Report 174

IMF New Arrangements to Borrow; Scientific Cooperation USA; Science Research Innovation NZ; Technological Innovation Israel

Joint Standing Committee on Treaties
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## Abbreviations

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<td>Department of Industry, Innovation and Science</td>
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Executive Summary

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

- International Monetary Fund’s Renewal of the New Arrangements to Borrow (4 November 2016);
- Agreement relating to Scientific and Technical Cooperation between the Government of Australia and the Government of the United States of America (Washington D.C., 29 November 2016);
- Agreement relating to Science, Research and Innovation Cooperation between the Government of Australia and the Government of New Zealand (Queenstown, 17 February 2017); and

The Renewal of the New Arrangements to Borrow for the International Monetary Fund (IMF) is intended to help the IMF maintain resources to prevent or resolve crises in the balance of payments and reserve positions of IMF member states. The IMF derives its resources from funds obtained through quota based contributions from members. It then supplements the quota based funds with arrangements to temporarily borrow funds from some members. Australia is a founding member of the borrowing arrangements, providing the IMF with a signed instrument of adherence in 1997.

The renewal of the borrowing arrangements for a period of five years from November 2017 to 2022 will continue Australia’s commitment to the IMF under the borrowing arrangement of up to $A4.15 billion.
Apart from Australia’s obligations under the borrowing arrangements, the Committee noted three additional issues:

- the treaty level status of the borrowing arrangements which have been previously overlooked by the Treasury;
- the timeliness of the referral of this treaty action to the Committee which did not allow the Committee to make any useful recommendations regarding binding treaty action as it had already come into effect; and
- the actual extent of Australia’s commitments to the IMF as the borrowing arrangements are in addition to Australia’s basic commitment to the organisation.

The three science agreements considered in the Report are with the United States of America (USA), New Zealand and Israel. These types of agreements are considered central to Australia’s economic policy in delivering economic growth, productivity and job creation as reflected in Australia’s National Innovation and Science Agenda. The treaty actions provide a formal legal framework to encourage cooperation and collaboration in scientific activities and are expected to boost Australia’s innovation system, attract investors and promote commercialisation in the global market.

The Committee recognises the benefits of such agreements and recommends that binding treaty action be taken for all three agreements.
Members

Chair
Hon Stuart Robert MP

Deputy Chair
Hon Michael Danby MP

Members
Mr John Alexander OAM, MP
Senator Slade Brockman
Mr Chris Crewther MP
Senator Sam Dastyari
Senator David Fawcett
Senator Sarah Hanson-Young
Senator Kimberley Kitching
Senator the Hon Ian Macdonald
Mrs Nola Marino MP
Senator Jenny McAllister
Ms Susan Templeman MP
Mr Ross Vasta MP

Mr Andrew Wallace MP

Mr Josh Wilson MP
Committee Secretariat

Ms Lynley Ducker, Committee Secretary
Dr Narelle McGlusky, Inquiry Secretary
Mr Kevin Bodel, Inquiry Secretary
Ms Stephanie Limm, Researcher
Ms Cathy Rouland, Office Manager
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.
List of Recommendations

Recommendation 1

3.28 The Committee supports the Agreement relating to Scientific and Technical Cooperation between the Government of Australia and the Government of the United States of America and recommends that binding treaty action be taken.

Recommendation 2

3.29 The Committee supports the Agreement relating to Science, Research and Innovation Cooperation between the Government of Australia and the Government of New Zealand and recommends that binding treaty action be taken.

Recommendation 3

3.30 The Committee supports the Agreement between the Government of Australia and the Government of the State of Israel on Bilateral Cooperation in Technological Innovation and Research and Development 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:

- International Monetary Fund’s (IMF’s) *Renewal of the New Arrangements to Borrow* (4 November 2016);
- Agreement relating to Scientific and Technical Cooperation between the Government of Australia and the Government of the United States of America (Washington D.C., 29 November 2016);
- Agreement relating to Science, Research and Innovation Cooperation between the Government of Australia and the Government of New Zealand (Queenstown, 17 February 2017); and

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

1.3 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 the Government. This document considers arguments for and against the treaty and outlines the treaty obligations and any 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 for Australian business. The treaties examined in this report did not require a RIS.

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

- http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/ScienceResearch-NZ; and

**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. The Committee received one submission for the inquiry into the IMF’s *New Arrangements to Borrow* and two submissions that addressed issues with the three science agreements.

1.8 The Committee held a public hearing into all four treaty actions in Canberra on 4 September 2017. The transcript of evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee’s website. A list of submissions received is at Appendix A. A list of witnesses who appeared at the public hearing is at Appendix B.
2. IMF New Arrangements to Borrow - renewal

Renewal of the New Arrangements to Borrow

Introduction

2.1 The proposed treaty action is the renewal of the International Monetary Fund’s (IMF’s) *New Arrangements to Borrow* (the borrowing arrangement).

2.2 The IMF is the central institution of a global financial safety net intended to maintain international financial and monetary stability by providing financial support to countries in economic difficulty.¹

2.3 A Treasury representative noted:

This in turn provides confidence to markets and other economic actors to continue to trade and invest.²

2.4 The IMF generally lends money to recipient countries in instalments over a number of years. Instalments are often conditional, and can be delayed if the conditions for the payment have not been met.³


³ NIA, para 15.
2.5 The IMF uses its own currency for financial transactions, called Special Drawing Rights (SDRs). The currency operates using an exchange rate mechanism similar to that which applies to other currencies such as the dollar.\textsuperscript{4} At the time of writing (12 September 2017) 1 SDR was worth A$1.77.

2.6 For clarity, sums of money will be expressed in Australian Dollars.

2.7 The IMF derives its resources from a mix of funds obtained through quota based contributions from members and arrangements to temporarily borrow funds from some members. These temporary funds include the borrowing arrangement and bilateral loan agreements.\textsuperscript{5}

2.8 These temporary funds currently comprise around half of the IMF’s total lending capacity.\textsuperscript{6}

The Agreement

2.9 The \textit{New Arrangements to Borrow} is intended to help the IMF maintain resources to prevent or resolve crises in the balance of payments and reserve positions of IMF member states.\textsuperscript{7}

2.10 A treasury representative described it as:

\ldots a voluntary multilateral credit arrangement that will allow the IMF to borrow up to approximately A$3.9 billion from Australia to support countries facing economic difficulties.\textsuperscript{8}

2.11 In total the borrowing arrangement provide the IMF with access to the equivalent of around A$319.67 billion.\textsuperscript{9}

2.12 There are 40 participants in the borrowing arrangement, including two new parties. The parties with the largest commitments are Japan, the United


\textsuperscript{5} NIA, para 10.

\textsuperscript{6} NIA, para 10.

\textsuperscript{7} NIA, para 5.

\textsuperscript{8} Ms Vroombout, Treasury, \textit{Committee Hansard}, Canberra, 4 September 2017, p. 1.

\textsuperscript{9} NIA, para 11.
States, China, and Germany. Collectively, these countries contribute slightly less than 50 per cent of the funds in the borrowing arrangement.10

2.13 According to Treasury:

Australia’s financial support under the [borrowing arrangement] was used to provide IMF assistance that contributed to the stabilisation of advanced economies, including Ireland, Portugal and Greece. Our financial contributions have also supported developing economies facing economic challenges, along with transition economies such as the Ukraine.11

**Australia’s involvement**

2.14 The NIA states:

Australia benefits from an effective IMF that has the resources available to fulfil its mandate to support global economic and financial stability.12

2.15 A Treasury representative told the Committee:

As a successful open trading economy, Australia’s prosperity relies on strong and stable growth in the world economy. Australia therefore has a strong interest in ensuring that the IMF remains an effective and credible institution.13

2.16 Australia is a founding member of the borrowing arrangement, providing the IMF with a signed instrument of adherence in 1997.14

2.17 In 2010, Australia signed a further instrument consenting to an increase in Australia’s commitment in response to the Global Financial Crisis.15

2.18 In 2012, Australia consented to a rollback of Australia’s commitment following an increase in Australia’s IMF quota contribution under the Fund’s 14th General Review of Quotas.16

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11 Ms Vroombout, Treasury, Committee Hansard, Canberra, 4 September 2017, p. 1.

12 NIA, para 9.

13 Ms Vroombout, Treasury, Committee Hansard, Canberra, 4 September 2017, p. 1.

14 NIA, para 2.

15 NIA, para 2.

16 NIA, para 2.
2.19  In November 2016, the IMF Executive Board, which includes an Australian representative, agreed to renew the borrowing arrangement for a period of five years from November 2017 to 2022.\(^{17}\)

2.20  Apart from the provision extending the borrowing arrangement, the renewal will introduce a number of technical modifications to the broader terms and conditions of the borrowing arrangement.\(^ {18}\)

2.21  The IMF has drawn on Australian funds committed under the borrowing arrangement on 22 occasions.\(^ {19}\) The first drawing occurred in December 1998 and the last in December 2015.\(^ {20}\)

2.22  The sum of Australia’s commitment used by the IMF under the borrowing arrangement peaked at A$998 million in June 2014. This has since fallen to A$674.37 million as at 10 July 2017. This has occurred as a result of repayments by countries that have received IMF assistance.\(^ {21}\)

2.23  The renewed borrowing arrangement has been included in the budget papers as a quantifiable contingent liability, and will continue to be so.\(^ {22}\)

2.24  In order to meet its obligations, Australia must pass amendments to the International Monetary Agreements Act 1947 to extend the government’s statutory authority to make borrowing arrangement payments when required to do so by the IMF. The passage of these amendments will ensure that appropriate provisions are in place before the renewed agreement commences.\(^ {23}\)

\(^{17}\) NIA, para 3.

\(^{18}\) NIA, para 5.

\(^{19}\) For clarity, there are three types of actions undertaken by the IMF in relation to the borrowing arrangement:

- the IMF ‘activates’ a borrowing arrangement when it needs to access the funds under the borrowing arrangement. This has occurred on 15 occasions (see paragraph 2.31);
- the IMF draws on the funds made available by Australia for use during and ‘activation’ period. This has occurred on 22 occasions; and
- the IMF repays the funds drawn from Australia during an activation period. This has occurred on 35 occasions (see paragraph 2.45).

\(^{20}\) Treasury, Submission 1, p 1.

\(^{21}\) NIA, para 7.

\(^{22}\) NIA, para 27.

\(^{23}\) Ms Vroombout, Treasury, Committee Hansard, Canberra, 4 September 2017, pp 1-2.
Specific provisions

Obtaining funds

2.25 The borrowing arrangement obliges parties to make funds available to the IMF up to the applicable total listed in Annex 1 of the arrangement (as previously stated, up to A$3.93 billion for Australia).\(^{24}\)

2.26 To activate the borrowing arrangement, the IMF must assess that the resources it has available are not sufficient to forestall or cope with problems in the international monetary system.\(^{25}\)

2.27 The IMF must also obtain the consent of parties that make up at least 85 per cent of the value of the borrowing arrangement for each activation of the arrangement.\(^{26}\)

2.28 This arrangement means that any party to the borrowing arrangement with a greater than 15 per cent share of the value of the borrowing rights could prevent the activation of the borrowing arrangement. Two parties to the borrowing arrangement currently have more than a 15 per cent share of the value of the borrowing rights: the United States and Japan.\(^{27}\)

2.29 The Committee notes that the ability of one of the parties to the borrowing arrangement to prevent activation constitutes a risk. While this is a very unlikely occurrence, the increased support for protectionism internationally makes this risk more significant than it was at the time the borrowing arrangement was negotiated.

2.30 The borrowing arrangement can only be activated for six month periods at a time, but can be activated for consecutive six month periods.\(^{28}\)

2.31 According to the Treasury, the borrowing arrangement has been activated 15 times since initial ratification in 1997.\(^{29}\) At the time of writing it was not active.\(^{30}\)

\(^{24}\) The borrowing arrangement, para 2(a).

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

\(^{26}\) NIA, para 16.

\(^{27}\) Treasury, Submission 1, p 2.

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

\(^{29}\) Ms Vroombout, Treasury, Committee Hansard, Canberra, 4 September 2017, p. 2. See footnote 19 for the difference between activation, drawing and repaying funds.
2.32 To establish an activation period, the IMF must develop a resource mobilisation plan, including:

- information on the amount of the funds that are expected to be drawn upon and the amounts expected to be held in reserve;
- information on any additional financing the Managing Director of the IMF considers may be necessary during the activation period; and
- the maximum amount of a party’s commitments that can be used during an activation period, which is usually based on their proportion of the commitment to the borrowing arrangement.

2.33 During the activation period, the IMF may at any time:

- draw on the funds committed by parties to the borrowing arrangement; and
- make commitments for which it may need to draw on the funds committed by parties.

2.34 A party may not be included in a resource mobilisation plan when its balance of payments and reserve position are not sufficiently robust. In other words, if Australia is experiencing a problem with balance of payments or its reserve position, its commitments under the borrowing arrangement should not be called upon.

2.35 The Committee notes that, the above exclusion notwithstanding, the borrowing arrangement obliges Australia to make funds available when required. However, Section 8A of the International Monetary Agreements Act 1947, which relates to appropriations for the borrowing arrangements phrases the decision to make the funds available accordingly:

If the Treasurer is satisfied that an amount should be paid out of the Consolidated Revenue Fund to enable Australia to carry out its obligations...

(emphasis added)

2.36 In the public hearing, a Treasury representative indicated that:

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30 NIA, para 15.
31 The borrowing arrangement, para 5(a).
32 The borrowing arrangement, para 6(a).
33 The borrowing arrangement, para 5(a).
34 The borrowing arrangement, para 6(b).
The act also requires the Treasurer to agree to each payment that Australia makes…\textsuperscript{35}

2.37 The Act and the statement by Treasury imply that, contrary to the obligations of the borrowing arrangement, the Treasurer has some discretion in relation to each payment. The Committee suggests the Treasury examine its position, and satisfy itself that there is no apparent contradiction between the obligations in the borrowing arrangement and the procedure for the appropriation of funds contained in the Act.

**Repaying funds**

2.38 The IMF draws on the funds under the borrowing arrangement in the form of a loan.\textsuperscript{36}

2.39 Loans drawn by the IMF under the borrowing arrangement have a maximum maturity date of 10 years, but can be repaid earlier.\textsuperscript{37} Repayments are allocated amongst parties to ensure they remain broadly equitable.\textsuperscript{38}

2.40 According to the NIA, Australia’s lending to the IMF increases Australia’s own borrowing requirement. This can cost Australia money if there is a difference in the interest rate at which Australia borrows money and the interest it earns from funds used by the IMF.\textsuperscript{39}

2.41 The rate of interest applying to a loan under the borrowing arrangement is the standard SDR interest rate.\textsuperscript{40} The SDR interest rate is a weighted average of a sample of interest rates applying to leading currencies, including the euro, British pound, United States dollar and the Chinese renminbi. As of 21 August 2017, the interest rate was 0.53 per cent.\textsuperscript{41}

2.42 When the Australian Government wishes to borrow money, it does so by issuing Commonwealth Government Securities. There are a range of

\textsuperscript{35} Ms Karen Moorcroft, Analyst, International Monetary System Unit, International Policy and Engagement Division, Treasury, *Committee Hansard*, Canberra, 4 September 2017, p. 2.

\textsuperscript{36} The borrowing arrangement, para 8(a).

\textsuperscript{37} The borrowing arrangement, para 11(a) and 11(b).

\textsuperscript{38} NIA, para 19.

\textsuperscript{39} NIA, para 28.

\textsuperscript{40} NIA, para 20.

\textsuperscript{41} Ms Linda Ward, Principal Advisor, International Policy and Engagement Division, Treasury, *Committee Hansard*, Canberra, 4 September 2017, p. 3.
different types of securities, but all are repaid after a set period of time and all accrue interest for the purchaser.\textsuperscript{42}

2.43 To provide some comparison of the interest paid to Australia by the IMF and the interest rate paid by the Australian Government, the Committee used Treasury Indexed Bonds issued on 21 February 2012 with a 10 year maturity period (the same as that applying to IMF loans under the borrowing arrangement). The interest rate applying to these Bonds was 1.25 per cent.\textsuperscript{43}

2.44 The Committee is aware that this is a very approximate comparison, but notes that none of the Commonwealth Government Securities examined paid an interest rate less than that applying to IMF loans.

2.45 To date, the IMF has made 35 payments on loans from Australia under the borrowing arrangements.\textsuperscript{44}

2.46 According to the NIA, the default risk is minimal as the IMF borrows from parties with the backing of its full balance sheet and ultimately the resources of its global membership.\textsuperscript{45} To date, the IMF has made all repayments in accordance with the terms and conditions of the borrowing arrangement.\textsuperscript{46}

**Issues**

2.47 Apart from Australia’s obligations under the borrowing arrangement, the Committee explored three additional issues:

- the treaty level status of the borrowing arrangement;
- the timeliness of the referral to the Committee; and
- the actual extent of Australia’s commitments to the IMF.


\textsuperscript{44} Treasury, *Submission 1*, p 1. See footnote 19 for the difference between activation, drawing and repaying funds.

\textsuperscript{45} NIA, para 21.

\textsuperscript{46} NIA, para 22.
Treaty status of borrowing arrangement

2.48 Australia’s entry into the borrowing arrangement in 1997 and subsequent amendments and renewals were not tabled for consideration by the Committee. The Committee was established in 1996.

2.49 According to the NIA, the Treasury has now received advice that the borrowing arrangement constitutes a treaty as it is binding under international law.

2.50 It is not clear from the NIA why the Treasury did not initially consider the borrowing arrangement to be a treaty action. Paragraph 3(c) of the arrangement states:

A member or institution shall adhere to this decision by depositing with the Fund an instrument setting forth that it has adhered in accordance with its law and has taken all steps necessary to enable it to carry out the terms and conditions of this decision...

2.51 On the face of it, this appears to be a legally binding obligation, making the borrowing arrangement a treaty action.

2.52 According to a representative of the Treasury:

The Treasury received formal advice that the [borrowing arrangement] constitutes a treaty, and is binding under international law. The reasons the [borrowing arrangement] has not previously been regarded as a treaty are unclear, and the records over the period are incomplete. However, since receiving that advice the government has moved to undertake the necessary actions to complete domestic treaty-making requirements...

2.53 The Committee was concerned that Treasury may have entered into other internationally binding treaty actions without Committee consideration. In response, Treasury has advised that it is not aware of any internationally

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47 NIA, para 1.
48 NIA, para 1.
49 The borrowing arrangement, para 3(c).
50 Ms Vroombout, Treasury, Committee Hansard, Canberra, 4 September 2017, p. 2.
binding treaty actions within its portfolio that have not been subject to Committee consideration.\textsuperscript{51}

**Timeliness of referral**

2.54 All parties to the borrowing arrangement are bound by it for five years unless they withdraw six months prior to the renewal of the arrangement. In the case of the current treaty action, renewal occurs in November 2017.\textsuperscript{52}

2.55 The treaty action was referred to the Committee on 8 August 2017.

2.56 In other words, Australia is now bound by the borrowing arrangement because the date by which Australia could withdraw from the arrangement passed in May 2017.\textsuperscript{53}

2.57 The timing of the referral of the borrowing arrangement to the Committee impacts on the Committee’s consideration in two ways:

- the Committee cannot make a useful recommendation regarding binding treaty action as it is too late; and
- legislation implementing the arrangement will need to be introduced to Parliament prior to receipt of the Committee’s report so that Australia can meet its obligations when the arrangement comes into force on 17 November 2017.\textsuperscript{54}

2.58 This situation has arisen as a result of Treasury only recently becoming aware of the fact that the borrowing arrangement was a binding treaty action. Nonetheless, the Committee is concerned about the lack of parliamentary oversight for an agreement that commits Australia to lend up to several hundred million dollars.

**Extent of Australia’s commitments to the IMF**

2.59 Australia’s commitments under the borrowing arrangement are in addition to Australia’s quota commitment to the IMF, discussed in the introduction.

2.60 However, this is not the full extent of Australia’s commitment to the IMF. In 2012, the Committee considered the *Loan Agreement between Australia and the*

\textsuperscript{51} Treasury, *Submission 1*, p 1.

\textsuperscript{52} NIA, para 4.

\textsuperscript{53} NIA, para 23.

\textsuperscript{54} NIA, para 25.
International Monetary Fund, under which Australia made A$6.8 billion available to the IMF to support the IMF’s resources for crisis prevention.\textsuperscript{55}

2.61 Australia’s commitments under the borrowing arrangement, which were in place at the time, were not mentioned during that inquiry, and there is no mention of Australia’s commitment under the Loan Agreement between Australia and the International Monetary Fund in the NIA for the treaty being considered here.

2.62 The Committee questioned Treasury witnesses to clarify Australia’s overall commitments to the IMF. In a submission to the inquiry, Treasury stated Australia’s total commitment to the IMF was A$23.8 billion, broken down in the following manner:

- A$11.67 billion in quota payments;
- A$3.94 billion available under the borrowing arrangement; and
- A$8.19 billion available under the bi-lateral Loan Agreement between Australia and the International Monetary Fund.\textsuperscript{56}

2.63 It should be noted that the Committee has previously commented, in relation to the renewal of the bi-lateral Loan Agreement between Australia and the International Monetary Fund, on the quality of information in NIAs provided by Treasury. In Report 170, the Committee noted:

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.\textsuperscript{57}

\textbf{Conclusion}

2.64 Due to the fact that Treasury has only recently become aware that the borrowing arrangement is a binding treaty action, the time by which the Committee could make a useful recommendation in relation to this treaty has passed.

2.65 It is unacceptable that Treasury has failed to notice that the borrowing arrangement is manifestly a binding treaty action on at least three occasions, in 1997, 2010 and 2012.

\textsuperscript{55} Joint Standing Committee on Treaties, Report 132: Treaties tabled on 18 September and 30 October 2012, p 18.

\textsuperscript{56} Treasury, Submission 1, p 1.

\textsuperscript{57} Joint Standing Committee on Treaties, Report 170, p 34.
2.66 It is also clear that those in Treasury currently responsible for the borrowing arrangement identified the problem and have acted to resolve it.

2.67 The inquiry has identified a number of matters Committee would like Treasury to note:

- the process for activating the borrowing arrangements contains a small risk that a party with more than 15 per cent of the value of the borrowing arrangement can prevent the activation of the arrangement;
- there may be an apparent contradiction between the obligations in the borrowing arrangement and the procedure for the appropriation of funds contained in the International Monetary Agreements Act 1947; and
- in future, NIAs for treaties that relate to funding international financial institutions should list Australia’s total financial obligations to that organisation, not just the obligation related to the particular treaty in question.
3. Three Science Agreements

Scientific Technical Cooperation USA; Science Research Innovation NZ; Technological Innovation Israel

Introduction

3.1 This chapter examines the following treaty actions:

- Agreement relating to Scientific and Technical Cooperation between the Government of Australia and the Government of the United States of America;
- Agreement relating to Science, Research and Innovation Cooperation between the Government of Australia and the Government of New Zealand; and
- Agreement between the Government of Australia and the Government of the State of Israel on Bilateral Cooperation in Technological Innovation and Research and Development.

3.2 The three Agreements were tabled in the Parliament on 8 August 2017. The Agreement with the United States of America (USA) was signed on 29 November 2016, the Agreement with New Zealand on 17 February 2017 and the Agreement with Israel on 23 February 2017.

Background

3.3 According to the National Interest Analysis (NIA) the Agreement with the USA represents a largely unchanged renewal of an earlier agreement, the Agreement with the Government of the United States for Cooperation in Scientific
Research and Technological Development ([1968] ATS 22). The Agreement with Israel builds on the 1987 Memorandum of Understanding between the Department of Science of Australia and the Ministry of Science and Development of the State of Israel on Cooperation in the Fields of Science and Technology. The Agreement with New Zealand is intended to further cooperation between Australia and New Zealand, strengthening the existing economic cooperation under the 1983 Australia–New Zealand Closer Economic Relations Trade Agreement.

3.4 The Department of Industry, Innovation and Science (DIIS) told the Committee that the new Agreement with the USA builds on the previous Agreement to reinforce scientific collaboration between the two countries:

The renewed agreement with the US now includes a reference to scientific and technical innovation and supports the continuation of our formal science and innovation relationship. It provides mechanisms by which government and private sector researchers can continue to exchange scientific data and results, protect intellectual property rights and establish partnerships. It also reiterates our science and technical relationship, which spans over 48 years through several previous agreements.

3.5 The Agreement with New Zealand focuses on promoting the region as an innovation hub and marketing its combined ‘capability to the rest of the world’.

The agreement with New Zealand recognises the significant potential benefits that combining Australian and New Zealand efforts and resources can produce for our region. It supports further alignment of our national economic

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4 Dr Gino Grassia, General Manager, Science Policy Branch, Department of Industry, Innovation and Science (DIIS), Committee Hansard, Canberra, 4 September 2017, p. 7.

5 Dr Grassia, DIIS, Committee Hansard, Canberra, 4 September 2017, p. 11.
and strategic interests to achieve a trans-Tasman innovation ecosystem, and is a significant addition to the closer economic relationships framework and is part of the single economic market agenda.\(^6\)

3.6 The Agreement with Israel also builds on the existing relationship. It is designed to take advantage of Israel’s reputation in entrepreneurial innovation and foster commercialisation:

The agreement with Israel will place Australian companies in a position to take advantage of opportunities in Israel’s strengths, including biotechnology and ICT research and development sectors. Israel has a reputation as an exemplar of innovative entrepreneurship and its position in the world’s leading countries for R&D investment, with a vibrant venture capital industry. This agreement builds on Australia’s relationship with Israel, underpinned by a memorandum of understanding on cooperation in the fields of science and technology, signed in 1987, to support joint activities in innovation, aiming for commercialisation in the global market.\(^7\)

Reasons to take the proposed treaty action

3.7 According to the NIA for each Agreement innovation and science are central to Australia’s economic policy in delivering economic growth, productivity and job creation as reflected in Australia’s National Innovation and Science Agenda.\(^8\)

3.8 The DIIS stressed the importance of facilitating commercialisation in today’s global market and the role played by formal legal frameworks:

The three treaty actions proposed with the United States, New Zealand and Israel support Australia’s efforts to continue to have a world-class science, research and innovation system that drives productivity. Strengths in translating publicly funded research into commercial outcomes and business entrepreneurship, among other reasons, make these countries attractive partners for us. These kinds of agreements can help to create formal frameworks for collaboration, raise the level of engagement on science and innovation activities and address impediments to collaboration.\(^9\)

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\(^6\) Dr Grassia, DIIS, Committee Hansard, Canberra, 4 September 2017, p. 7.

\(^7\) Dr Grassia, DIIS, Committee Hansard, Canberra, 4 September 2017, p. 8.

\(^8\) NIA (USA), para 7; NIA (NZ), para 7; NIA (Israel), para 6.

\(^9\) Dr Grassia, DIIS, Committee Hansard, Canberra, 4 September 2017, p. 7.
The Agreements

3.9 The three Agreements contain similar obligations.

Obligations

USA

Table 3.1 USA Obligations

<table>
<thead>
<tr>
<th>Cooperation</th>
<th>Article II obliges the Parties to strengthen their overall science and technology relationship and to conduct that relationship on the basis of a number of principles, including shared responsibilities and mutual contributions and benefits, comparable access to programs and facilities and exchange of information, effective intellectual property protection, and cooperation in the promotion of research and development results.¹⁰</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Article IV obliges the Parties to support cooperative science and technology activities for peaceful purposes, encourage the timely application of research results for economic, social and industrial benefits, and encourage researchers and organisations from all sectors to participate in cooperative activities.¹¹</td>
</tr>
<tr>
<td></td>
<td>Article III obliges the parties to each designate an Executive Agent to coordinate and facilitate cooperative activities under the proposed Agreement.¹²</td>
</tr>
</tbody>
</table>

Confidentiality of information

| Annex I obliges the Parties to protect business-confidential information created under the proposed Agreement, in accordance with their |

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¹⁰ NIA (USA), para 13.
¹¹ NIA (USA), para 14.
¹² NIA (USA), para 15.
Personnel and equipment  

Article IX obliges the Parties to facilitate the entry into and exit from their territory of personnel, material and equipment of the other Party engaged on cooperative activities under the proposed Agreement.\(^{14}\)

Intellectual property  

Article VI and Annex I oblige the Parties to ensure the adequate and effective protection of any intellectual property introduced into, or created in the course of, a cooperative activity under the proposed Agreement.\(^{15}\)

Security obligations  

Article VII requires that reciprocal security obligations related to cooperative activities under the proposed Agreement be observed in accordance with Annex II.\(^{16}\)

Source: NIA (USA)

**New Zealand**

**Table 3.2   New Zealand Obligations**

Cooperation  

Article 3 obliges the Parties to strengthen and conduct their science, research and innovation relationship on the basis of a number of principles, including shared responsibilities and mutual benefits, mutually beneficial access to programmes and facilities and exchange of information, and cooperation in promoting science, research and innovation.\(^{17}\)

Article 5 obliges the Parties to undertake and support mutually beneficial cooperative

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\(^{13}\) NIA (USA), para 16.  
\(^{14}\) NIA (USA), para 17.  
\(^{15}\) NIA (USA), para 18.  
\(^{16}\) NIA (USA), para 25.  
\(^{17}\) NIA (NZ), para 12.
activities, and encourage participation in cooperative activities.\footnote{NIA (NZ), para 13.}

**Article 4** obliges that Parties to each designate an Executive Agent to oversee progress on cooperative activities and the work programme under the Agreement.\footnote{NIA (NZ), para 14.}

<table>
<thead>
<tr>
<th>Sharing of information</th>
<th><strong>Article 8</strong> requires that non-proprietary information arising from cooperative activities under the Agreement be made available to the world’s scientific community unless otherwise jointly decided.\footnote{NIA (NZ), para 15.}</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intellectual property</td>
<td><strong>Article 9</strong> provides that the protection and ownership of intellectual property rights will be the responsibility of, and jointly decided by, the affected participants.\footnote{NIA (NZ), para 16.}</td>
</tr>
<tr>
<td>Personnel and equipment</td>
<td><strong>Article 11</strong> obliges the Parties to facilitate the entry to and exit from their territory of personnel, material and equipment of the other Party engaged on cooperative activities under the Agreement.\footnote{NIA (NZ), para 17.}</td>
</tr>
<tr>
<td>Dispute resolution</td>
<td><strong>Article 13</strong> obliges the Parties to settle any disputes between them arising out of the interpretation or implementation of the Agreement amicably through consultation or negotiation.\footnote{NIA (NZ), para 18.}</td>
</tr>
</tbody>
</table>

*Source: NIA (NZ)*
### Israel

Table 3.3  **Israel Obligations**

<table>
<thead>
<tr>
<th>Cooperation</th>
<th><strong>Article IV</strong> obliges the Parties to encourage and support cooperative activities in innovation between entities from Australia and Israel.(^\text{24})</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sharing of information</td>
<td><strong>Article VI</strong> obliges the Parties to endeavour to facilitate the sharing of scientific and technological information of a non-proprietary nature derived from cooperative activities under the Agreement, to third parties, in accordance with the normal policies and procedures of the entities.(^\text{25})</td>
</tr>
<tr>
<td>Non-disclosure of information</td>
<td><strong>Article V</strong> obliges the Parties not to transmit confidential information received from the other to any third party, without written approval, subject to their domestic laws.(^\text{26})</td>
</tr>
<tr>
<td>Protection of legal and commercial interests</td>
<td><strong>Article VI</strong> provides that entities participating in cooperative activities under the Agreement are solely responsible for taking necessary steps to protect their own legal and commercial interests, including intellectual property rights.(^\text{27})</td>
</tr>
<tr>
<td>Settlement of disputes</td>
<td><strong>Article VII</strong> obliges Parties to settle any disputes between them arising out of the interpretation or implementation of the Agreement amicably through consultation or negotiation.(^\text{28})</td>
</tr>
</tbody>
</table>

*Source: NIA (Israel)*

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\(^{24}\) NIA (Israel), para 15.

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

\(^{26}\) NIA (Israel), para 17.

\(^{27}\) NIA (Israel), paragraphs 18 and 19.

\(^{28}\) NIA (Israel), para 20.
Entry into force

Implementation

3.10 According to the NIA for each of the three Agreements, no new domestic legislation or amendment to existing legislation is required to implement any of the Agreements.²⁹

Costs

3.11 According to the NIA for each of the Agreements, Australia is not committed to any financial outlays. Activities are subject to the availability of funds and each Party will bear the costs of discharging their own responsibilities.³⁰

Issues

Treatment of confidential information

3.12 Drawing on its experience with previous treaty actions, the Committee expressed concern over provisions for confidentiality in the three Agreements. Information created or exchanged under the treaty is to be dealt with under the domestic laws of each country. The Committee asked how confidentiality was interpreted in each of the respective countries.

3.13 The Department pointed out that only the USA and Israel Agreements specifically refer to the treatment of ‘confidential information’. DIIS stressed that the term is used in these two Agreements ‘to refer to commercially sensitive information, not security classified information’. The Department is of the opinion that the domestic laws in all three countries will treat ‘confidential information’ similarly:

The department’s view is that ‘confidential information’ generated from international science, research and innovation collaboration between governments, institutions and individuals, is not expected to attract significantly different treatment through respective domestic laws of New Zealand, Israel or the United States.³¹

²⁹ NIA (USA), para 28; NIA (NZ), para 19; NIA (Israel), para 21.
³⁰ NIA (USA), para 29; NIA (NZ), para 20; NIA (Israel), para 21.
³¹ Department of Industry, Innovation and Science (DIIS), Submission 1, p. 1.
3.14 DIIS also explained that the treatment of confidential information in these agreements ‘relates to the handling of said information by the respective governments’, not the cooperative participating research or industry partners, thus reducing the risk of mishandling:\(^{32}\)

In the case of these agreements, the department’s view is that the amount of confidential information generated and handled by the governments is expected to be minimal with the risk of inappropriate handling by partner governments likely to be low, given the importance of the broader bilateral relationships Australia has with each of these three partners.\(^{33}\)

3.15 DIIS told the Committee that it was unaware of any issues with regard to the treatment of confidentiality and the domestic laws of New Zealand, Israel or the USA and reminded the Committee that all three countries are parties to the Agreement on Trade-related Aspects of Intellectually Property Rights (TRIPPS).\(^{34}\)

**Effectiveness of Landing Pads**

3.16 The Committee noted the establishment of Landing Pads in a range of countries as a means to facilitate entry into new markets for Australian innovation entrepreneurs. The Committee asked if there was evidence of the success of the Landing Pad set up in Israel in 2016.

3.17 The Landing Pads provide either a ninety day residency in a co-work space or a Bootcamp program aimed at introducing participants to investors, mentor networks and strategic partnership opportunities.\(^{35}\) Austrade informed the Committee that, since the Tel Aviv Landing Pad became operational in May 2016 it has hosted 28 participants in intensive Bootcamp programs and 4 participants in the ninety day residency program.\(^{36}\) Austrade is expecting an additional 27 participants in the Bootcamp program for the 2017–18 financial year.\(^{37}\)

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\(^{32}\) DIIS, *Submission 1*, p. 2.

\(^{33}\) DIIS, *Submission 1*, p. 2.

\(^{34}\) DIIS, *Submission 1*, p. 1.


3.18 Austrade provided evidence that participants have found the programs beneficial with 85 per cent of respondents to a survey indicating ‘that the Landing Pads program provided a big or very big advantage to their business’. One hundred per cent of the respondents ‘expect to achieve commercial outcomes within 12 months of completing the program in Tel Aviv’.

Access to grants and funding

3.19 The Committee asked for clarification regarding the availability and accessibility of grants and tax incentives mentioned in the NIA (Israel) which states that:

Competitive grants and tax incentives are the two main policy instruments for governments to support business research and development. With government incentives and the availability of highly trained human capital, Israel has become an attractive location for the research and development centres of leading multinationals.

3.20 Austrade explained that two grants have been, or are being, developed with the Israeli Government and the Israeli Innovation Authority R&D collaboration agreements:

1. **Victoria**: Israel Science and Technology Research and Development Fund (VISTECH): The grant provides up to $250,000 to support collaborative R&D projects by Victorian and Israeli organisations. (Status: signed and running); and

2. **NSW**: NSW–Israel Research and Development (R&D) Program. The NSW–Israel R&D agreement will allow companies from NSW and Israel to collaborate with one another to conduct joint research and development projects. Israeli companies will be able to collaborate with NSW companies to co-develop and commercialize innovate products with financial support from both governments of up to $250,000. (Status: to be signed).

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38 Austrade, Submission 2, p. 1.
40 NIA (Israel), para 10.
41 Austrade, Submission 2, pp. 2–3.
Priorities under the New Zealand Agreement

3.21 The NIA (NZ) states that the Agreement with New Zealand will provide opportunities for the two countries to collaborate on Australian priority areas of interest under the ‘Innovative New Zealand’ initiative.\(^4\) The Committee sought clarification of Australia’s priorities under this initiative.

3.22 DIIS listed research infrastructure, aligning standards with the National Measurement Institute and IP arrangements, agriculture and health as priorities for Australia. The DIIS also re-iterated the importance of marketing the region to the world:

So you could have, over time, the opportunity for both business and government to take a delegation of science and innovation individuals to a third area in the world—maybe the US, Europe or Israel, for example. There are lots of opportunities where we can see us marketing our capability jointly.\(^5\)

Resourcing of the Executive Agent

3.23 All three Agreements require an Executive Agent to oversee progress on cooperative activities and the work program for the Agreement.\(^6\) DIIS explained that it is the Executive Agent for all three Agreements and the Committee questioned whether it was sufficiently resourced to take on the task.

3.24 DIIS will absorb the oversight of these three Agreements into its current departmental structure with some reallocation of resources but without any additional resourcing.\(^7\) However, the Department emphasised that their role is an administrative one and that agencies and institutions, both government and non-government, are responsible for driving many of the activities:

A very good example is that CSIRO might be one counterpart on our side that would engage with an equivalent counterpart of, say, New Zealand or the other countries to drive a particular collaborative or cooperative activity. So we leave it, in some cases, to the doers of the science or to doers of the

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\(^4\) NIA (NZ), para 11.
\(^5\) Dr Grassia, DIIS, Committee Hansard, Canberra, 4 September 2017, p. 11.
\(^6\) NIA (NZ), para 14; NIA (USA), para 15; Agreement between the Government of Australia and the Government of the State of Israel on Bilateral Cooperation in Technological Innovation and Research and Development, Article III.
\(^7\) Dr Grassia, DIIS, Committee Hansard, Canberra, 4 September 2017, p. 12.
collaboration to actually get on and do that. They might do that out of their own resourcing or they might seek additional resourcing over time.\textsuperscript{46}

**Committee comment**

3.25 In the current world where innovation and technology are driving productivity, the Committee sees benefit in the negotiation and implementation of these types of agreements. These agreements provide a formal legal framework through which the Australian government can encourage commercialisation for Australian innovation entrepreneurs.

3.26 The Committee notes the promising results achieved through the establishment by Australia of Landing Pads across the globe to introduce and support Australian innovation entrepreneurs’ entry to new marketing opportunities.

3.27 The Committee recommends that binding treaty action be taken for all three Agreements.

**Recommendation 1**

3.28 The Committee supports the Agreement relating to Scientific and Technical Cooperation between the Government of Australia and the Government of the United States of America and recommends that binding treaty action be taken.

**Recommendation 2**

3.29 The Committee supports the Agreement relating to Science, Research and Innovation Cooperation between the Government of Australia and the Government of New Zealand and recommends that binding treaty action be taken.

**Recommendation 3**

3.30 The Committee supports the Agreement between the Government of Australia and the Government of the State of Israel on Bilateral Cooperation in Technological Innovation and Research and Development and recommends that binding treaty action be taken.

\textsuperscript{46} Dr Grassia, DIIS, Committee Hansard, Canberra, 4 September 2017, p. 12.
The Hon Stuart Robert MP
Chair
4 October 2017
A. List of Submissions

Technological Innovation Israel
1. Department of Industry, Innovation and Science
2. Austrade

Scientific Technical Cooperation USA
1. Department of Industry, Innovation and Science

Science Research Innovation NZ
1. Department of Industry, Innovation and Science

IMF New Arrangements to Borrow
1. The Treasury
B. List of Witnesses

Monday, 4 September 2017

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 Sue Vroombout, Division Head, International Policy and Engagement Division
Ms Linda Ward, Principal Advisor, International Policy and Engagement Division

Department of Industry, Innovation and Science

Ms Sarah Brown, Manager, International Strategy, Science and Innovation
Dr Gino Grassia, General Manager, Science Policy Branch
Ms Louise Jansen, Policy Officer, International Negotiation, Science and Innovation
Ms Emma Luke, Acting Manager, International Negotiation, Science and Innovation
Ms Nina Thappa, Assistant Manager, International Negotiation, Science and Innovation