(4); NIA para 28.

\textsuperscript{32} NIA, para 17.

\textsuperscript{33} NIA, para 17.

\textsuperscript{34} NIA, para 33.


\textsuperscript{36} Mr Hoy, DIRD, *Proof Committee Hansard*, Canberra, 27 February 2017, p. 12.
prices. DIRD responded by stating that it was a question of which standard was being used:

That would depend on what standard you wanted to pick up. If you picked up the international standard, that would be the lowest cost option. Different countries manufacture different standards around the world.37

**Reasons for taking proposed treaty action**

5.33 The NIA asserts that the revisions contained within the proposed Agreement will attract new signatory countries, particularly those with developing automotive markets and regulatory systems. The NIA states that this would, in turn, ‘have substantial road safety benefits globally’ and ‘Australia… would benefit from new trade opportunities’.38 Further, revisions have improved the quality and reliability of the approval of vehicles’ compliance with UN regulations, as well as the robustness and integrity of these assessments.39

5.34 The ability for a whole vehicle to be assessed and approved under a UN regulation will ‘significantly reduce the compliance and regulatory costs for the Government, industry and consumers’.40

5.35 Australia was a ‘strong contributor’ to the development of the proposed revisions and has been active at international forums in encouraging other countries to adopt the proposed Agreement.41

**Implementation**

5.36 According to the NIA, Australia would not require any new or amended legislation to give effect to the proposed Agreement.42 The obligation to accept approvals to UN regulations under the existing Agreement is

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38 NIA, para 21.
39 NIA, paras 22, 24.
40 NIA, para 26.
41 NIA, para 19.
42 NIA, para 29.
facilitated through the *Motor Vehicle Standards Act 1989* (the Act), and the ADR’s which are determined under the Act.\footnote{NIA, para 30.}

5.37 The Act currently provides for the making of ADR’s for road vehicles and their components. This includes the incorporation of UN regulations into national vehicles standard documentation.\footnote{NIA, para 31.}

5.38 The NIA states there are no inconsistencies between the proposed Agreement and the Act. The Act enables and facilitates the obligations contained in the proposed Agreement.\footnote{NIA, para 32.}

**Committee comment**

5.39 The Committee supports the efforts to streamline international regulations and the application of the highest safety standards for consumers in a global international vehicle market. The Committee questions the claim in the NIA that there will be a ‘significant’ reduction in compliance costs, but agrees that the Agreement should not result in increased costs for government or consumers.

5.40 The Committee notes previous arrangements of considering UN regulations as an implementation action within the framework of the treaty, rather than as a separate and individual treaty action. The Committee also notes the previous arrangement of being informed of each regulatory action taken to harmonise ADRs with UN regulations, and requests that both arrangements continue under the proposed Agreement.

5.41 The Committee supports the Agreement on the Harmonization of Wheeled Vehicles and recommends that binding treaty action be taken.
Recommendation 4

5.42 The Committee supports the Agreement concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis on these United Nations Regulations and recommends that binding treaty action be taken.

The Hon Stuart Robert MP

Chair

28 April 2017
A. Submissions

Agreement on Social Security between the Government of Australia and the Government of New Zealand

1 Department of Social Services

Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology

1 Scientia Professor Michael Barton OAM
2 Australian Institute for Non-destructive Testing
3 Dr Donald McLean
4 Dr John Frederick Easey
5 Professor Chengdao Li
6 Australian Nuclear Science and Technology Organisation (ANSTO)
7 Mr Jim Cramb
8 Australian Conservation Foundation
9 Dr Fiona Hegi-Johnson
Loan Agreement between Australian and the International Monetary Fund

1 The Treasury

The Treasury – Attachment 1

The Treasury – Attachment 2

Agreement concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these United Nations Regulations

Nil.
B. List of witnesses

Agreement on Social Security between the Government of Australia and the Government of New Zealand

Monday, 27 February 2017

CANBERRA

Department of Social Services

Ms Anita Davis, Acting Branch Manager, International Means Test Policy Branch

Ms Ali O’Brien, Acting Director, International Agreements, International Means Test Policy Branch

Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology

Monday, 27 February 2017

CANBERRA

Australian Nuclear Science and Technology Organisation

Professor Hendrik Heijnis, Leader, Environmental Research
Loan Agreement between Australian and the International Monetary Fund

Monday, 27 March 2017

CANBERRA

The Treasury

Mr Grant Ferres, Manager, International Monetary System Unit, International Policy and Engagement Division

Ms Karen Moorcroft, Analyst, International Monetary System Unit, International Policy and Engagement Division

Ms Linda Ward, Principal Advisor, International Policy and Engagement Division

Agreement concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these United Nations Regulations

Monday, 27 February 2017

CANBERRA

Department of Infrastructure and Regional Development
Mr Steven Hoy, Section Head, Standards Development and International, Vehicle Safety Standards Branch

Mrs Sharon Nyakuengama, General Manager, Vehicle Safety Standards Branch
Australian Greens' Additional Comments

The Australian Greens acknowledge the work and analysis in the Committee report on the Nuclear Research Co-operation Agreement (the Agreement).

Recommendation 1.

The Australian Greens recommend that there be periodic review of the cost and benefit of the Agreement to Australia. Periodic reviews should consider the research interests pursued under the Agreement to ensure that the Agreement is consistent with Australian laws and is in the public interest. Australia has the ability to opt out of the Agreement at any time, and this option should be considered during periodic reviews.

Recommendation 2.

Review section 3.31 of the Report. This section suggests that Australia’s involvement contributes to our standing on nuclear weapons non-proliferation without acknowledging that Australia’s international reputation on this issue has been damaged by the Government’s ongoing refusal to engage in UN fora on the advancement of the abolition of nuclear weapons.

This section also suggests that a “significant expansion of nuclear power is underway or being considered in the region.” There is certainly no significant expansion of nuclear power, and the consideration of expanding nuclear power is neither significant nor noteworthy in the context of this agreement.
The misrepresentation of Australia’s current standing on non-proliferation issues and the global nuclear energy trajectory should not form part of Australia’s justification for participating in this agreement.

Senator Sarah Hanson-Young
Senator for South Australia