Report 187

Oil Stock Contracts—Hungary; MRA UK; Trade in Wine UK; MH17 Netherlands; Air Services: Thailand, Timor–Leste, PNG; Work Diplomatic Families—Italy; Double Taxation—Israel

Joint Standing Committee on Treaties
Executive summary

The Report contains the Committee’s review of nine treaty actions:

- Agreement between the Government of Australia and the Government of Hungary concerning Oil Stock Contracts;
- Agreement on Mutual Recognition in Relation to Conformity Assessment, Certificates and Markings between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland;
- Agreement on Trade in Wine between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland;
- Treaty between Australia and the Kingdom of the Netherlands on the Ongoing Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines Flight MH17;
- Agreement between the Government of Australia and the Government of the Kingdom of Thailand relating to Air Services;
- Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste relating to Air Services;
- Agreement between the Government of Australia and the Government of Papua New Guinea relating to Air Services;
- Agreement between the Government of Australia and the Government of the Italian Republic regarding the undertaking of work by cohabiting family members of diplomatic, consular and technical and administrative staff; and

The Committee’s inquiry into the first eight treaty actions listed above lapsed at the dissolution of the 45th Parliament and were re-referred following the re-establishment of the Committee in the 46th Parliament. The Convention between Australia and the State of Israel on taxation was referred on 9 September 2019 and
the Committee agreed to a request from the Treasurer that the treaty be considered urgently.

The Agreement between the Government of Australia and the Government of Hungary concerning Oil Stock Contracts will support Australia to meet its obligations as a member of the International Energy Agency (IEA). As a member of the IEA, Australia is a party to the Agreement on an International Energy Program (IEP Treaty). Under the IEP Treaty, Australia is required to maintain oil stocks that can sustain national consumption for at least 90 days with no net oil imports (the 90-day obligation). Australia has been non-compliant with this obligation since March 2012. The Committee once again raised ongoing concerns over the length of time it is taking to devise and implement a solution to Australia’s non-compliance. The Committee recommends that binding treaty action be taken.

Both of the Agreements between Australia and the United Kingdom (UK) are intended to secure existing arrangements between the two countries following Brexit. Given the uncertainty about the exact date of the UK’s formal departure from the European Union, the Government has exercised the National Interest Exemption (NIE) provisions to ensure that if needed, both Agreements could enter into force ahead of the UK’s possible departure day of 12 April 2019. No further recommendations of the Committee are required.

The Treaty between Australia and the Kingdom of the Netherlands on the Ongoing Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines Flight MH17 is the fifth prolongation of the original treaty action that entered into force on 1 August 2014. The treaty entered into force on 28 June 2019 under the NIE provisions to ensure that Australian personnel deployed in the Netherlands remained protected when the most recent prolongation of the Original Treaty expired on 30 June 2019.

While the immediate emergency response to the incident has concluded, the investigation and the preparation for the prosecution of the perpetrators in the Dutch criminal system are ongoing. The Agreement reflects this new phase. Indictments of four individuals for their alleged roles in the downing of MH17 were announced by the Joint Investigation Team on 19 June, 2019. Unlike the previous treaty actions, the Agreement does not specify an expiry date, providing ongoing certainty as to protections for Australian personnel in the Netherlands.

The three air services agreements provide access for Australian airlines to the aviation markets of Thailand, Timor-Leste, and Papua New Guinea, and provide airlines from those countries access to the Australian market. Each agreement is drawn from Australia’s model Air Services Agreement, and with a few exceptions, are substantially similar.
The Committee raised concerns regarding the dangers imposed for flights transiting conflict zones. The Committee is aware that the safety and security of citizens is paramount and will continue to take an interest in this issue. The Committee recommends that binding treaty action be taken for all three air services agreements.

The Agreement between the Government of Australia and the Government of the Italian Republic regarding the undertaking of work by cohabiting family members of diplomatic, consular and technical and administrative staff will allow family members of diplomatic staff stationed in Australia and Italy to engage in paid work for the duration of an official’s posting in the receiving country. The Committee recommends that binding treaty action be taken.

The Convention between the Government of Australia and the Government of the State of Israel for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance was signed in Canberra on 28 March 2019 and tabled in the Parliament on 9 September 2019. The proposed Convention establishes an internationally accepted framework for the taxation of cross-border financial transactions and is the latest addition to Australia’s network of 44 tax-related treaties. The Committee recommends that binding treaty action be taken.

The Report also contains the Committee’s review of the following six minor treaty actions:

- 2018 amendments to Annex VI of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocols of 1978 and 1997 relating thereto (MARPOL) MEPC.305(73);
- 2017 Amendments to the International Convention for the Safety of Life at Sea Resolution MSC.421(98);
- 2018 Amendments to the International Convention for the Safety of Life at Sea Resolution MSC.436(99);
- Adjustments to the Montreal Protocol on Substances that Deplete the Ozone Layer relating to the controlled substances on Annex C, Group I adopted at Quito on 9 November 2018;
- Amendment to the Treaty on Extradition between Australia and Ireland; and
- Acceptance of the accessions of Andorra, Armenia, Brazil, Colombia, Costa Rica, Montenegro and Morocco to the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters.
Contents

Executive summary .......................................................... iii
Abbreviations ........................................................................ xi
Members .............................................................................. xiii
Terms of Reference .................................................................. xv
List of Recommendations .................................................. xvii

The Report

1 Introduction ........................................................................ 1
   Conduct of the Committee’s review ....................................... 3

2 Oil Stock Contracts: Hungary ........................................ 5
   International energy program treaty and IEA obligations ........ 6
      IEA obligations ................................................................ 6
      Challenges of non-compliance ........................................ 7
      Practicalities of non-compliance ..................................... 9
   Obligations .......................................................................... 10
      Right to purchase oil stock reservation contracts with entities of Hungary... 11
   Approval and Notification process .................................. 11
      Consultation ................................................................... 12
   Implementation ..................................................................... 13
   Costs ................................................................................ 13
   Future actions ..................................................................... 14
<table>
<thead>
<tr>
<th>3</th>
<th>MRA UK</th>
<th>17</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Conclusion</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>Conformity assessment</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>Obligations</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>Implementation</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>Costs</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td>22</td>
</tr>
<tr>
<td>4</td>
<td>Trade in Wine: UK</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>Overview and national interest summary</td>
<td>24</td>
</tr>
<tr>
<td></td>
<td>Reasons for Australia to take the proposed treaty action</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>Obligations</td>
<td>26</td>
</tr>
<tr>
<td></td>
<td>Implementation</td>
<td>29</td>
</tr>
<tr>
<td></td>
<td>Costs</td>
<td>29</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td>29</td>
</tr>
<tr>
<td>5</td>
<td>MH17 Netherlands</td>
<td>31</td>
</tr>
<tr>
<td></td>
<td>Background</td>
<td>32</td>
</tr>
<tr>
<td></td>
<td>Reasons for Australia to take the proposed treaty action</td>
<td>33</td>
</tr>
<tr>
<td></td>
<td>Obligations</td>
<td>35</td>
</tr>
<tr>
<td></td>
<td>Implementation</td>
<td>37</td>
</tr>
<tr>
<td></td>
<td>Costs</td>
<td>37</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td>38</td>
</tr>
<tr>
<td>6</td>
<td>Air Services: Thailand, Timor-Leste, PNG</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td>Background</td>
<td>41</td>
</tr>
<tr>
<td></td>
<td>Provisions</td>
<td>42</td>
</tr>
<tr>
<td></td>
<td>Authorisation of airlines</td>
<td>42</td>
</tr>
<tr>
<td></td>
<td>Grant of access</td>
<td>43</td>
</tr>
<tr>
<td></td>
<td>Application of laws</td>
<td>44</td>
</tr>
<tr>
<td></td>
<td>Recognition of certificates</td>
<td>44</td>
</tr>
<tr>
<td></td>
<td>Safety</td>
<td>44</td>
</tr>
</tbody>
</table>
Aviation security .......................................................... 45
User charges .................................................................. 46
Customs duties and air fares ......................................... 46
Capacity and schedules ................................................. 46
Implementation .............................................................. 47
Oversight of airspace .................................................... 47
Conclusion ................................................................. 48

7 Work Diplomatic Families: Italy ................................................. 51
Obligations ................................................................. 53
Additional reasons for declining a request ..................... 55
Implementation .............................................................. 56
Conclusion ................................................................. 56

8 Double Taxation - Israel ......................................................... 57
Double taxation treaties and international models .......... 57
Overview and reasons to take proposed treaty action ....... 59
Provisions to reduce barriers and improve tax integrity ....... 60
Timing of the treaty .......................................................... 61
Obligations ................................................................. 61
Implementation .............................................................. 64
Costs ........................................................................... 64
Conclusion ................................................................. 65

9 Minor Treaty Actions .............................................................. 67
2018 amendments to Annex VI of the International Convention for the
Prevention of Pollution from Ships, 1973, as modified by the Protocols
of 1978 and 1997 relating thereto (MARPOL) MEPC.305(73) ........... 67
2017 Amendments to the International Convention for the Safety of Life at
Sea Resolution MSC.421(98) ................................................. 68
2018 Amendments to the International Convention for the Safety of Life at
Sea Resolution MSC.436(99) ................................................. 68
Adjustments to the Montreal Protocol on Substances that Deplete the Ozone Layer relating to the controlled substances on Annex C, Group I adopted at Quito on 9 November 2018................................. 69

Amendment to the Treaty on Extradition between Australia and Ireland..... 69

Acceptance of the accessions of Andorra, Armenia, Brazil, Colombia, Costa Rica, Montenegro and Morocco to the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters............................... 70

Conclusion .............................................................................................................. 70

Appendix A. Submissions ....................................................................................... 73

Appendix B. Witnesses .......................................................................................... 75
Abbreviations

AFP  Australian Federal Police
BEPS  Base Erosion and Profit Shifting
CABs  Conformity Assessment Bodies
CASA  Commonwealth Civil Aviation Safety Authority
DAWR  Department of Agriculture and Water Resources
DEE  Department of the Environment and Energy
DFAT  Department of Foreign Affairs and Trade
DIRDC  Department of Infrastructure, Regional Development and Cities
EU  European Union
HCFCs  Hydrochlorofluorocarbons
ICAO  International Civil Aviation Organization
IEA  International Energy Agency
IEP Treaty  *Agreement on an International Energy Program*
JIT  Joint Investigation Team
JSCOT  Joint Standing Committee on Treaties
MARPOL  *International Convention for the Prevention of Pollution from Ships, 1973*
MIL  *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*
MoU  Memorandum of Understanding
MRA  Mutual Recognition Agreement
NIA  National Interest Analysis
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>NIE</td>
<td>National Interest Exemption</td>
</tr>
<tr>
<td>OECD</td>
<td>Organization for Economic Co-operation and Development</td>
</tr>
<tr>
<td>PE</td>
<td>Permanent Establishment</td>
</tr>
<tr>
<td>PNG</td>
<td>Papua New Guinea</td>
</tr>
<tr>
<td>RIS</td>
<td>Regulation Impact Statement</td>
</tr>
<tr>
<td>SOLAS</td>
<td><em>International Convention for the Safety of Life at Sea</em></td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
</tr>
</tbody>
</table>
Members

Chair

Mr Dave Sharma MP

Deputy Chair

Mr Peter Khalil MP

Members

Senator Tim Ayres  
Hon Dr John McVeigh MP

Senator Catryna Bilyk  
Senator Gerard Rennick

Senator Andrew Bragg  
Senator Marielle Smith

Mr Russell Broadbent MP  
Senator Jordon Steele-John

Senator Slade Brockman  
Ms Kate Thwaites MP

Mr Jason Falinski MP  
Mr Tim Wilson MP

Ms Nicolle Flint MP  
Mr Josh Wilson MP
Committee Secretariat

Julia Morris, Committee Secretary
Narelle McGlusky, Inquiry Secretary
Emilia Schiavo, Inquiry Secretary
Kevin Bodel, Senior Researcher
Stephanie Lee, Research Officer
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

2.49 The Committee supports the Agreement between the Government of Australia and the Government of Hungary concerning Oil Stock Contracts and recommends that binding treaty action be taken.

Recommendation 2

6.45 The Committee supports the Agreement between the Government of Australia and the Government of the Kingdom of Thailand relating to Air Services and recommends that binding treaty action be taken.

Recommendation 3

6.46 The Committee supports the Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste relating to Air Services and recommends that binding treaty action be taken.

Recommendation 4

6.47 The Committee supports the Agreement between the Government of Australia and the Government of Papua New Guinea relating to Air Services and recommends that binding treaty action be taken.

Recommendation 5

7.29 The Committee supports the Agreement between the Government of Australia and the Government of the Italian Republic regarding the undertaking of work by cohabiting family members of diplomatic, consular and technical and administrative staff and recommends that binding treaty action be taken.
Recommendation 6

8.52 The Committee supports the Convention between the Government of Australia and the Government of the State of Israel for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance and recommends that binding treaty action be taken.
1. Introduction

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

- Agreement between the Government of Australia and the Government of Hungary concerning Oil Stock Contracts;
- Agreement on Mutual Recognition in Relation to Conformity Assessment, Certificates and Markings between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland;
- Agreement on Trade in Wine between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland;
- Treaty between Australia and the Kingdom of the Netherlands on the Ongoing Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines Flight MH17;
- Agreement between the Government of Australia and the Government of the Kingdom of Thailand relating to Air Services;
- Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste relating to Air Services;
- Agreement between the Government of Australia and the Government of Papua New Guinea relating to Air Services;
- Agreement between the Government of Australia and the Government of the Italian Republic regarding the undertaking of work by cohabiting family members of diplomatic, consular and technical and administrative staff; and

1.2 The Committee’s inquiry into the first eight treaty actions listed above lapsed at the dissolution of the 45th Parliament. These treaties were re-referred following the establishment of the Committee in the 46th
Parliament. The Convention between Australia and the State of Israel on taxation (Double Taxation-Israel) was referred on 9 September 2019 and the Committee agreed to a request from the Treasurer that the treaty be considered urgently.

1.3 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 the Parliament.

1.4 The treaties, and matters arising from them, are evaluated to ensure that ratification is in the national interest, and that unintended or negative effects on Australia will not arise.

1.5 Prior to tabling, major treaty actions are subject to a National Interest Analysis (NIA), prepared by Government. This document considers arguments for and against the treaty, outlines the treaty obligations and any regulatory or financial implications, and reports the results of consultations undertaken with State and Territory Governments, Federal, State and Territory agencies, and with industry or non-government organisations.

1.6 A Regulation Impact Statement (RIS) may accompany the NIA. The RIS provides an account of the regulatory impact of the treaty action where adoption of the treaty will involve a change in the regulatory environment for Australian business.

1.7 The Committee takes account of these documents in its examination of the treaty text, in addition to other evidence taken during the inquiry program.

1.8 None of the treaty actions examined in this report required a RIS.

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

This report also contains the Committee’s reviews on six minor treaty actions:

- 2018 amendments to Annex VI of the *International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocols of 1978 and 1997 relating thereto* (MARPOL) MEPC.305(73);
- 2017 Amendments to the *International Convention for the Safety of Life at Sea* Resolution MSC.421(98);
- 2018 Amendments to the *International Convention for the Safety of Life at Sea* Resolution MSC.436(99);
- Adjustments to the *Montreal Protocol on Substances that Deplete the Ozone Layer* relating to the controlled substances on Annex C, Group I adopted at Quito on 9 November 2018;
- Amendment to the *Treaty on Extradition between Australia and Ireland*; and
- Acceptance of the accessions of Andorra, Armenia, Brazil, Colombia, Costa Rica, Montenegro and Morocco to the *Convention on the Taking of Evidence Abroad in Civil or Commercial Matters*.

**Conduct of the Committee’s review**

1.11 The first eight treaty actions listed at paragraph 1.9 were advertised on the Committee’s website from the original date of the tabling in the 45th Parliament. Submissions for those treaty actions were requested by 15 March 2019. One submission was received for the inquiry into Trade in Wine with the United Kingdom, and one each for the following inquiries: MH17 Netherlands; the three air service agreements; and working arrangements for diplomatic family members.

1.12 The Committee held public hearings into those treaty actions in Canberra on 1 April 2019. The transcripts of evidence from the public hearings may be obtained from the Committee Secretariat or accessed through the Committee’s website as listed above.
1.13 The treaties were re-referred to the Committee by the Minister for Foreign Affairs on 29 July 2019, following the re-establishment of the Committee in the 46th Parliament. The Committee resolved to adopt the evidence received by the previous Committee for all the lapsed treaty actions under review. The Committee also sought updated advice from all witnesses who appeared at the April 2019 hearings.\(^1\) Subsequently correspondence was noted, and any updated information was accepted as a submission.\(^2\)

1.14 The inquiry into Double Taxation-Israel was advertised on the Committee’s website and one submission was received. The Committee held a public hearing on 16 September 2019.

1.15 A list of submissions received for the inquiries is at Appendix A. A list of witnesses who appeared at the public hearings is at Appendix B.

---

1 Advice received by email and correspondence.

2 Department of Foreign Affairs and Trade, MH-17 Netherlands, *Submission 1*. 
2. Oil Stock Contracts: Hungary

Agreement between the Government of Australia and the Government of Hungary concerning Oil Stock Contracts

2.1 This Chapter reviews the Agreement between the Government of Australia and the Government of Hungary concerning Oil Stock Contracts (the Agreement). The treaty action was signed in Canberra on 30 October 2018 and tabled in the Parliament on 12 February 2019. A public hearing was held on 1 April 2019. The Committee’s inquiry into the treaty action lapsed at the dissolution of the 45th Parliament and the treaty was re-referred to the Committee by the Minister for Foreign Affairs on 29 July 2019, following the re-establishment of the Committee in the 46th Parliament. As noted at paragraph 1.13, updated information was sought at this time, and the Department of Environment and Energy (DEE) advised that no additional comment was needed.

2.2 This is the second such treaty action to come before the Committee. It examined the Agreement between the Government of Australia and the Government of the Kingdom of the Netherlands concerning Oil Stocks Contracts (Netherlands Agreement) in August 2018.¹ Essentially, these agreements assist Australia to meet its obligations as a member of the International Energy Agency (IEA), which includes maintaining sufficient oil stocks (Australia

¹ Joint Standing Committee on Treaties (JSCOT), Report 182: Oil Stocks Contracts: Netherlands, Canberra, September 2018.
has been non-compliant with this requirement since 2012). The agreements formalise arrangements to allow oil stocks held under reservation contracts (also known as ‘tickets’) to be credited towards Australia’s obligations.

2.3 While the Committee was supportive of the 2018 proposed treaty action with the Netherlands, and agrees that Australia’s long-standing non-compliance needs to be addressed, from the information obtained during that earlier inquiry, the Committee was somewhat sceptical regarding the outcome and the overall effect the action would have on Australia’s capacity to address this long-standing problem of non-compliance.

2.4 The proposed Agreement with Hungary follows a similar format to that with the Netherlands. The National Interest Analysis (NIA) is almost identical to the one for the Netherlands Agreement and the Committee notes that the NIA provides no new information regarding Australia’s progress towards meeting its obligation.

2.5 The Committee acknowledges the interrelationship of the separate issues; Australia’s obligations under the Agreement on an International Energy Program (IEP Treaty), and its physical oil stocks. To that end, the Committee will outline information presented regarding the proposed treaty action, before considering in more detail the broader issues and themes it considers less well understood and worthy of further monitoring.

International energy program treaty and IEA obligations

IEA obligations

2.6 The IEA was established in 1974 in response to the 1973–74 global oil crisis. The IEA currently has 30 members including Australia, which became a member in 1979. The IEA’s objective is to promote energy security amongst its member countries through coordinating a collective response to physical disruptions in global oil supply, and in providing authoritative research and analysis on ways to ensure reliable, affordable and clean energy.

---


4 NIA, para 5.
2.7 The NIA explains that, as a member of the IEA, Australia is a party to the IEP Treaty. Article 2 of the IEP Treaty requires Australia to maintain oil stockholdings sufficient to sustain national consumption for at least 90 days with no net oil imports (the 90-day obligation). Australia has been non-compliant with this obligation since March 2012.\(^5\)

2.8 The NIA states that Australia submitted a two phase plan to return to compliance to the IEA governing board in June 2016. Under Phase 1 of the plan, Australia will procure up to 400 kilotonnes of oil stock reservation contract tickets in each of the financial years 2018–19 and 2019–20.\(^6\) Under Article 3 of the Annex to the IEP Treaty, Australia can credit stocks held overseas towards its 90-day obligation under the IEP Treaty, provided there is an arrangement in place stating that the country hosting oil stocks will not impede stock transfer during an emergency.\(^7\)

2.9 The NIA notes that this Agreement is as a result of the offer by the Government of Hungary of the opportunity to purchase tickets in its territory to assist in Australia’s return to compliance, and the request for a treaty level agreement governing this purchase, in order to comply with Hungary’s domestic legal requirements.\(^8\)

2.10 The NIA explains that oil tickets give the ticket holder (Australia) a right either to purchase reserved oil stock outright, or to release the stock back to the host market. Both of these options would operate in accordance with the terms and conditions in each ticketing contract. In the event that the IEA declares a global oil supply emergency, oil could either be transferred to Australia for use, or released into the Hungarian market to help alleviate the economic consequences of a supply disruption, depending on the nature of the emergency.\(^9\)

**Challenges of non-compliance**

2.11 The Committee understands that non-compliance with the IEP Treaty has been of long-standing concern. During the Committee’s inquiry into the Netherlands Agreement, the DEE advised that since 2008 only two other countries had been non-compliant with the 90-day obligation: Luxembourg

\(^5\) NIA, para 6.
\(^6\) NIA, para 7.
\(^7\) NIA, para 8.
\(^8\) NIA, paragraphs 8 and 11.
\(^9\) NIA, para 9.
and Turkey. Luxembourg had fallen to 89 days on three occasions and Turkey to 88 days (in 2009) and 86 days (in 2018).\textsuperscript{10}

2.12 As noted at paragraph 2.8, in 2016, Australia submitted a two phase plan to return to compliance. Phase 1 involves the procurement of tickets, as described above, and Phase 2 has not yet been announced. The Committee was advised during its 2018 inquiry into the Netherlands agreement that Phase 1 would only provide Australia with a small fraction of its requirement to meet the 90 day obligation and that Phase 2 was not decided, but would be informed by an assessment of the country’s liquid fuel security.\textsuperscript{11} Asked what progress had been made with regard to that assessment, the DEE stated that a final report was expected during the second half of 2019. In the meantime some interim advice had been provided to the Minister.\textsuperscript{12}

2.13 The Committee learnt during its inquiry into the Netherlands Agreement that the 400 kilotonnes of tickets would only provide Australia with 3.8 days towards its 90-day obligation. At the time of that inquiry (August 2018) Australia held 51–52 days of that 90-day requirement. The DEE advised that as at the date of the current inquiry (April 2019), Australia has 55 days.\textsuperscript{13}

2.14 Australia’s non-compliance has been driven by falling domestic crude oil production, along with rising product demand and imports. This has increased Australia’s net imports under the IEA statistical methodology. However, the NIA claims that physical stock levels held in Australia have remained relatively stable.\textsuperscript{14}

2.15 With regard to the type of mechanisms that may be included in Phase 2, DEE explained that there are a range of possibilities that the Government could consider:

One of the most frequently used options would be an industry obligation, so all entities that bring fuel into the country and sell fuel would have to hold a certain amount of stock, a certain number of days of stocks. That’s commonly used by EU member countries. Obviously a large strategic reserve is an option

\textsuperscript{10} JSCOT, \textit{Report 182}, p.4.

\textsuperscript{11} JSCOT, \textit{Report 182}, p. 7.

\textsuperscript{12} Mr Shane Gaddes, Assistant Secretary, Energy International and Implementation Branch, Department of the Environment and Energy (DEE), \textit{Committee Hansard}, Canberra, 1 April 2019, pp. 12–13.

\textsuperscript{13} Mr Gaddes, DEE, \textit{Committee Hansard}, Canberra, 1 April 2019, p. 13.

\textsuperscript{14} NIA, para 6.
as well. The US strategic petroleum reserve is an option that a lot of countries use. The US don’t use an industry obligation; they just hold a very large amount of crude oil in salt caverns. They are two of the obvious ones that countries can use. Others would be what we’re doing here—contracts to hold oil in other countries, whether it be through tickets or whether it be through buying oil and leasing the space.\textsuperscript{15}

**Practicalities of non-compliance**

2.16 During its consideration of both the 2018 Agreement and this Agreement with Hungary, Committee members focused on concerns prompted by proposed treaty actions which seemed to offer little in the way of practical solutions. Neither treaty action appears to address either Australia’s longstanding and significant compliance issues or the possible national interest impacts of fuel security.

2.17 The DEE advised the Committee during the 2018 inquiry that it saw no threat to Australia’s overall fuel security despite its non-compliance with the 90-day obligation under the IEP Treaty.\textsuperscript{16} At the 1 April 2019 public hearing, the DEE explained that Australia has never been in a position to meet its obligation in the event of a global disruption:

[The treaties] allow us to respond to what’s called a collective action. If there’s a significant disruption, Australia is called on, as a member of the IEA, to release an amount of oil into the market. We’ve never been able to do that. We’ve always relied either on the amount of oil that’s been held by industry or our exports to reduce our compliance to a certain level. We’ve never held a strategic reserve that we could release in an emergency. These tickets allow us to release that oil into the market in a global disruption. It’s our share of the IEA collective action.\textsuperscript{17}

2.18 During the 2018 inquiry, the DEE advised that other measures were being undertaken to address non-compliance, including improved mandatory reporting by oil companies and the creation of the energy security office within DEE.\textsuperscript{18}

2.19 Updating the Committee in April 2019, the DEE advised that the implementation of the proposed measures had produced positive results:

\textsuperscript{15} Mr Gaddes, DEE, *Committee Hansard*, Canberra, 1 April 2019, p. 14.

\textsuperscript{16} JSCOT, *Report 182*, p. 5.

\textsuperscript{17} Mr Gaddes, DEE, *Committee Hansard*, Canberra, 1 April 2019, p. 15.

\textsuperscript{18} JSCOT, *Report 182*, p. 8.
... with the mandatory reporting legislation ... we have identified another 30 days in our supply chain. So these days can’t be counted against the IEA framework, but there are another 30 days in our supply chain from stocks that have been purchased by Australian entities and are held overseas waiting to come to Australia and then stocks that are in ships on their way to Australia.  

2.20 The Committee remains concerned by the practical differences in maintaining an adequate fuel supply, and maintaining obligations under a treaty, where there is no expectation that a 90-day oil stock holdings will ever be able to be maintained. As at January 2019, the DEE reported that Australia has 29 days of consumption cover including 24 days of petrol, 20 days of diesel and 22 days of aviation jet fuel.

2.21 The Committee queried why the 30 days of supply could not be counted towards Australia’s IEA obligations. The DEE explained that the statistical methodology used by the IEA has become outdated and does not accurately reflect the current operation of the oil market. The DEE advised that Australia is pressing for reform but progress is slow:

We are consistently engaging with the IEA, and the IEA has agreed with all the member countries to reform the oil stockholding mechanism and to modernise it, and also to bring more countries into the IEA because its representative nature is diminishing over time because emerging countries are using more oil.

2.22 Asked to identify the circumstances that could threaten Australia’s liquid fuel security, the DEE told the Committee that in broad terms both internal and external events should be considered:

... you would look at things like small-scale disruptions to retail supply chains and refinery outages. You would look at some of the global disruptions ... like closure of the Strait of Hormuz. The other sort of things that you would look at would be a complete blockade of all of Australia’s ports.

Obligations

2.23 The following summary of Australia’s obligations under the proposed Agreement is taken from the NIA.

---

19 Mr Gaddes, DEE, Committee Hansard, Canberra, 1 April 2019, p. 13.
20 Mr Gaddes, DEE, Committee Hansard, Canberra, 1 April 2019, p. 13.
21 Mr Gaddes, DEE, Committee Hansard, Canberra, 1 April 2019, p. 16.
22 Mr Gaddes, DEE, Committee Hansard, Canberra, 1 April 2019, p. 14.
Right to purchase oil stock reservation contracts with entities of Hungary

2.24 Article 5 sets out the right of the Australian Government or Australian entities to negotiate and conclude ticket contracts with private or public entities operating in Hungary.23

2.25 Under Article 7, Australia would be able to call on tickets held in Hungary in the event the IEA calls for members to take collective action under the IEP Treaty during a global oil supply disruption.24

2.26 Commercial contracts will sit under the Agreement. These will generally give two options to Australia during such a disruption: an option to purchase and an option to release. An option to purchase will involve Australia buying all or part of the previously reserved oil stock outright. The option to release will likely see the cancellation of all or part of the contract, making the oil available again to the market within the host country to help ease the supply issue. The exact operation of these options will be set out in the terms and conditions of contracts entered into with each entity.25

2.27 Article 9 obliges Hungary not to impose any impediment (legislative, physical, or by other means) on the removal and transfer of oil stocks held under a ticket contract to Australia from its territory.26

Approval and Notification process

2.28 Article 4 provides that the proposed Agreement shall be administered by the Competent Authorities of Australia and Hungary. For Australia, the Competent Authority is the agency responsible for implementing the Agreement, being the Department of the Environment and Energy, or its successor. For Hungary, it is the Hungarian Ministry of Innovation and Technology, or its successor responsible for energy policy.27

2.29 Article 5(2) requires contracts for holding oil stocks in Hungary to be approved by the Competent Authority of Hungary.28

23 NIA, para 14.
24 NIA, para 15.
25 NIA, para 16.
26 NIA, para 17.
27 NIA, para 18.
28 NIA, para 19.
2.30 A process of government-to-government notification and approval is set out in Articles 6 to 8. This is to ensure Hungary can manage its own stockholding obligations and ensures the ticketed stock is only reported to the IEA as stock credited to Australia (and is not double counted by two countries within the IEA’s stockholding system).  

2.31 Australia must seek prior approval from Hungary as to any applicable maximum thresholds of oil stocks to contract on an annual basis, pursuant to Article 6(1) of the Agreement.  

2.32 Australia must then seek Hungary’s approval for ticket contracts that Australia has concluded one month before the contract’s intended start date. This notification is to include information relating to the ticket seller, the nature, quantity and location of the ticketed stock, and the term of the ticket contract (Article 6(2)). Hungary shall notify Australia of its approval no later than two weeks before the contract’s intended start date (Article 6(3)).  

2.33 Under Article 6(4), Australia is under an obligation to notify Hungary if there is any significant change in the information supplied in accordance with Article 6(2).  

2.34 Hungary has the right to withdraw its approval if it identifies a significant inaccuracy in the information provided by Australia under Article 6(2). However, it must first give Australia a reasonable opportunity to have the inaccuracy rectified, and if Australia does so, Hungary cannot withdraw its approval (Article 6(5)).  

2.35 If Australia calls on tickets held in Hungary (as set out under Article 7 of the proposed Agreement), it must notify Hungary of that decision at least two weeks in advance (Article 8).  

2.36 Article 6(6) permits Australia and Hungary to agree to vary the time limits for notification and approval outlined above.  

Consultation

29 NIA, para 20.  
30 NIA, para 21.  
31 NIA, para 22.  
32 NIA, para 23.  
33 NIA, para 24.  
34 NIA, para 25.  
35 NIA, para 26.
2.37 **Article 10** requires the Competent Authorities to consult as soon as reasonably practicable: where either Australia or Hungary faces a supply emergency; to resolve difficulties in the interpretation of the proposed Agreement; or if circumstances arise which may be taken into consideration in the exercise of Australia’s purchase options under oil stocks contracts.\(^\text{36}\)

**Implementation**

2.38 According to the NIA, no new legislation is needed for the proposed Agreement to enter into force and it will not bring about any changes to the existing roles of the State and Territory Governments. The legislative authority for the Australian Government to spend funds on entering into and purchasing oil stocks under a ticket contract exists under section 40A of the *Liquid Fuel Emergency Act 1984*.\(^\text{37}\)

2.39 The NIA states that a multi-stage procurement process is being implemented to enable the Australian Government to run a competitive process for the purchase of tickets. The proposed Agreement will allow entities of Hungary to participate in the procurement process.\(^\text{38}\)

**Costs**

2.40 The NIA states that the Australian Government has provided both departmental and administered funding of $23.8 million over four years to implement Australia’s oil stockholding compliance plan. This includes funding for the purchase of up to 400 kilotonnes of tickets in each of the 2018–19 and 2019–20 financial years. The NIA notes that further ticketing commitments may be made under Phase 2 of the compliance plan; options for Phase 2 are currently being investigated.\(^\text{39}\)

2.41 According to the NIA, the multi-stage procurement process should ensure value for money when acquiring ticketing contracts. The NIA notes that although the proposed Agreement gives entities in Hungary the opportunity to compete in the tender, it does not guarantee they will be successful. The NIA cautions that, due to the proposed nature of the procurement process, it

---

\(^{36}\) NIA, para 27.

\(^{37}\) NIA paragraphs 28 and 29.

\(^{38}\) NIA, para 30.

\(^{39}\) NIA, para 31.
cannot be specified how much, if any, spending would occur with entities in Hungary under the proposed Agreement.\textsuperscript{40}

2.42 The NIA explains that the price of oil or product purchased under any ticket contract will be determined by the market price of the type of oil at the time of purchase and the terms and conditions contained in the specific ticket contract. The NIA notes that details of contracts will be commercial-in-confidence.\textsuperscript{41}

**Future actions**

2.43 This Agreement is likely to be the second of several which formalise arrangements for the Australian Government to purchase tickets through a competitive multi-stage procurement. The NIA considers that it is important to the success of the procurement process that Australia has access to as many tickets as possible to help improve the competitiveness of Australia’s available pool of sellers including Hungary. This will help to ensure value for money can be achieved in the procurement.\textsuperscript{42}

2.44 In order to gain access to a broad market, the DEE advised Australia has concluded MOUs with the US, the UK, Germany, Spain and Denmark. Australia has concluded the Agreement with the Netherlands, is negotiating one other treaty, and two further MOUs.\textsuperscript{43}

2.45 In order to consider the set of current and future oil stock contract agreements, in the context of Australia’s IEA commitments and the Government’s intention of establishing a pathway to compliance with our IEA obligations by 2026, the Committee will seek in the first half of 2020 a public hearing opportunity with the Department of Foreign Affairs and Trade (DFAT) and DEE in relation to the information and recommendations contained in the final report of the Liquid Fuel Security Review.

**Conclusion**

2.46 The Committee reiterates its concern over the length of time it is taking to devise and implement a solution to Australia’s non-compliance with its IEA

\textsuperscript{40} NIA, para 32.

\textsuperscript{41} NIA, para 33.

\textsuperscript{42} NIA, para 12.

\textsuperscript{43} Mr Gaddes, DEE, Committee Hansard, Canberra, 1 April 2019, p. 14.
obligations, noting that we became non-compliant in 2012 and made a commitment in 2016 to return to full compliance by 2026. The Committee considers that Australia will have to take significant action if it is to meet that commitment.

2.47 The Committee is mindful of the connection between Australia’s obligations under the IEA and its physical oil stocks and will continue to remain informed on both issues.

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

**Recommendation 1**

2.49 The Committee supports the Agreement between the Government of Australia and the Government of Hungary concerning Oil Stock Contracts and recommends that binding treaty action be taken.
3. MRA UK

Agreement on Mutual Recognition in Relation to Conformity Assessment, Certificates and Markings between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland

3.1 This Chapter reviews the Agreement on Mutual Recognition in Relation to Conformity Assessment, Certificates and Markings between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland (the Australia–UK MRA). The Australia–UK MRA was signed in London on 18 January 2019 and is intended, in a post-Brexit environment, to secure existing arrangements for conformity assessment between Australia and the United Kingdom (UK).1

3.2 The proposed treaty action was tabled in the Parliament on 12 February 2019. A public hearing was held on 1 April 2019. The Committee’s inquiry into the treaty action lapsed at the dissolution of the 45th Parliament on 11 April 2019. The treaty was re-referred to the Committee by the Minister for Foreign Affairs on 29 July 2019, following the re-establishment of the Committee in the 46th Parliament.

3.3 Timing for the entry into force of the Agreement was expected to depend on the terms of Brexit, which remain uncertain. When the Committee considered the Agreement in April 2019, the UK was set to leave the European Union (EU) on 29 March 2019 (UK time). The National Interest Analysis (NIA) stated that, during an expected transition period, the UK would remain bound by obligations stemming from EU–third country agreements as if it remained an EU Member State. Australia’s treaties with the EU would continue to apply to the UK for the duration of the transition period, and the Australia–UK MRA would not enter into force until the transition period ends.²

3.4 However, the NIA explained that there was still considerable uncertainty regarding the withdrawal of the UK from the EU and a ‘no-deal’ scenario remained a possibility. In the event of a ‘no-deal’ Brexit, the Agreement would need to enter into force on the date the UK formally leaves the EU to avoid any legal gaps for Australia.³

3.5 The UK is Australia’s equal seventh largest two way trading partner for goods and services, worth nearly $28 billion in 2017–18.⁴ The Department of Industry, Innovation and Science (DIIS) emphasised the need to protect this relationship and ‘minimise disruptions to trade flows and provide as much certainty to Australian industry as possible.’⁵ Consequently, on 7 February 2019, Senator the Hon Simon Birmingham, acting Minister for Foreign Affairs, wrote to the Committee to advise that, in the event of a ‘hard’ Brexit, it may be necessary to ratify the Agreement before the Committee had completed its inquiry and reported on the treaty.

**Conformity assessment**

3.6 Conformity assessment ensures that a product or service meets a set standard. Conformity Assessment Agreements, usually referred to as Mutual Recognition Agreements (MRAs), allow Parties to an MRA to recognise each other’s conformity assessments. In practical terms, this

---

² NIA, para 3.
³ NIA, para 4.
⁴ Mr Martin Squire, General Manager, Trade and International Branch, Department of Industry, Innovation and Science (DIIS), Committee Hansard, Canberra, 1 April 2019, p. 17.
⁵ Mr Squire, DIIS, Committee Hansard, Canberra, 1 April 2019, p. 18.
reduces the regulatory burden on exporters by enabling them to rely on a single conformity assessment when exporting products and services.\footnote{International Organisation for Standards, Certification and Conformity, <https://www.iso.org/conformity-assessment.html> viewed on 25 March 2019.}

3.7 Conformity assessments with the UK are currently covered by the Australia–European Union (EU) MRA.\footnote{NIA, para 2.} Post-Brexit, the Australia–UK MRA will provide continuity and certainty for Australian businesses.\footnote{NIA, para 6.}

3.8 The UK and Australia will continue to recognise the technical competence of each other’s conformity assessment bodies to test, inspect and certify products for compliance with each other’s respective regulatory requirements. This means that Australian exporters can ensure their goods comply with UK technical regulations before they depart Australia.\footnote{NIA, para 5.}

3.9 The DIIS explained that the laboratories, inspection bodies and certification bodies or conformity assessment bodies (CABs) play an important role curtailing costs for Australian businesses:

\ldots what this means is that a test report or certificate issued by an accredited CAB in the EU is accepted within Australia, and vice versa, without the need for duplicative retesting or recertification of a product on arrival. This saves businesses time, resources and money.\footnote{Mr Squire, DIIS, Committee Hansard, Canberra, 1 April 2019, p. 17.}

### Obligations

3.10 The following summary of Australia’s obligations under the proposed Agreement is taken from the NIA.

3.11 The Australia–UK MRA incorporates the rights and obligations provided for in the Australia–EU MRA subject to some ‘technical modifications’ provided for in the Agreement.\footnote{NIA, para 8.}

3.12 The Agreement covers conformity assessments in the following areas:

- manufactured medical products;
- medical devices;
- telecommunications terminal equipment;

\begin{itemize}
  \item manufactured medical products;
  \item medical devices;
  \item telecommunications terminal equipment;
\end{itemize}
- low voltage equipment;
- electromagnetic compatibility;
- machinery;
- pressure equipment; and
- automotive products.\(^\text{12}\)

3.13 **Article 6** of the Agreement confirms that conformity assessment bodies designated under the Australia–EU MRA will continue to be recognised by the Parties where those conformity assessment bodies are located in Australia and the UK. A safeguard mechanism will allow both Parties to withdraw designation from any conformity assessment body. Both Parties will have the right to contest the competence of any conformity assessment body designated by the other Party if this process is justified.\(^\text{13}\)

3.14 Conformity assessments issued under the Australia–EU MRA prior to the entry into force of the Agreement will continue to be recognised by the Parties under the Agreement for the life of their validity provided they are issued by conformity assessment bodies located in the UK or Australia.\(^\text{14}\)

3.15 **Article 4** of the Agreement provides that all references to EU laws and regulations in the Agreement will be read as references to the substance of those laws as transposed into the UK when Brexit occurs.\(^\text{15}\)

3.16 Transitional periods contained in the Australia–EU MRA that have not yet ended will be recognised, along with any ongoing rights or obligations relating to transition periods that end before the Agreement comes into force.\(^\text{16}\)

3.17 The implementation of the Agreement will be undertaken using a Joint Committee. Any decisions made by the Joint Committee of the Australia–EU MRA will be deemed to have been adopted where the decision relates to the matters covered in the Agreement.\(^\text{17}\)

\(^\text{12}\) NIA, para 7.

\(^\text{13}\) NIA, para 9.

\(^\text{14}\) NIA, para 10.

\(^\text{15}\) NIA, para 11.

\(^\text{16}\) NIA, para 12.

\(^\text{17}\) NIA, para 13.
The Agreement contains a number of administrative arrangements as Sectoral Annexes that have less than treaty status. These Sectoral Annexes detail:

- the scope of the products covered by the Agreement;
- the applicable legislative, administrative and regulatory requirements of each Party;
- the designated authorities of each Party; and
- their respective procedures for designation.\(^{18}\)

These Sectoral Annexes have not been included in the material provided to the Committee.

**Implementation**

The NIA states that the Agreement will not require any legislative changes in Australia. However, it cautions that some future legislative or regulatory changes may be required, including if, post-Brexit, the UK adopts technical standards that substantially diverge from those it currently conforms to under EU laws and regulations.\(^{19}\)

**Costs**

According to the NIA, there will be minimal financial and regulatory costs as it replaces existing arrangements.\(^{20}\) The Committee notes that:

> There are no additional costs imposed on businesses or our conformity assessment bodies. We’re essentially mirroring the agreement that we currently have with the EU with a new agreement which is solely for Australia and the UK … It’s more around providing certainty and ensuring that we don’t impose unnecessary additional costs, which would be the situation if there were no agreement in place.\(^{21}\)

The NIA advises that the Australia–UK Joint Committee established under the Agreement will be covered by the normal appropriations of DIIS.\(^{22}\)

---

\(^{18}\) NIA, para 14.

\(^{19}\) NIA, para 15.

\(^{20}\) NIA, para 17.

\(^{21}\) Mr Squire, DIIS, *Committee Hansard*, Canberra, 1 April 2019, p. 18.

\(^{22}\) NIA, para 18.
Conclusion

3.23 The Committee understands that, further to Minister Birmingham’s advice of 7 February 2019 and given the ongoing uncertainty about the exact date of the UK’s formal departure from the EU, the Government has exercised the National Interest Exemption (NIE) provisions to ensure that if needed, the agreement could enter into force ahead of the UK’s possible departure date. At the time of the inquiry that date was 12 April 2019.

3.24 Therefore, Australia has provided the UK with advice confirming it completed the domestic processes necessary for entry into force of the treaty action and no further recommendation of the Committee is required.
4. Trade in Wine: UK

Agreement on Trade in Wine between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland

4.1 This Chapter reviews the Agreement on Trade in Wine between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland (the Agreement). The treaty action was signed in London on 18 January 2019 and is intended, in a post-Brexit environment, to secure existing arrangements under Australia’s Trade in Wine Agreement with the European Union (EU) (EC–AU Wine Agreement).¹

4.2 The proposed treaty action was tabled in the Parliament on 12 February 2019. A public hearing was held on 1 April 2019. The Committee’s inquiry into the treaty action lased at the dissolution of the 45th Parliament on 11 April 2019. The treaty was re-referred to the Committee by the Minister for Foreign Affairs on 29 July 2019, following the re-establishment of the Committee in the 46th Parliament. Updated advice was sought at the time and the Department of Agriculture advised that no additional comment was needed.

Timing for the entry into force of the Agreement was expected to depend on the terms of Brexit, which remain uncertain. When the Committee considered the Agreement in April 2019, the United Kingdom (UK) was set to leave the EU on 29 March 2019 (UK time). The National Interest Analysis (NIA) stated that, during an expected transition period, the UK would remain bound by obligations stemming from EU–third country agreements as if it remained an EU Member State. Australia’s treaties with the EU would continue to apply to the UK for the duration of the transition period, and the Agreement on Trade in Wine would not enter into force until the transition period ends.

However, the NIA explained that there was still considerable uncertainty regarding the withdrawal of the UK from the EU and a ‘no-deal’ scenario remained a possibility. In the event of a ‘no-deal’ Brexit, the Agreement would need to enter into force on the date the UK formally leaves the EU to avoid any legal gaps for Australia.

The UK is Australia’s equal seventh largest two-way trading partner for goods and services, and ninth largest export market. Consequently, on 8 February 2019, Senator the Hon Simon Birmingham, acting Minister for Foreign Affairs, wrote to the Committee to advise that, in the event of a ‘hard’ Brexit, it may be necessary to ratify the Agreement before the Committee had completed its inquiry and reported on the treaty.

Overview and national interest summary

The NIA states that the Agreement will ensure ongoing access to the UK market for Australian wine-makers following the UK’s withdrawal from the EU. The NIA notes that it also aims to provide a platform for further facilitation and promotion of wine between the UK and Australia.²

The NIA maintains that the Agreement largely mirrors the rights and obligations provided for under the EC–AU Wine Agreement, subject to some technical changes necessary for replicating those provisions in a bilateral Australia–UK context.³

² NIA, para 5.
³ NIA, para 6.
4.8 The Former Department of Agriculture and Water Resources (DAWR)\(^4\) stated that the technical changes relate to:

- reading all references to EU law as references to UK law;
- updating the designated representative bodies to reflect some changes and new contact points;
- a new entry-into-force requirement; and
- a modified process for giving each other notices.

4.9 DAWR suggested that the changes would not alter the substance of the Agreement.\(^5\)

4.10 The NIA states that under the Agreement, Australia and the UK will continue to accept each other’s authorised winemaking techniques and simplified wine certification and labelling arrangements. The Agreement also provides for ongoing reciprocal recognition of each Party’s geographical indications (and other terms) in relation to wine.\(^6\)

**Reasons for Australia to take the proposed treaty action**

4.11 According to the NIA, the UK is Australia’s top wine export market by volume and third largest market by value. In the 12 months to December 2018, Australia exported 246 million litres of wine to the UK, with a value of $389 million.\(^7\) In their submission to the inquiry, Australian Grape and Wine maintain that the UK market is ‘critically important’ for Australian wine.\(^8\)

4.12 The UK is also an important hub for Australian wine exports to Europe. Approximately 80 per cent of wine shipped to the UK is unpackaged (bulk), which is bottled in market and distributed across the EU. The value of unpackaged wine exports to the UK grew by 27 per cent to $214 million in the 12 months to December 2018.\(^9\)

---

\(^4\) On 29 May 2019, the Governor-General made a new Administrative Arrangements Order that included renaming the Department of Agriculture and Water Resources the Department of Agriculture. For the purpose of this report, the former name of the Department will be used.

\(^5\) Ms Jo Grainger, Assistant Secretary, Plant Industries, Infrastructure and Workforce Branch, Agricultural Policy Division, Department of Agriculture and Water Resources (DAWR), *Committee Hansard*, Canberra, 1 April 2019, p. 21.

\(^6\) NIA, para 6.

\(^7\) NIA, para 7.

\(^8\) Australian Grape & Wine, *Submission 1*, [p.3].

\(^9\) NIA, para 7.
4.13 The NIA advises that the Agreement is intended to ensure that Australia’s wine exports to the UK can continue uninterrupted, and with minimal technical barriers, post-Brexit. Further, the NIA suggests that it underlines the strong commitment of Australia and the UK to the promotion and facilitation of wine trade between the two countries and will help maintain a mutually beneficial trade relationship.\(^\text{10}\)

4.14 In their submission to the inquiry, Australian Grape and Wine were supportive of this view, stating:

> With the outcome of Brexit shrouded in so much uncertainty, it is great to see this Agreement providing us with a greater possibility of assured access, maintaining access to this vital market for the Australian wine sector.\(^\text{11}\)

4.15 The Committee questioned whether Australian producers and exporters had raised any concerns about the EC–AU Wine Agreement, and if this had been taken into account in considering the Agreement. DAWR explained that:

> … the UK is still a member of the EU and is only allowed to talk about treaties on the status quo. It’s not actually allowed, at this point in time, to pursue something more ambitious. It was very important that this agreement get put into place so that we have a status quo outcome to ensure the continuation of trade.\(^\text{12}\)

4.16 However, DAWR highlighted that further opportunity to consider the conditions for wine trade between Australia and the UK may arise in the future:

> … if there is the opportunity for a UK–Australia free trade agreement, that’s a point in time we would all look to work closely with industry to understand their agenda for the outcomes we could seek there.\(^\text{13}\)

**Obligations**

4.17 The following summary of the obligations under the Agreement are taken from the NIA.

4.18 **Article 2** incorporates the obligations provided for in the EC–AU Wine Agreement (hereinafter referred to as ‘incorporated’ provisions), including

\(^\text{10}\) NIA, para 8.

\(^\text{11}\) Australian Grape & Wine, *Submission 1*, [p. 2.].

\(^\text{12}\) Ms Grainger, DAWR, *Committee Hansard*, Canberra, 1 April 2019, p. 21

\(^\text{13}\) Ms Grainger, DAWR, *Committee, Hansard*, Canberra, 1 April 2019, p. 21.
the Protocol, Annexes and Consolidated Exchange of Letters, subject to some technical modifications provided for in the Agreement. The obligations provided for under the EC–AU Wine Agreement are set out in the NIA for that treaty.\textsuperscript{14}

4.19 Under \textbf{Article 4}, all references to EU laws and regulations will be read as references to the substance of those laws, as transposed into UK law as at the date on which the UK leaves the EU or the date the UK ceases to be bound by the relevant EU legislation following the expiration of any Brexit transition period. The Agreement further provides that the commitments described in the Declarations made by the parties to the EC–AU Wine Agreement, shall apply with the same effect to the Parties to this Agreement as if the Declarations had been concluded between the Parties and subject to the provisions of the Agreement. These declarations are non-binding.\textsuperscript{15}

4.20 Incorporated \textbf{Article 5} requires the Parties to authorise the importation into and marketing in their territory of wines produced in accordance with the winemaking practices or processes and compositional requirements outlined in the Agreement. Incorporated \textbf{Articles 6–11} also set out a process for modifications or additions to the list of permitted oenological practices, processes or compositional requirements. Incorporated \textbf{Article 10} allows disputes about these matters to be subject to a binding arbitration.\textsuperscript{16}

4.21 Incorporated \textbf{Article 12(2)} requires the Parties to prevent, where wines produced in their territory are exported and marketed outside their territory, the use of protected names provided for in the Agreement. Australia will be required to prevent, for wines produced in Australia, use of UK geographical indications (incorporated \textbf{Article 12(1)(a)(I)}); traditional wine expressions of the UK (incorporated \textbf{Article 12(1)(a)(III)}); certain categories of wines and sales descriptions (incorporated \textbf{Article 12(a)(IV)}), as well as references to the UK (incorporated \textbf{Article 12(1)(a)(II)}). The UK will be required to prevent, for wines produced in the UK, use of Australian geographical indications listed in incorporated \textbf{Annex II, Part B} (incorporated \textbf{Article 12(1)(b)(I)}) and references to ‘Australia’ or other names to indicate Australia (incorporated \textbf{Article 12(1)(b)(II)}).\textsuperscript{17}


\textsuperscript{15} NIA, para 10.

\textsuperscript{16} NIA, para 11.

\textsuperscript{17} NIA, para 12.
Incorporated Article 13(1) extends Australia and the UK’s obligation to prevent misuse of geographical indications to wine imported from third countries.\textsuperscript{18}

Incorporated Articles 19–25 impose further obligations regarding the presentation and description of wine. Incorporated Article 19 provides generally that wine may not have false or misleading labelling. Incorporated Article 20 contains particular types of wine descriptions which may be used on labels, depending on whether the wine bears an authorised geographical indication. These rules are supplemented by the requirements for terms used to describe certain product types and production methods set out in incorporated Annexes VII and VIII. There are also rules about describing wines by reference to vine varieties (incorporated Article 22) and, for Australian wines, with a geographical indication (incorporated Article 24).\textsuperscript{19}

Incorporated Article 23 allows Australia to continue to use the quality wine terms listed in incorporated Annex V to describe Australian wines. These are commercially important terms used for Australian fortified wine including ‘cream’, ‘ruby’, ‘tawny’ and ‘vintage’.\textsuperscript{20}

Incorporated Article 26 is a ‘stand still’ provision which prohibits Australia and the UK from introducing more onerous labelling requirements than those in force as at the date of signature of the Agreement.\textsuperscript{21}

Incorporated Article 27 requires that the UK authorise the importation of wine, originating in Australia, if accompanied by the simplified certification provisions outlined in the Agreement. Australia is required to provide the certification to the UK via the authorised competent body. It also requires that both Parties will not impose more restrictive certification requirements for wine originating from each other’s territories.\textsuperscript{22}

Incorporated Article 30 provides for the establishment of a Joint Committee to see to the proper functioning of the Agreement. Upon entry into force of this Agreement, any decisions adopted by the Joint Committee established under the EC–AU Wine Agreement immediately before it ceases to apply to the UK, shall, to the extent to which those decisions relate to the Parties to

\textsuperscript{18} NIA, para 13.
\textsuperscript{19} NIA, para 14.
\textsuperscript{20} NIA, para 15.
\textsuperscript{21} NIA, para 16.
\textsuperscript{22} NIA, para 17.
this Agreement, be deemed to have been adopted by the Joint Committee established under this Agreement (Article 7(2)). However, it will be open to the Joint Committee to subsequently make decisions which are different to, revoke or supersede those decisions deemed to have been adopted (Article 7(3)).

Implementation

4.28 The NIA says that Australia’s obligations under the Agreement will be implemented under the Wine Australia Act 2013 and the Wine Australia Regulations 2018.

4.29 The Wine Australia Regulations 2018 will need to be amended to declare the Agreement as a ‘prescribed wine-trading agreement’ for the purposes of Section 4(1) of the Wine Australia Act 2013. The NIA explains that, with this declaration, the UK will be recognised as an agreement country under Section 4(1) of the Wine Australia Act 2013. As such, provisions applicable to agreement countries under both the Wine Australia Act 2013 and Wine Australia Regulations 2018 will apply to wine trade between Australia and the UK.

Costs

4.30 The NIA states that there will be administrative costs associated with amending the Wine Australia Act 2013 and the Wine Australia Regulations 2018 to enable the entry into force of the Agreement but that these will be absorbed within existing budgets. The NIA does not expect any costs to business.

Conclusion

4.31 The Committee understands that, further to Minister Birmingham’s advice of 8 February 2019 and given the ongoing uncertainty about the exact date of the UK’s formal departure from the EU, the Government has exercised the National Interest Exemption (NIE) provisions to ensure that if needed, the

---

23 NIA, para 18.
24 NIA, para 19.
25 NIA, para 20.
26 NIA, para 21.
agreement could enter into force ahead of the UK’s possible departure date. At the time of the inquiry that date was 12 April 2019.

4.32 Therefore, Australia has provided the UK with advice confirming completion of the domestic processes necessary for entry into force of the treaty action and no further recommendation of the Committee is required.
5. MH17 Netherlands

Treaty between Australia and the Kingdom of the Netherlands on the Ongoing Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines Flight MH17

5.1 This Chapter reviews the Treaty between Australia and the Kingdom of the Netherlands on the Ongoing Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines Flight MH17 (the Agreement). The treaty action was signed at The Hague on 18 December 2018 and tabled in the Parliament on 12 February 2019. A public hearing was held on 1 April 2019. The Committee’s inquiry into the treaty action lapsed at the dissolution of the 45th Parliament on 11 April 2019. The treaty was re-referred to the Committee by the Minister for Foreign Affairs on 29 July 2019, following the re-establishment of the Committee in the 46th Parliament. As noted in paragraph 1.13, updated advice was sought at that time and information from the Department of Foreign Affairs and Trade (DFAT) was accepted as a submission.

5.2 This is the fifth prolongation of the original treaty action, which entered into force on 1 August 2014.\(^1\) The original Agreement was implemented under

---

\(^1\) Treaty between Australia and the Kingdom of the Netherlands on the presence of Australian personnel in the Netherlands for the purpose of responding to the downing of Malaysia Airlines Flight MH17.
the National Interest Exemption (NIE) provisions and without following the usual treaty making process which requires that a treaty action be tabled 20 joint sitting days before binding treaty action is taken.

5.3 The Joint Standing Committee on Treaties (JSCOT) concurred with the Government’s decision to invoke the NIE at the time and later examined the original Agreement when it was tabled in Parliament on 30 September 2014.\(^2\) The Netherlands required a binding treaty action in order to grant the rights and protections needed to facilitate the deployment of Australian personnel to handle the downing of Malaysia Airlines Flight MH17 (MH17).\(^3\) However, due to Dutch domestic requirements, the duration of the original Agreement was limited to twelve months.\(^4\)

5.4 Australian personnel continued to serve in the Netherlands beyond the twelve month period as the investigation was extended. Therefore the Protocol Establishing the Prolongation of the Treaty between the Kingdom of the Netherlands and Australia on the Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines Flight MH17 (the Protocol) was tabled in the Parliament on 12 May 2015 to extend the original Agreement. The Committee did not hold further public hearings but reported on the Protocol in June 2015.\(^5\) The Committee has subsequently endorsed the prolongation of the treaty action three times under the minor treaty action provisions.\(^6\) Unlike previous treaty actions, the Agreement does not specify an expiry date and will provide ongoing certainty as to protections for Australian personnel in the Netherlands.\(^7\)

**Background**

5.5 Malaysia Airlines Flight MH17 from Amsterdam to Kuala Lumpur was shot down on 17 July 2014 with 298 people on board, including 38 victims who


\(^3\) JSCOT, *Report 146*, p. 4.


\(^7\) NIA, para 10.
called Australia home. In response, Australian personnel were deployed to the Netherlands to assist in activities related to the immediate emergency situation and to assist the investigation into the cause of the incident.\(^8\)

5.6 The National Interest Analysis (NIA) explains that while the immediate emergency response to the incident has been concluded, the investigations into the downing and the preparation for the prosecution of the perpetrators in the Dutch criminal system are ongoing. Australian personnel continue to be deployed to the Netherlands to assist in this work. At the time of the NIA there were five Australian Federal Police (AFP) personnel deployed assisting in investigations as part of the Joint Investigation Team (JIT).\(^9\)

5.7 DFAT added that Australia and the Netherlands assert that the ‘Russian Federation is responsible at international law for the downing of MH17.’\(^10\) DFAT informed the Committee that the two countries are negotiating with Russia to progress the matter and held the first round of talks in March 2019.\(^11\)

**Reasons for Australia to take the proposed treaty action**

5.8 According to the NIA, Australia fully supports a Dutch national prosecution of the individuals responsible for the downing of MH17. The Dutch national prosecution will ensure the results of the JIT investigation are taken into account and that justice for the victims and their families is delivered.\(^12\)

5.9 The NIA explains that Australian personnel deployed to the Netherlands will continue to support the investigation and, once commenced, the prosecution. Accordingly, the Agreement provides authorisation for Australia to send personnel and associated equipment and assets to the Netherlands for the purpose of assisting with activities relating to the downing of Malaysia Airlines flight MH17. **Article 2** makes specific

---


\(^9\) NIA, para 7.

\(^10\) Mr Ben Milton, Assistant Secretary, International Law Branch, Department of Foreign Affairs and Trade (DFAT), *Committee Hansard*, Canberra, 1 April 2019, p. 8.

\(^11\) Mr Milton, DFAT, *Committee Hansard*, Canberra, 1 April 2019, p. 8.

\(^12\) NIA, para 8.
reference to Australia’s provision of support to the JIT and assisting with preparations for the prosecution of perpetrators responsible.\textsuperscript{13}

5.10 DFAT elaborated on the purpose of the Agreement, emphasising its role in pursuing accountability and justice for the victims and their loved ones:

[The Agreement] authorises and provides the legal framework for the ongoing presence of Australian personnel in the Netherlands, supporting the AFP’s participation in the JIT and defining the rights and obligations of deployed Australian personnel. The treaty advances Australia’s objectives. It enables Australia to participate in establishing the truth of the events that led to the death of so many who called Australia home and it allows us to contribute to the Dutch national prosecution of the individuals responsible for it. It supports Australia’s efforts with the Netherlands to hold the Russian Federation to account for its role in the downing.\textsuperscript{14}

5.11 The NIA states that these activities are not expected to conclude within the next twelve months. DFAT elaborated on the difference between this Agreement and the previous iterations of the treaty action:

This treaty differs from the earlier treaty in the key respect that it continues until either side terminates it. What that means is that, having gone through five of these prolongations, it has become clear to us that the process will not be resolved within another 12 months. So we have agreed with the Netherlands to put aside the original treaty and enter a new treaty with the same provisions, apart from the fact that it’s ongoing.\textsuperscript{15}

5.12 DFAT pointed out that the only other differences between this Agreement and the previous treaty actions concerned the changed nature of the mission:

The second difference essentially reflects the fact that the treaty that has been concluded now was not done in the immediate aftermath of the downing as was the original treaty. In that treaty there were provisions that allowed the AFP to carry firearms. There were also provisions with respect to the repatriation of bodies. Those provisions are now not needed, because the AFP is in a different mode in the Netherlands.\textsuperscript{16}

5.13 Asked if the remains of all the Australian citizens and residents had been repatriated, the AFP informed the Committee that:

\textsuperscript{13} NIA, para 9.
\textsuperscript{14} Mr Milton, DFAT, \textit{Committee Hansard}, Canberra, 1 April 2019, p. 8.
\textsuperscript{15} Mr Milton, DFAT, \textit{Committee Hansard}, Canberra, 1 April 2019, p. 9.
\textsuperscript{16} Mr Milton, DFAT, \textit{Committee Hansard}, Canberra 1 April 2019, p. 9.
All of the Australian victims have been identified and repatriated. There is the potential for other remains to be identified over future years, depending upon access to the site and who gets access to the site. So you may well see in the media that additional remains have been identified. We are in constant contact with the next of kin if that is the case and if there is the potential for those small fragments to be identified as linked to Australian victims.\(^\text{17}\)

5.14 The Committee asked if there is a timeframe for the operation. The AFP explained that as the operation is transitioning from an investigation into a prosecution phase, it is difficult to estimate how long it will take to conclude:

The AFP will have a presence during the prosecution phase—so as it transitions from investigations into prosecutions—for two reasons: firstly, there will always be questions for investigators during the prosecution phase; and, secondly, we would expect investigations to continue against individuals who are deemed to be culpable and that they will be phased. One option is that all the individuals would be prosecuted as co-acccused. Another option is that they would be prosecuted individually. Obviously the time lines will be dependent on which approach is adopted.\(^\text{18}\)

5.15 DFAT provided the Committee with an update on the prosecution phase, advising that:

On 19 June [2019] the JIT announced the indictment of four individuals for their alleged roles in the downing of MH17. This represented an important step towards justice and accountability for the victims of the downing, including the 38 who called Australia home, and their loved ones. Prosecutions of these individuals are expected to commence in a Dutch court in March 2020.\(^\text{19}\)

5.16 Further indictments may occur and the JIT’s work is ongoing.\(^\text{20}\)

Obligations

5.17 The NIA offers assurance that the Agreement essentially follows the form of the original MH17 Treaty examined by the Committee but language referring to the initial emergency situation has been removed. It no longer

\(^\text{17}\) Mr McIntyre, Manager, Criminal Assets, Fraud and Anti-Corruption, Organised Crime, Australian Federal Police (AFP), *Committee Hansard*, Canberra, 1 April 2019, p. 9.

\(^\text{18}\) Mr McIntyre, AFP, *Committee Hansard*, Canberra, 1 April 2019, p. 9.

\(^\text{19}\) Department of Foreign Affairs and Trade (DFAT), *Submission 1*, p. 1.

provides for the repatriation of the body of an Australian official who dies in the course of activities and removes the provision permitting Australian personnel to carry weapons. The original MH17 Treaty will cease to have effect from the date of entry into force of this Agreement (Article 14(2)).

5.18 Under Article 3 Australians deployed to the Netherlands are required to respect the sovereignty, territorial integrity and political independence of the Netherlands, the laws of the Netherlands, and must refrain from any activity incompatible with the purposes of the Agreement.

5.19 Article 3 also ensures that Australian personnel remain under Australia’s command and control while deployed, and Australian authorities are obliged to take administrative or disciplinary action in accordance with Australian laws, regulations and policies if necessary. Neither Party is permitted to take administrative or disciplinary action against the other Party’s personnel.

5.20 Article 4 provides Australian personnel status equivalent to that accorded to the administrative and technical staff of a diplomatic mission under the Vienna Convention on Diplomatic Relations (Vienna Convention). Where a member of the Australian personnel is also accredited as a diplomatic agent of the Australian Embassy to the Netherlands, they will be provided with the full privileges and immunities available to diplomatic agents under the Vienna Convention. The Agreement requires Australia to withdraw deployed personnel at the Netherlands’ request.

5.21 Article 5 waives claims between the Netherlands and Australia that arise from activities covered by the Agreement, except where such claims arise out of wilful misconduct, recklessness or gross misconduct. The Agreement also sets out procedures for dealing with third party claims, apportioning liability on the basis of responsibility.

5.22 Article 9 provides permission for Australian personnel to wear national uniforms; Article 10 requires the appointment of an Australian Senior Representative in the Netherlands to serve as a point of contact with Dutch authorities; and Article 12 regulates the sharing and disclosure of

---

21 NIA, para 11.
22 NIA, para 12.
23 NIA, para 13.
24 NIA, para 14.
25 NIA, para 15.
information, including that relating to deployed personnel and the victims of MH17.\textsuperscript{26}

5.23 **Article 6** provides that Australian personnel enjoy entry, exit and movement within the Netherlands without delay or hindrance. **Article 8** provides that Australian personnel be granted the use of facilities, such as training centres, or be entitled to establish facilities in the Netherlands as mutually determined. **Article 11** provides that guard duties related to the security and safety of Australian personnel and assets shall be the responsibility of the Netherlands.\textsuperscript{27}

### Implementation

5.24 The NIA advises that no legislation is required to implement Australia’s obligations under the Agreement.\textsuperscript{28}

### Costs

5.25 **Article 7** permits Australia to import, export, possess, store, move and use equipment, supplies and other items for the purpose of responding to the downing of MH17 free of duties, taxes and charges. The NIA notes that this exemption does not apply to goods purchased in the Netherlands.\textsuperscript{29}

5.26 The NIA states that Australia will otherwise follow budgetary processes and rules to fund activities carried out under the Agreement. This may include the need for supplementary funding to agencies.\textsuperscript{30}

5.27 The NIA notes that the 2018–19 Federal Budget allocated $50.3 million over four years to support this prosecution.\textsuperscript{31} The Committee asked for details on the expenditure to date and if the budget was adequate. DFAT advised that the budget is being managed so as to satisfactorily meet the requirements of the mission but that so far expenditure has been slower than expected:

> The budget allocation of $50.3 million over four years goes to support the Dutch national prosecution of the individuals responsible for the crime. The

\textsuperscript{26} NIA, para 16.  
\textsuperscript{27} NIA, para 17.  
\textsuperscript{28} NIA, para 18.  
\textsuperscript{29} NIA, para 21.  
\textsuperscript{30} NIA, para 22.  
\textsuperscript{31} NIA, para 8.
prosecution hasn’t started yet, and that has meant that we haven’t spent as much money as we would otherwise have spent. The $50.3 million is divided into two allocations. One of those is $37.4 million, which is in the department’s administered budget. I am not aware that any of that has been spent at this point. That will go to support the prosecution and so support the families’ participation in the prosecution. The remainder is in the department’s departmental budget. Just over $1 million of that has been spent as at last Friday. That has gone to a range of issues, including travel, short-term missions for people and to support our post in Kiev.\cite{Mr Milton, DFAT, Committee Hansard, Canberra, 1 April 2019, pp. 9–10.

Conclusion

5.28 The Committee once again commends the work of the dedicated Australian personnel who continue the investigation into the tragic downing of MH17 and welcomes the implementation of these more permanent arrangements to facilitate Australia’s pursuit of accountability and justice for the victims and their loved ones. The Committee understands that the work is expected to continue for some time as the mission moves into its prosecution phase.

5.29 The Committee is aware that this treaty action entered into force on 28 June 2019 under the National Interest Exemption (NIE) provisions to ensure that Australian personnel deployed in the Netherlands remained protected when the fifth prolongation of the Original Treaty expired on 30 June 2019.

5.30 Therefore, no further recommendation of the Committee is required.
6. Air Services: Thailand, Timor-Leste, PNG

Agreement between the Government of Australia and the Government of the Kingdom of Thailand relating to Air Services; Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste relating to Air Services; Agreement between the Government of Australia and the Government of Papua New Guinea relating to Air Services

6.1 This Chapter covers three air services agreements:

- the Agreement between the Government of Australia and the Government of the Kingdom of Thailand relating to Air Services (the Thai Air Services Agreement);
- the Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste relating to Air Services (the Timor-Leste Air Services Agreement); and
6.2 The Thai Air Services Agreement was signed in Bangkok on 2 August 2017. The Agreement will replace an existing treaty governing air services between Australia and Thailand from 1960.\(^1\) The Former Department of Infrastructure, Regional Development and Cities (DIRDC)\(^2\) noted that the Agreement includes modern provisions that aim to support the aviation safety and security framework and offer further commercial flexibility for airlines.\(^3\)

6.3 The Timor-Leste Air Services Agreement was signed in Dili on 26 May 2017. This is the first treaty level air services relationship between Australia and Timor-Leste.\(^4\)

6.4 The PNG Air Services Agreement was signed in Port Moresby on 6 October 2017. The Agreement replaces a previous treaty governing air services between Australia and Papua New Guinea dating from 1980.\(^5\) The NIA notes that the text of the PNG Agreement has been applied on an administrative, non-legally binding basis under a Memorandum of Understanding (MoU) signed in 2010. As such, the Agreement has been observed by aeronautical authorities of the two countries pending entry into force.\(^6\)

6.5 The three proposed treaty actions were tabled in the Parliament on 12 February 2019. A public hearing was held on 1 April 2019. The Committee’s inquiry into the treaty action lapsed at the dissolution of the 45th Parliament on 11 April 2019. The treaty was re-referred to the Committee by the Minister for Foreign Affairs on 29 July 2019, following the

---

\(^1\) National Interest Analysis [2019] ATNIA 4, Agreement between the Government of Australia and the Government of the Kingdom of Thailand relating to Air Services, (Bangkok, 3 August 2017) [2019] ATNIF 4, hereafter referred to as the Thai Air Services Agreement NIA, para 3

\(^2\) On 29 May 2019, the Governor-General made a new Administrative Arrangements Order that included renaming the Department of Infrastructure, Regional Development and Cities the Department of Infrastructure, Transport, Cities and Regional Development. For the purpose of this report, the former name of the Department will be used.

\(^3\) Mr Ross Adams, Director, International Air Transport Section, Department of Infrastructure, Regional Development and Cities (DIRDC), Committee Hansard, Canberra, 1 April 2019, p. 4.


\(^6\) PNG Air Services Agreement NIA, para. 4.
re-establishment of the Committee in the 46th Parliament. As noted in paragraph 1.13, updated advice was sought at that time and DIRDC advised that no additional comment was needed.

6.6 These Agreements are being covered together because they are all based on Australia’s model Air Services Agreement, and with a few exceptions, are substantially similar. Differences between the agreements will be identified at relevant points throughout the Chapter.

Background

6.7 International air travel is regulated by the Convention on International Civil Aviation, first signed in Chicago in 1944 (the Chicago Convention). All the countries party to the air services agreements under consideration here have signed the Chicago Convention.7

6.8 Article 6 of the Chicago Convention establishes the requirement for parties to have in place agreements to enable international air travel between them:

No scheduled international air services may be operated over or into the territory of a contracting State, except with the special permission or other authorisation of that State, and in accordance with the terms of such permission or authorisation.8

6.9 Australia has 105 bilateral air service agreements, although a number of these are of less than treaty status.9

6.10 The agreements under consideration here provide access for Australian airlines to the aviation markets of Thailand, Timor-Leste, and Papua New Guinea, and provide airlines from those countries access to the Australian market.10 The objective of the agreements is to provide a binding legal

---

7 Thai Air Services Agreement NIA, para 7; Timor-Leste Air Services Agreement NIA, para 7; PNG Air Services Agreement NIA, para 8.
10 Thai Air Services Agreement NIA, para 5; Timor-Leste Air Services Agreement NIA, para 5; PNG Air Services Agreement NIA, para 6.
framework to support the operation of air services between Australia and Thailand, Timor-Leste and Papua New Guinea.\textsuperscript{11}

6.11 DIRDC noted that each Agreement is:

\ldots supplemented by arrangements of less than treaty status between the aeronautical authorities, and these settle more detailed commercial entitlements that determine the scope of airlines’ operations under the air service agreements.\textsuperscript{12}

6.12 DIRDC informed the Committee that as at 1 April 2019 such a MoU with Timor-Leste was yet to be finalised.\textsuperscript{13}

\textbf{Provisions}

6.13 Each of the agreements:

\ldots allow the ‘designated airlines’ of each country to operate scheduled air services carrying passengers, baggage, cargo and mail between the two countries on specified routes in accordance with the provisions of the [Agreement]\ldots the [Agreement] also includes reciprocal provisions on a range of aviation-related matters such as safety, security, competition laws, customs regulations and the commercial aspects of airline operations, including the ability to establish offices in the territory of each Party and to sell fares to the public.\textsuperscript{14}

6.14 The three Agreements have the following obligations.

\textbf{Authorisation of airlines}

6.15 Each Party can designate any number of airlines to conduct international air transport between the Parties. Either Party can refuse authorisation of an airline’s operations and impose conditions on the airlines operation if it fails to meet, or operate in accordance with, the conditions set out the agreements.\textsuperscript{15}

\textsuperscript{11} Thai Air Services Agreement NIA, para 4; Timor-Leste Air Services Agreement NIA, para 4; PNG Air Services Agreement NIA, para 5.

\textsuperscript{12} Mr Ross Adams, Director, International Air Transport Section, Department of Infrastructure, Regional Development and Cities (DIRDC), \textit{Committee Hansard}, Canberra, 1 April 2019, p. 4.

\textsuperscript{13} Mr Adams, DIRDC, \textit{Committee Hansard}, Canberra, 1 April 2019, p. 5.

\textsuperscript{14} Thai Air Services Agreement NIA, para 8.

\textsuperscript{15} Agreement between the Government of Australia and the Government of the Kingdom of Thailand relating to Air Services, (Bangkok, 3 August 2017) [2019] ATNIF 4, hereafter referred to the Thai Air Services Agreement, Article 2; Agreement between the Government of Australia and the
Grant of access

6.16 Each Party grants the airlines of the other Party the right to fly across its territory without landing and to make stops for non-traffic purposes such as refuelling. Each designated airline also has the right to operate routes between the Parties as specified in an Annex to each agreement. Each Annex in the agreements permits designated airlines from each Party to access any routes.  

6.17 Designated airlines are not permitted to undertake domestic services in the country to which they fly.  

6.18 The Timor-Leste Air Services Agreement permits designated airlines to operate non-scheduled flights between Australia and Timor-Leste. The PNG Air Services Agreement contains a similar provision in relation to non-scheduled flights.  

6.19 The PNG Air Services Agreement also includes the following additional provision:

If because of armed conflict, political disturbance or developments, or special and unusual circumstances, the designated airlines of one Party are unable to operate a service on their normal routes, the other Party shall use its best efforts to facilitate the continued operation of such services through appropriate temporary rearrangements of such routes as is mutually decided by the parties.

\[\text{References:}\]

- Thai Air Services Agreement, Article 3; Timor-Leste Air Services Agreement, Article 3; PNG Air Services Agreement, Article 3.  
- Thai Air Services Agreement, Article 3; Timor-Leste Air Services Agreement, Article 3; PNG Air Services Agreement, Article 3.  
- Timor-Leste Air Services Agreement, Article 3.  
- PNG Air Services Agreement, Article 3.  
- PNG Air Services Agreement, Article 3.
6.20 DIRDC reflected that continued service is not always possible depending on the nature of the conflict, and that safety and security are the key considerations in determining whether services are continued.\(^{21}\)

6.21 Asked to clarify why this clause was not in each Agreement, DIRDC told the Committee that it is not in Australia’s model text\(^ {22}\) but that the delegation of the Government of Papua New Guinea had requested its inclusion.\(^ {23}\) It highlighted that the clause ‘codifies existing international practices’\(^ {24}\) and is similar to clauses included in other air service agreements.\(^ {25}\)

**Application of laws**

6.22 Each Party’s designated airlines must comply with the other Party’s laws and regulations relating to the operation and navigation of aircraft when they are entering, within, or leaving the territory of the Party.\(^ {26}\)

6.23 Parties are required to apply the laws and regulations relating to the operation and navigation of aircraft consistently and without bias.\(^ {27}\)

6.24 Passengers, baggage and cargo transported by designated airlines will be subject to aviation security, narcotics control and immigration checks.\(^ {28}\)

**Recognition of certificates**

6.25 Each Party is required to recognise the certificates of airworthiness, competency and licences issued or rendered valid by the other Party.\(^ {29}\)

**Safety**

\(^{21}\) Mr Adams, DIRDC, *Committee Hansard*, Canberra, 1 April 2019, p. 5.

\(^{22}\) Mr Adams, DIRDC, *Committee Hansard*, Canberra, 1 April 2019, p. 5.

\(^{23}\) DIRDC, *Submission 1*, Response to Question on Notice, p. 3.

\(^{24}\) Mr Adams, DIRDC, *Committee Hansard*, Canberra, 1 April 2019, p. 5.

\(^{25}\) DIRDC, *Submission 1*, Response to Question on Notice, p. 3.

\(^{26}\) Thai Air Services Agreement, Article 4; Timor-Leste Air Services Agreement, Article 4; PNG Air Services Agreement, Article 4.

\(^{27}\) Thai Air Services Agreement, Article 4; Timor-Leste Air Services Agreement, Article 4; PNG Air Services Agreement, Article 4.

\(^{28}\) Thai Air Services Agreement Article 4; Timor-Leste Air Services Agreement, Article 4; PNG Air Services Agreement Article 4.

\(^{29}\) Thai Air Services Agreement Article 5; Timor-Leste Air Services Agreement Article 5; PNG Air Services Agreement, Article 5.
6.26 Each Party can request consultations at any time concerning safety standards in the other Party. If one Party finds that the safety standards of the other Party are not in line with those required under the Chicago Convention, the Party must notify the other Party of the corrective action required to meet the Chicago Convention standards. Each Party is also able to take immediate action where necessary to ensure the safety of an airline operation.\(^{30}\)

6.27 Noting recent safety concerns, the Committee queried whether any of the designated airlines under the agreements use Boeing 737 MAX aircrafts. DIRDC stated that none of the airlines currently has these aircrafts in service. The Committee was advised that Air Niugini and Virgin Australia have aircraft on order, but that both companies have stated that those orders are being reviewed.\(^{31}\)

**Aviation security**

6.28 Each Party is required to protect the security of civil aviation against acts of unlawful interference and to act in conformity with multilateral conventions relating to aviation security.\(^{32}\)

6.29 Parties are required to adequately protect aircraft and inspect passengers, crew, baggage, cargo and aircraft stores before and during boarding or loading. Each Party shall consider positively a request from the other Party for reasonable special security measures to meet a particular threat.\(^{33}\)

6.30 Each Party’s aeronautical authorities may request a security assessment in the other Party’s territory upon 60 days’ notice.\(^{34}\)

6.31 The Agreements with Timor-Leste and Papua New Guinea will also enable either Party to request immediate consultations if there are reasonable grounds to believe the other Party is not meeting aviation security

---

\(^{30}\) Thai Air Services Agreement, Article 6; Timor-Leste Air Services Agreement, Article 6; PNG Air Services Agreement; Article 6.

\(^{31}\) Mr Adams, DIRDC, *Committee Hansard*, Canberra 1 April 2019, p. 6.

\(^{32}\) Thai Air Services Agreement, Article 7; Timor-Leste Air Services Agreement, Article 7; PNG Air Services Agreement, Article 7.

\(^{33}\) Thai Air Services Agreement, Article 7; Timor-Leste Air Services Agreement, Article 7; PNG Air Services Agreement, Article 7.

\(^{34}\) Thai Air Services Agreement, Article 7; Timor-Leste Air Services Agreement, Article 7; PNG Air Services Agreement, Article 7.
obligations. If the consultations do not reach a satisfactory outcome, a Party will be able to withhold, revoke or suspend airline operations.\textsuperscript{35}

6.32 While the Thai Air Services Agreement does not include similar text relating to immediate consultations, DIRDC stated that there is:

Still a requirement that they conform to ICAO [International Civil Aviation Organization] security standards … [and that there is] separate domestic legislation for security, in terms of the airline needing to have an approved transport security plan to operate [in Australia].\textsuperscript{36}

6.33 DIRDC highlighted that the Thai Air Services Agreement also includes the ability for Australian officials to conduct last-port-of-call assessments in Bangkok.\textsuperscript{37}

**User charges**

6.34 Charges for airport, security and navigation services imposed on designated airlines must be reasonable, not unjustly discriminatory, equitably apportioned, and not higher than those imposed on other international airlines. User charges must reflect but not exceed the actual cost of providing the air services.\textsuperscript{38}

**Customs duties and air fares**

6.35 Designated airlines can set their own air fares and will not be charged customs duties on equipment and stores used to support the airline’s operation.\textsuperscript{39}

**Capacity and schedules**

6.36 The passenger and cargo capacity of designated airlines will be agreed by the aeronautical authorities of the parties.\textsuperscript{40}

\textsuperscript{35} Timor-Leste Air Services Agreement, Article 7; PNG Air Services Agreement, Article 7.

\textsuperscript{36} Mr Adams, DIRDC, *Committee Hansard*, Canberra, 1 April 2019, p. 7.

\textsuperscript{37} Mr Adams, DIRDC, *Committee Hansard*, Canberra, 1 April 2019, p. 7.

\textsuperscript{38} Thai Air Services Agreement, Article 8; Timor-Leste Air Services Agreement, Article 8; PNG Air Services Agreement, Article 8.

\textsuperscript{39} Thai Air Services Agreement, Articles 10 and 11; Timor-Leste Air Services Agreement, Articles 10 and 11; PNG Air Services Agreement, Articles 10 and 11.

\textsuperscript{40} Thai Air Services Agreement, Article 12; Timor-Leste Air Services Agreement, Article 12; PNG Air Services Agreement, Article 12.
6.37 The Thai Air Services Agreement also requires the approval of timetabling schedules for designated airlines.\(^{41}\)

6.38 Designated airlines can use any surface transport within a Party to link their customers with departure points.\(^{42}\)

**Implementation**

6.39 According to the respective NIAs, each of the Agreements will be implemented using existing legislation including the:

- *Air Navigation Act 1920*;
- *Civil Aviation Act 1988*; and
- *International Air Services Commission Act 1992*.\(^{43}\)

**Oversight of airspace**

6.40 The Committee questioned whether Australia’s approach to air service agreements has changed since the downing of Malaysia Airlines flight MH17. DIRDC suggested that there has not been an identified need to change the model text since the incident.\(^{44}\)

6.41 The Civil Aviation Safety Authority (CASA) highlighted that the following advice relating to international safety and security is provided on its website:

Australian air operators and pilots are reminded to check all available and authoritative information about potential safety and security threats to flights before conducting operations in, over or near areas of armed conflict or turmoil. Air operators and pilots should determine if National Aviation Authorities or other government agencies have issued any notices, advisories, bulletins, warnings or other safety information about activities that may pose risks to flights in particular geographic regions or airspace. These should be assessed along with any relevant travel advisories from the Department of Foreign Affairs and Trade.

---

\(^{41}\) Thai Air Services Agreement, Article 14.

\(^{42}\) Thai Air Services Agreement, Article 15; Timor-Leste Air Services Agreement, Article 14; PNG Air Services Agreement, Article 14.

\(^{43}\) Thai Air Services Agreement NIA, para 27; Timor-Leste Air Services Agreement NIA, para 27; PNG Air Services Agreement NIA, para 29.

\(^{44}\) Mr Adams, DIRDC, *Committee Hansard*, Canberra, 1 April 2019, p. 6.
It is the responsibility of air operators and pilots to consider this kind of information and to make informed decisions about when, and whether, to operate into or over particular areas where local situations and circumstances may pose unacceptable risks. Operators and pilots are always required to be familiar, and to comply, with the applicable aviation laws of other countries in which they conduct operations.

Lastly, the ICAO, is compiling information promulgated by states regarding risks to civil aircraft arising from conflict zones. CASA reminds Australian air operators and pilots considering operations into or over problematic areas to pay attention to all current safety notices and bulletins, including from the following sources—and we have provided links: the ICAO conflict zone information repository; the USFAA prohibitions, restrictions and notices; and the European Aviation Safety Agency safety bulletins as well.45

Conclusion

6.42 The Committee has ongoing concerns regarding the dangers imposed for flights transiting conflict zones. The Committee is aware that the safety and security of citizens is paramount and will continue to take an interest in this issue.

6.43 The Committee notes DIRDC’s acknowledgement that there was a significant amount of time between the signing and tabling of these treaty actions.

6.44 The Committee recommends that binding treaty action be taken in relation to these air services agreements.

Recommendation 2

6.45 The Committee supports the Agreement between the Government of Australia and the Government of the Kingdom of Thailand relating to Air Services and recommends that binding treaty action be taken.

Recommendation 3

6.46 The Committee supports the Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste

45 Ms Carolyn Hutton, Manager, Government and International Relations Branch, Civil Aviation Safety Authority (CASA), Committee Hansard, Canberra, 1 April 2019, p. 6.
relating to Air Services and recommends that binding treaty action be taken.

Recommendation 4

6.47 The Committee supports the Agreement between the Government of Australia and the Government of Papua New Guinea relating to Air Services and recommends that binding treaty action be taken.
7. Work Diplomatic Families: Italy

Agreement between the Government of Australia and the Government of the Italian Republic regarding the undertaking of work by cohabiting family members of diplomatic, consular and technical and administrative staff

7.1 This chapter considers the Agreement between the Government of Australia and the Government of the Italian Republic regarding the undertaking of work by cohabiting family members of diplomatic, consular and technical and administrative staff (the Agreement). The treaty action was signed in Canberra on 27 November 2017 and tabled in the Parliament on 12 February 2019. A public hearing was held on 1 April 2019. The Committee’s inquiry into the treaty action lapsed at the dissolution of the 45th Parliament on 11 April 2019. The treaty was re-referred to the Committee by the Minister for Foreign Affairs on 29 July 2019, following the re-establishment of the Committee in the 46th Parliament. As noted in paragraph 1.13, updated advice was sought at that time and the Department of Foreign Affairs and Trade (DFAT) advised that no additional comment was needed.

7.2 The National Interest Analysis (NIA) states that the Agreement will allow family members of diplomatic staff stationed in Australia and Italy to
engage in paid work for the duration of an official’s posting in the receiving country.\(^1\)

7.3 According to the NIA, it is in Australia’s interest to address barriers to the employment of family members of Australian diplomatic and consular personnel serving overseas. The opportunity for spouses and family members of Australian diplomatic and consular personnel to engage in gainful employment overseas can be an incentive for staff to serve in particular countries.\(^2\)

7.4 DFAT stated that these types of agreements are valuable to Australia, as they support DFAT and other agencies to recruit and retain high-quality officers willing to serve abroad. The Department emphasised that:

> The financial implications of one spouse ceasing work can lead to a reduced number of officers seeking overseas postings, or an increase in families being separated, with the associated problems that that can create. These agreements don’t secure or guarantee employment; rather, these agreements provide the opportunity to seek employment locally, including as remote workers for current jobs in Australia.\(^3\)

7.5 The NIA notes that the Australian Government also has a strong commitment, as an employer, to support its employees to balance their work and family responsibilities.\(^4\)

7.6 In order to encourage other countries to provide employment opportunities to family members of Australian diplomatic and consular personnel serving overseas, the Australian Government offers reciprocal opportunities to family members of foreign officials.\(^5\)

7.7 The Agreement is one of a series of bilateral employment arrangements that Australia has concluded with countries in which the Australian Government has a diplomatic or consular presence. Bilateral employment arrangements are usually conducted at a less than treaty level, by way of a memorandum

---


\(^2\) NIA, para 5.

\(^3\) Ms Lyndall Sachs, Chief of Protocol, Department of Foreign Affairs and Trade (DFAT), Committee Hansard, Canberra, 1 April 2019, p. 1.

\(^4\) NIA, para 5.

\(^5\) NIA, para 6.
of understanding. However, the domestic laws of Italy require a treaty level agreement.\textsuperscript{6}

7.8 To date, Australia has seven treaty level agreements (not including this Agreement), and 46 less than treaty level arrangements concerning the employment of spouses and family members of diplomatic and consular officials, and negotiations are currently under way for similar agreements or arrangements with seven other countries.\textsuperscript{7}

7.9 The Agreement broadly follows the form of the Australian model text for arrangements concerning the employment of family members of diplomatic and consular personnel.\textsuperscript{8}

7.10 DFAT advised that there are currently 219 Partners and 84 children over the age of 16 accompanying Australian posted officers abroad, although records are not kept as to how many of these are employed because of bilateral work agreements of this sort.\textsuperscript{9}

7.11 The NIA states that the Agreement is in the national interest as it will assist in enabling the highest quality of official representation by Australia in Italy and by Italy in Australia.\textsuperscript{10}

7.12 DFAT advised that the Agreement will apply to dependants of Australian officers posted to Rome, Milan and the Holy See, and to dependants of Italian officers posted to Australia across their embassy and five consulates.\textsuperscript{11}

### Obligations

7.13 The following summary of the obligations under the Agreement are taken from the NIA.

7.14 **Article 1** provides that on a reciprocal basis the cohabiting family members who form a part of the official household of diplomatic and consular personnel of the sending State, will be authorised by the receiving State to

\begin{itemize}
  \item \textsuperscript{6} NIA, para 7.
  \item \textsuperscript{7} NIA, para 8.
  \item \textsuperscript{8} NIA, para 9.
  \item \textsuperscript{9} Department of Foreign Affairs and Trade (DFAT), *Submission 1*, Response to Question on Notice, p. [2].
  \item \textsuperscript{10} NIA, para 4.
  \item \textsuperscript{11} Ms Sachs, DFAT, *Committee Hansard*, Canberra, 1 April 2019, p. 1.
\end{itemize}
carry out self-employed or salaried work, in compliance with the provisions of the Agreement.\textsuperscript{12}

7.15 **Article 6** provides that this authorisation would commence from the time of arrival of the member of the diplomatic mission or consular post in the receiving State, until their time of departure, or until such time as the person ceases to be a family member forming part of the household of a member of the diplomatic mission or consular post.\textsuperscript{13}

7.16 The expression ‘family members’ is defined by **Article 1(2)** to include spouses, unmarried dependent children aged 16 to 25, and other members of the family pursuant to Article 37 of the *Vienna Convention on Diplomatic Relations* of 1961 and the *Vienna Convention of Consular Relations* of 1963.\textsuperscript{14} DFAT clarified that the definition of ‘spouse’ includes de facto and those in LGBTI relationships.\textsuperscript{15}

7.17 **Articles 2 and 3** set out the process for requesting the requisite authorisation. In Italy, the Embassy of Australia will send its request to the Diplomatic Protocol Office of the Italian Republic, informing it of the name of the relevant family member that wishes to engage in work, and a description of the nature of the proposed work. In Australia, the Embassy of Italy will submit its request to the Protocol Branch of DFAT.\textsuperscript{16}

7.18 **Article 4** provides that family members who have been authorised to undertake gainful employment would be subject to the applicable taxation, social security and employment law in force in the receiving State for all matters connected with their work.\textsuperscript{17}

7.19 **Article 6(3)** provides that each Party may refuse authorisation in cases where the family member has worked illegally in the receiving State or has violated the laws and regulations on tax and social security. Authorisation may also be refused in those cases where, for reasons of security, only citizens of the receiving State may be employed.\textsuperscript{18}

\textsuperscript{12} NIA, para 10.

\textsuperscript{13} NIA, para 11.

\textsuperscript{14} NIA, para 12.

\textsuperscript{15} Ms Sachs, DFAT, *Committee Hansard*, Canberra, 1 April 2019, p. 2.

\textsuperscript{16} NIA, para 13.

\textsuperscript{17} NIA, para 14.

\textsuperscript{18} NIA, para 15.
Article 5(1) provides that the sending State will waive immunities from the civil or administrative jurisdiction of the receiving State, which would otherwise be enjoyed by family members of the diplomatic and consular personnel authorised to work under the proposed Agreement, in respect of all matters arising out of the aforementioned work.\(^\text{19}\)

Article 5(2) provides that the sending State will waive immunities from criminal jurisdiction, which would otherwise be enjoyed by cohabiting family members, in respect of any act or omission arising out of the aforementioned work, except in special instances when the sending State considers that such a waiver could be contrary to its interests.\(^\text{20}\)

Asked to provide examples of sending States waiving immunities contrary to their interest, DFAT told the Committee that:

- no waivers of immunity in relation to the employment of a dependant of a diplomatic or consular officer being either sought or provided has been recorded, either in Australia or overseas;
- it is unlikely that Australia would waive immunity of dependants overseas if it is contrary to their interests; and
- in relation to immunities regarding employment, if there is a bilateral employment treaty in place, immunities in relation to work are removed. If there is no bilateral treaty, the dependant may be required to give up their immunities entirely if they wished to work overseas.\(^\text{21}\)

**Additional reasons for declining a request**

DFAT acknowledged that a receiving State could decline a request for family members of diplomatic and consular personnel to undertake employment for reasons other than those specified in the Agreement.\(^\text{22}\)

The Committee queried whether a receiving State could decline a request on the basis that the employment may constitute a conflict of interest. DFAT stated that this was possible, but that it would be up to the employer to determine whether there is a conflict of interest.\(^\text{23}\)

\(^{19}\) NIA, para 16.

\(^{20}\) NIA, para 17.

\(^{21}\) DFAT, Submission 1, Response to Question on Notice, p. [3].

\(^{22}\) Ms Sachs, DFAT, Committee Hansard, Canberra, 1 April 2019, p. 2.

\(^{23}\) Ms Sachs, DFAT, Committee Hansard, Canberra, 1 April 2019, p. 3.
7.25 DFAT clarified that it would be notified about a potential conflict of interest as it:

... receive[s] notice of intention from the prospective employee, so the spouse or family member of the diplomatic or consular official notifies DFAT of their intention to commence employment, ostensibly seeking approval from us to pursue that. So, if they were intending to work for a government agency or something other than that, it would come to our attention that way and then we would potentially make inquiries ... We would then give that to somebody else to look into, but we would be notified of their intention to commence that employment.  

**Implementation**

7.26 According to the NIA, the Agreement can be implemented using existing legislation.  

**Conclusion**

7.27 The Committee notes that the Agreement was signed in 2017, and as it has previously observed, has some concern about the length of time that occurs between the signing and tabling of these treaty actions.

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

**Recommendation 5**

7.29 The Committee supports the Agreement between the Government of Australia and the Government of the Italian Republic regarding the undertaking of work by cohabiting family members of diplomatic, consular and technical and administrative staff and recommends that binding treaty action be taken.

---

24 Ms Clele White, Assistant Director, Protocol, Department of Foreign Affairs and Trade (DFAT), Committee Hansard, Canberra, 1 April 2019, p. 3.

25 NIA, para 18.
8. Double Taxation - Israel

Convention between the Government of Australia and the Government of the State of Israel for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance

8.1 This chapter examines the Convention between the Government of Australia and the Government of the State of Israel for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance (the Convention). The treaty action was signed in Canberra on 28 March 2019 and tabled in the Parliament on 9 September 2019.

8.2 The Joint Standing Committee on Treaties (JSCOT) has developed a practice where, in the event of a compelling national interest, the Committee will consider a request from the Australian Government that a treaty be considered urgently.¹ In this case, the need for urgent consideration may not have been required if the referral had occurred in a more timely manner.

Double taxation treaties and international models

¹ For example: the Agreement between the Government of Australia and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA, which enabled all Australian Financial Institutions to avoid being subject to a 30 per cent withholding tax in the United States.
8.3 The Convention, which can also be referred to as a double taxation treaty, is a bilateral treaty that ‘establishes an internationally accepted framework for the taxation of cross-border financial transactions’.²

8.4 The Convention adds to Australia’s pre-existing network of 44 tax treaties.³ Similar to Australia’s other tax treaties, the Convention is consistent with Australia’s established treaty practice and reflects the Organization for Economic Co-operation and Development’s (OECD) Model tax convention on income and on capital (model convention).⁴

8.5 Both Australia and Israel are also parties to the OECD’s Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MIL),⁵ which provides an international framework to prevent double taxation treaties from being used for tax minimisation.⁶

8.6 The Committee sought details on the interaction between the Convention and the OECD’s MIL. Treasury advised that the Convention ‘incorporates the key changes’ implemented by the OECD’s MIL, which introduced integrity provisions to address tax avoidance, base erosion and profit shifting.⁷

8.7 The measures incorporated into the Convention from the OECD’s MIL are specifically designed to minimise opportunities for ‘double non-taxation or reduced taxation through tax avoidance’.⁸ For example, Treasury outlined that:

---
³ Ms Ram, Treasury, Committee Hansard, Canberra, 16 September 2019, p. 15.
⁴ Ms Ram, Treasury, Committee Hansard, Canberra, 16 September 2019, pp. 15–16.
⁵ Base erosion and profit shifting refers to the tax planning strategies multinational companies implement to exploit gaps and differences between the tax rules of different international jurisdictions.
⁶ Joint Standing Committee on Treaties (JSCOT), Report 175: OECD Tax Measures BEPS; International Solar Alliance-Agreement; Air Services-Three Agreements, Canberra, November 2017, p. 5.
⁷ Ms Ram, Treasury, Committee Hansard, Canberra, 16 September 2019, p. 16. Note: the changes introduced by the OECD’s MIL are also now reflected in the model convention.
⁸ Ms Ram, Treasury, Committee Hansard, Canberra, 16 September 2019, p. 16.
...the key benefits of the treaty would be denied if a person’s principle purpose is to take advantage of the treaty and avoid paying tax.\textsuperscript{9}

8.8 The Convention preserves each country’s right to apply its own domestic laws to prevent tax avoidance. In this case, Australia can continue to apply its ‘general anti-avoidance rules’.\textsuperscript{10}

8.9 Treasury noted however, that there was no ‘direct relationship’ between the Convention and the OECD’s MIL. The OECD’s MIL only applies to pre-existing treaties, not new treaties such as the Convention.\textsuperscript{11}

**Overview and reasons to take proposed treaty action**

8.10 According to the National Interest Analysis (NIA), the Convention will promote closer economic cooperation between Australia and Israel by reducing and clarifying the taxation obligations of businesses and residents of either country.\textsuperscript{12}

8.11 Commercial ties between Australia and Israel have grown over recent years. Two-way trade in merchandise amounted to approximately $1 billion in 2017–18 and in June 2019, Israel was the third-largest source of foreign company listings in Australia\textsuperscript{13}—with 20 Israeli companies listed on the Australian Stock Exchange.\textsuperscript{14}

8.12 The Treasury (Treasury)\textsuperscript{15} informed the Committee that the Convention will ‘support and continue to strengthen the economic trade and commercial relationship between the two countries’.\textsuperscript{16} Tax residents and companies in both Australia and Israel would be the major beneficiaries.\textsuperscript{17} More specifically, the Convention is expected to:

---

\textsuperscript{9} Ms Ram, Treasury, *Committee Hansard*, Canberra, 16 September 2019, pp. 16–17.

\textsuperscript{10} Ms Ram, Treasury, *Committee Hansard*, Canberra, 16 September 2019, p. 17.

\textsuperscript{11} Mr Gregory Wood, Manager, Corporate and International Tax Division, Treasury, *Committee Hansard*, Canberra, 16 September 2019, p. 17.

\textsuperscript{12} NIA, para 5.

\textsuperscript{13} Behind New Zealand and the United States of America.

\textsuperscript{14} Ms Ram, Treasury, *Committee Hansard*, Canberra, 16 September 2019, p. 15.

\textsuperscript{15} Treasury is the lead-policy agency for this Convention.

\textsuperscript{16} Ms Ram, Treasury, *Committee Hansard*, Canberra, 16 September 2019, p. 15.

\textsuperscript{17} Ms Ram, Treasury, *Committee Hansard*, Canberra, 16 September 2019, p. 16.
▪ reduce tax barriers for individuals and businesses in both countries and encourage cross-border ‘dealings and investment’; and
▪ improve the integrity of both countries’ tax systems through ‘anti-abuse rules’ that safeguard against taxpayers claiming benefits under the Convention.18

Provisions to reduce barriers and improve tax integrity

8.13 Provisions targeted to reduce barriers in bilateral investment and trade and reduce compliance costs for taxpayers include:
▪ reducing taxation of outbound dividends, interest payments and royalties;19
▪ providing an agreed basis for determining the allocation of taxable profits within multinational enterprises, assisting to remove the potential for double taxation of the same profits in each country;20
▪ preventing double taxation of salaries and wages;21
▪ allocating taxing rights over fringe benefits to the country that has primary taxing rights over the employment income to which the benefits relate;22 and
▪ creating a dispute resolution system for taxpayers who believe they have not been taxed in accordance with the Convention.23

8.14 The provisions designed to prevent tax evasion and avoidance focus on enhancing the integrity of the tax system through a cooperative framework, for example, by allowing the exchange of taxpayer information between Australia and Israel.24 Collectively, the integrity provisions aim to deny the benefits of the Convention to taxpayers using the Convention to avoid taxation.25

8.15 The Committee was also informed that a number of the integrity provisions included in the Convention were consistent with both the OECD’s MIL and

---

18 Ms Ram, Treasury, Committee Hansard, Canberra, 16 September 2019, p. 16.
19 NIA, paras 10, 11 and 12.
20 NIA, para 14.
21 NIA, para 32.
22 NIA, para 15.
23 NIA, para 16.
24 NIA, para 19; NIA, para 17.
25 NIA, para 17.
the OECD’s Base Erosion and Profit Shifting (BEPS) project. Treasury advised that such provisions include:

- preventing related parties from circumventing a ‘permanent establishment’ in Australia to avoid tax in Australia;
- preventing taxpayers from avoiding a taxable presence when using dependant agents to conclude contracts;
- integrity rules for fiscally transparent entities, to reduce the risk of double non-taxation; and
- introducing a new tie-breaker test for companies that reside in both Australia and Israel.

Timing of the treaty

8.16 The proposed Convention is to take effect in three stages in Australia. The first stage, which covers the key benefits of the Convention—including provisions for withholding rates for dividends, interest and royalties—is planned to take effect from the first day of January that follows the Convention’s full entry into force.

8.17 Following the Convention’s entry into force, the second stage involves fringe benefits tax on fringe benefits provided on or after 1 April, while the third stage is for all other taxes on income earned on or after 1 July.

Obligations

---


28 Ms Ram, Treasury, Committee Hansard, Canberra, 16 September 2019, p. 17.

29 NIA, para 2; Ms Ram, Treasury, Committee Hansard, Canberra, 16 September 2019, p. 16.

30 NIA, para 2.
As noted at para 8.4, Australia is already a party to 44 tax treaties. The following summary of the obligations under the Agreement are taken from the NIA.\\footnote{See NIA, paragraphs 22–46.}

The scope of the proposed Convention is set out in Articles 1 and 2. **Article 1** notes which person shall be covered by the proposed Convention, that is, persons who are residents of one or both of the Contracting States. **Article 2** describes the taxes to which the proposed Convention shall apply.

**Article 4 (Resident)** sets out how and the factors on the basis of which a person’s country of residence shall be determined for the purpose of the proposed Convention.

**Article 5 (Permanent Establishment)** defines the term ‘permanent establishment’ (PE), which is relevant to determining when a business, which is a resident of one country, will have a taxable presence in the other country.

**Article 6 (Income from Immovable Property)** provides that income derived by a resident of one of the parties to the proposed Convention from immovable property located in the other party may be taxed by the party where the property is located.

**Article 7 (Business Profits)** clarifies that an enterprise of a party to the proposed Convention (including beneficiaries of trusts) that derives business profits in the other party will be taxable in that other party only to the extent that the profits are attributable to a PE located in that other party.

**Article 8 (Shipping and Air Transport)** provides that profits from international shipping or air transport activities, will be taxable only in the country of residence of the operator, but may also be taxed in the other country where the transport is between places in that other country.

**Article 9 (Associated Enterprises)** requires the revenue authorities to make appropriate adjustments to the amount of tax charged on profits from transactions between related enterprises in certain circumstances, to remove double taxation.

**Article 10 (Dividends), 11 (Interest) and 12 (Royalties)** provide that dividends, interest and royalties that arise in one country and are paid to a resident of the other country may be taxed in the other country.
8.27 **Article 13 (Alienation of Property)** enables a country to tax income or gains derived by a resident of the other country from the alienation of immovable property located within its jurisdiction, including from the disposal of interests in land-rich entities.

8.28 **Article 14 (Income from Employment)** prevents the double taxation of salaries, wages and similar remuneration.

8.29 **Article 15 (Directors’ Fees)** provides that directors’ fees and other similar payments derived by a resident of one country as a member of the board of directors of a company that is a resident of the other country may be taxed in that other country.

8.30 **Article 16 (Artistes and Sportspersons)** provides that income derived by an entertainer or sportsperson from their personal activities may be taxed in the country where the activities take place.

8.31 **Article 17 (Pensions)** provides for pensions and similar periodic remuneration to be taxed only in the recipient’s country of residence.

8.32 **Article 18 (Government Service)** provides that government service (salaries, wages and other similar remuneration) will be taxable only in the country that paid the remuneration.

8.33 **Article 19 (Professors, Teachers and Researchers)** provides for the exemption from taxation in the country visited for remuneration derived by visiting teachers, professors, and researchers for up to two years, to the extent that the remuneration is subject to tax in the other country (**Article 19(1)**).

8.34 **Article 20 (Students)** deals with certain payments received by students or business apprentices.

8.35 **Article 21 (Other Income)** provides that any income derived by a resident of a country that is not expressly dealt with elsewhere in the proposed Convention may be taxed only in that country, unless the income arises in the other country.

8.36 **Article 22 (Limitation on Benefits)** includes a rule—based on an OECD/G20 BEPS recommendation—denying benefits under the proposed Convention if it is reasonable to conclude having regard to all relevant facts and circumstances that one of the principal purposes of any arrangement or transaction resulting in that benefit is to take advantage of the treaty, unless it is established that granting the benefit is in accordance with the object and purpose of the treaty.
8.37 **Article 23 (Relief from Double Taxation)** includes rules allowing a credit for tax paid in Israel against Australian tax payable on that income, and vice-versa.

8.38 **Article 24 (Non-discrimination)** contains rules requiring each country to treat nationals (including entities) of the other country no less favourably for tax purposes than it treats its own nationals in the same circumstances.

8.39 **Article 25 (Mutual Agreement Procedure)** provides a dispute resolution procedure for taxpayers where they consider that they have not been taxed in accordance with the proposed Convention.

8.40 **Article 26 (Exchange of Information)** obliges the exchange of taxpayer information between the Australian and Israeli competent authorities that is foreseeable relevant for carrying out the provisions of the proposed Convention or for the administration or enforcement of domestic laws concerning taxes.

8.41 **Article 27 (Members of Diplomatic Missions and Consular Posts)** provides that nothing in the proposed Convention will change the fiscal privileges under general rules of international law or special international agreements of members of diplomatic missions and consular posts.

8.42 **Article 28 (Protocol)** provides that the Protocol to the proposed Convention is an integral part of the treaty.

**Implementation**

8.43 Implementing the Convention will require the amendment of the *International Tax Agreements Act 1953*. The amending legislation *Treasury Laws Amendment (International Tax Agreements) Bill 2019* was introduced in the Parliament on 19 September 2019. At the time of this report being prepared, the Bill had not yet been debated.

**Costs**

8.44 Due to the reciprocal nature of tax treaties, both Australia and Israel can expect direct costs and direct benefits to their revenue bases. However, the NIA outlines that Treasury’s estimates on the financial impact of the

---

Convention’s first stage effects show an ‘unquantifiable cost to revenue over the forward estimates’.  

8.45 The Committee requested further clarification from Government representatives on whether the benefits and scope of the problems the Convention aims to address—both double taxation and tax evasion—can be measured.

8.46 Treasury reiterated that the costing of the Convention was ‘unquantifiable’ as it involves the treaty’s entire reach. Alongside the objective of alleviating double taxation, the treaty contains provisions that aim to increase transparency to assist with addressing tax evasion, which is a ‘difficult thing to quantify’.

8.47 Further, it was drawn to the Committee’s attention that the Convention establishes a framework that is also preventing possible future double taxation. While both countries have existing domestic laws to limit double taxation:

... what the treaty does is actually fixes it in international law, which creates a lot more certainty for taxpayers.

8.48 Notwithstanding responses to questions on the Convention’s costs/benefits, the Committee requested Treasury provide more detail on the extent the Convention addresses the OECD’s BEPS project. Treasury provided a table outlining how Articles 1, 5, 7, 9 10, 13, 22 and 25, incorporate a number of OECD Action Items.

**Conclusion**

8.49 The Committee notes that the Convention adds to Australia’s existing network of 44 tax treaties and is consistent with Australia’s established treaty practice, including that it reflects multiple OECD model conventions.

8.50 Specifically, the Committee acknowledges the benefits of the Convention reducing tax barriers for Australian and Israeli individuals and businesses, as well as enhancing the integrity of cross-border dealings by preventing tax evasion and avoidance.

---

33 NIA, para 50.

34 Ms Ram, Treasury, *Committee Hansard*, Canberra, 16 September 2019, p. 17.


8.51 The Committee supports the Convention and recommends that binding treaty action be taken.

**Recommendation 6**

8.52 The Committee supports the *Convention between the Government of Australia and the Government of the State of Israel for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance* and recommends that binding treaty action be taken.
9. Minor Treaty Actions

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

9.2 Minor treaty actions are presented to the Committee with a one-page explanatory statement and are listed on the Committee’s website. The Committee can choose to formally inquire into these treaty actions, or accept them without a formal inquiry and report.

9.3 The Committee has been asked to consider the following six minor treaty actions.

2018 amendments to Annex VI of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocols of 1978 and 1997 relating thereto (MARPOL) MEPC.305(73)

9.4 The proposed treaty action will amend Annex VI of the International Convention on the Prevention of Pollution from Ships in relation to the carriage of non-compliant fuel oil for use on the ship.¹

9.5 From March 2020, ships will not be permitted to carry fuel with a sulphur content of more than 0.5 per cent, except as cargo.²

9.6 The proposed amendments shall be deemed to have been accepted on 1 September 2019 unless sufficient MARPOL Parties object. Such an


² Explanatory Statement 6, para 2.
eventuality is unlikely because MARPOL amendments are made by consensus.³

**2017 Amendments to the International Convention for the Safety of Life at Sea Resolution MSC.421(98)**

9.7 The proposed Treaty action amends Chapters II-1, II-2 and III and the Appendix of the *International Convention for the Safety of Life at Sea 1974* (SOLAS) revising regulations for the construction and operation of ships, specifically the requirements for the construction of ships, damage control drills, fire protection, and safety equipment aboard ships.⁴

9.8 The proposed Amendments will have negligible legal, financial and practical impacts in Australia.⁵

9.9 The amendments will be deemed to have been accepted on 1 July 2019, unless a sufficient number of Parties notify an objection prior to that date. If accepted, the amendments will enter into force on 1 January 2020.⁶

**2018 Amendments to the International Convention for the Safety of Life at Sea Resolution MSC.436(99)**

9.10 The proposed Treaty action will amend Chapter II-1 and IV and the Appendix of the *International Convention for the Safety of Life at Sea 1974* (SOLAS) adding new requirements for the construction of ships after January 2020 and improving safety systems on existing passenger ships.⁷

9.11 The amendments will be deemed to have been accepted on 1 July 2019, unless a sufficient number of Parties notify an objection prior to that date. If accepted, the amendments will enter into force on 1 January 2020.⁸

---

³ Explanatory Statement 6, para 7.
⁵ Explanatory Statement 7, para 2.
⁶ Explanatory Statement 7, para 4.
⁸ Explanatory Statement 8, para 5.
Adjustments to the Montreal Protocol on Substances that Deplete the Ozone Layer relating to the controlled substances on Annex C, Group I adopted at Quito on 9 November 2018

9.12 The proposed treaty action concerns adjustments to the Montreal Protocol on Substances that Deplete the Ozone Layer [1989] ATS 18 (‘the Montreal Protocol’) relating to the control of hydrochlorofluorocarbons (HCFCs) to permit the maintenance of fire suppression systems that use HCFCs and to permit the use of HCFCs for experimental and laboratory use.9

9.13 The amendments will permit the importation of HCFCs for legacy fire control systems and laboratory use until 2030.10

Amendment to the Treaty on Extradition between Australia and Ireland

9.14 The proposed treaty action will amend the Treaty on Extradition between Australia and Ireland [Dublin, 2 September 1985] by designating revenue offences as extraditable offences. Specifically, the discretionary ground for refusal of extradition for revenue offences under Article III(2)(a) will be removed. A new Article II(5) will be inserted that clearly provides that a revenue offence is an extraditable offence.11

9.15 Australia does not require the amendment to enable it to grant an extradition request made by Ireland for revenue offences under Australia’s domestic legal framework. However, the amendment will enable Ireland (under Irish domestic law) to grant an Australian extradition request for revenue offences.12

9.16 Following the Committee’s consideration and after the relevant amendments are made to the Extradition (Ireland) Regulations 1989, the amendment will come into force upon exchange of diplomatic notes between Australia and Ireland.13

---

9 Adjustments to the Montreal Protocol on Substances that Deplete the Ozone Layer relating to the controlled substances on Annex C, Group I adopted at Quito on 9 November 2018, Explanatory Statement 9, para 2.

10 Explanatory Statement 9, para 2.


12 Explanatory Statement 1, para 2.

13 Explanatory Statement 1, para 3.
Acceptance of the accessions of Andorra, Armenia, Brazil, Colombia, Costa Rica, Montenegro and Morocco to the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters


9.18 The proposed treaty action is Australia’s acceptance of the accessions of Andorra, Armenia, Brazil, Colombia, Costa Rica, Montenegro and Morocco to the Convention, which entered into force for Australia on 22 December 1992. Accepting these accessions enables the streamlined approach for the taking of evidence already established by the Convention to apply between Australia and the seven countries listed.

9.19 The Convention will enter into force between Australia and each of the acceding countries sixty days after Australia’s declaration of acceptance is deposited with the Ministry of Foreign Affairs of the Netherlands.

Conclusion

9.20 The Committee determined not to hold a formal inquiry into any of the minor treaty actions, and agreed that binding treaty action may be taken in each case.

---


15 Explanatory Statement 10, para 2.

16 Explanatory Statement 10, para 2.

17 Explanatory Statement 10, para 4.

18 Explanatory Statement 10, para 5.
Mr Dave Sharma MP
Chair
14 October 2019
A. Submissions

*Trade in Wine: UK*
1. Australian Grape and Wine Incorporated

*MH17 Netherlands*
1. Department of Foreign Affairs and Trade

*Air Services: PNG*
1. Department of Infrastructure, Regional Development and Cities

*Work Diplomatic Families: Italy*
1. Department of Foreign Affairs and Trade

*Double Taxation-Israel*
1. The Treasury
B. Witnesses

Monday, 1 April 2019

Canberra

Oil Stock Contracts: Hungary
Department of Foreign Affairs and Trade
Department of the Environment and Energy

MRA UK
Department of Foreign Affairs and Trade
Department of Industry, Innovation and Science

Trade in Wine: UK
Department of Agriculture and Water Resources
Department of Foreign Affairs and Trade

MH17 Netherlands
Australian Federal Police
Department of Foreign Affairs and Trade

Air Services: Thailand, Timor-Leste, PNG
Civil Aviation Safety Authority
Department of Infrastructure, Regional Development and Cities
Work Diplomatic Families: Italy

Department of Foreign Affairs and Trade

Monday, 16 September 2019

Canberra

Double Taxation: Israel

Australian Taxation Office

Department of Foreign Affairs and Trade

The Treasury